

42 IAC 1-5-5 Outside employment (IC 4-2-6-5.5)

42 IAC 1-5-6 Conflict of interest; decisions and voting (IC 4-2-6-9)

An IDHS Programs Specialist was asked to join a township Volunteer Fire Department that served as an EMS provider and ambulance service provider. Since the Programs Specialist's duties as a state employee included acting as a back-up for the IDHS employee who was responsible for inspecting EMS providers and ambulance service providers, the IDHS EO wanted to ensure this proposed outside employment opportunity would not violate the Code of Ethics. SEC found a conflict of interest could potentially arise for the Programs Specialist under IC 4-2-6-9, and a screening procedure implemented by IDHS to remove him from any decision, vote, or inspection related to the Fire Department would be appropriate to address the conflict.

May 2011
No. 11-I-10

The Indiana State Ethics Commission ("Commission") issues the following advisory opinion concerning the State Code of Ethics pursuant to I.C. 4-2-6-4(b)(1).

BACKGROUND

The Ethics Officer for the Indiana Department of Homeland Security ("IDHS") requests an advisory opinion on behalf of IDHS and the North District Programs Specialist in the Field Services Division.

The Programs Specialist has been asked to join and work for the Adams Township Volunteer Fire Department ("Fire Department"). The Programs Specialist would serve as a firefighter/emergency medical technician for the Fire Department. His duties would include firefighting, auto extrication and providing emergency medical services/patient care. The Programs Specialist's work for the Fire Department would be strictly on a volunteer basis. He would not receive pay or reimbursement for the services he would provide. Furthermore, the Programs Specialist does not plan to respond as a firefighter/emergency medical technician during state time. Instead, he would only respond on his own time.

IDHS regulates all emergency medical service providers and ambulance providers in Indiana, as well as emergency medical services ("EMS") training institutions and all EMS personnel through a certification program. All EMS and ambulance service providers are required to be certified. The Fire Department is an EMS provider and an ambulance service provider.

The Programs Specialist's job duties at IDHS require that he act as a back-up for the IDHS employee that is typically responsible for inspecting EMS providers and ambulance services in the northern area of the State. The Programs Specialist will conduct inspections of EMS providers and ambulance services if the IDHS employee who normally performs these duties is behind or out of the office.

The Programs Specialist has been screened from any inspections or agency decisions regarding the Fire Department since he initiated discussions with the Fire Department regarding this position.

IDHS supports the Programs Specialist's membership with the Fire Department and is willing to implement a screening procedure to ensure that the Programs Specialist does not inspect and/or participate in any agency decision regarding the Fire Department. IDHS believes that establishing a screening procedure for him will be easily accomplished since he only performs inspections on a contingency basis. In addition, I.C. 4-15-10-7 is a special provision governing a state employee's membership on a volunteer fire department.

ISSUE

Would the Programs Specialist's acceptance of an offer to serve as a volunteer firefighter/emergency medical technician with the Fire Department be contrary to the State Code of Ethics?

RELEVANT LAW

IC 4-2-6-5.5 (42 I.A.C. 1-5-5)

Conflict of interest; advisory opinion by inspector general

Sec. 5.5. (a) A current state officer, employee, or special state appointee shall not knowingly:

(1) accept other employment involving compensation of substantial value if the responsibilities of that employment are inherently incompatible with the responsibilities of public office or require the individual's recusal from matters so central or critical to the performance of the individual's official duties that the individual's ability to perform those duties would be materially impaired;

(2) accept employment or engage in business or professional activity that would require the individual to disclose confidential information that was gained in the course of state employment; or

(3) use or attempt to use the individual's official position to secure unwarranted privileges or exemptions that are:

(A) of substantial value; and

(B) not properly available to similarly situated individuals outside state government.

(b) A written advisory opinion issued by the commission or the individual's appointing authority or agency ethics officer granting approval of outside employment is conclusive proof that an individual is not in violation of subsection (a)(1) or (a)(2).

I.C. 4-2-6-9 (42 I.A.C. 1-5-6)

Conflict of economic interests

Sec. 9. (a) A state officer, an employee, or a special state appointee may not participate in any decision or vote if the state officer, employee, or special state appointee has knowledge that any of the following has a financial interest in the outcome of the matter:

(1) The state officer, employee, or special state appointee.

(2) A member of the immediate family of the state officer, employee, or special state appointee.

(3) A business organization in which the state officer,

employee, or special state appointee is serving as an officer, a director, a trustee, a partner, or an employee.

(4) Any person or organization with whom the state officer, employee, or special state appointee is negotiating or has an arrangement concerning prospective employment.

(b) A state officer, an employee, or a special state appointee who identifies a potential conflict of interest shall notify the person's appointing authority and seek an advisory opinion from the commission by filing a written description detailing the nature and circumstances of the particular matter and making full disclosure of any related financial interest in the matter. The commission shall:

(1) with the approval of the appointing authority, assign the particular matter to another person and implement all necessary procedures to screen the state officer, employee, or special state appointee seeking an advisory opinion from involvement in the matter; or

(2) make a written determination that the interest is not so substantial that the commission considers it likely to affect the integrity of the services that the state expects from the state officer, employee, or special state appointee.

(c) A written determination under subsection (b)(2) constitutes conclusive proof that it is not a violation for the state officer, employee, or special state appointee who sought an advisory opinion under this section to participate in the particular matter. A written determination under subsection (b)(2) shall be filed with the appointing authority.

ANALYSIS

The Programs Specialist's intended service with the Fire Department invokes consideration of the provisions of the Code of Ethics pertaining to outside employment and conflicts of interest. The application of each provision to the Programs Specialist's prospective volunteer service is analyzed below.

A. Conflicts of Interest I.C. 4-2-6-5.5 (42 I.A.C. 1-5-5)

Based on the facts presented, the Commission finds that the Programs Specialist would not be prohibited from volunteering with the Fire Department. First, it would not appear as though the Programs Specialist's intended service with the Fire Department would qualify as "employment," because such service does not involve compensation of substantial value as it would be on a volunteer basis. Furthermore, the information provided does not appear to suggest that the Programs Specialist's professional activity with the Fire Department would require him to disclose confidential information that was gained in the course of his state employment. In addition, the facts presented do not suggest that the Programs Specialist would be using or attempting to use his official position at IDHS to secure unwarranted privileges or exemption that are of substantial value and not properly available to similarly situated individuals outside state government.

B. Conflicts of Interest I.C. 4-2-6-9 (42 IAC 1-5-6)

Having concluded that the conflicts of interest restrictions in I.C. 4-2-6-5.5 do not apply to the Programs Specialist, the analysis now turns to conflicts of interest that may arise for the Programs Specialist pursuant to I.C. 4-2-6-9 in the exercise of his duties at IDHS and volunteering with the Fire Department. I.C. 4-2-6-9 prohibits the Programs Specialist from participating in any decision or vote if he has knowledge that various

persons may have a “financial interest” in the outcome of the matter, including himself or a business organization in which he serves as an employee. The term financial interest as defined in I.C. 4-2-6-1(a)(10) includes the interest in a purchase, sale, lease, contract, option, or other transaction between an agency and any person. Financial interest does not include an interest that is not greater than the interest of the general public or any state officer or any state employee.

To the extent that the Fire Department would be considered a “business organization” for purposes of this rule, the Commission finds that the Programs Specialist would not be considered to be serving as an “employee” of the Fire Department since he would be serving on a volunteer basis. Nevertheless, it could be argued that he would have a financial interest in IDHS decisions or votes involving the Fire Department including inspection decisions. Since the Programs Specialist could be required to perform an inspection of the Fire Department station, a potential conflict of interest could arise.

I.C. 4-2-6-9(b) provides that a state employee who identifies a potential conflict of interest shall notify the person's appointing authority and seek an advisory opinion from the Commission by filing a written description detailing the nature and circumstances of the particular matter and making full disclosure of any related financial interest in the matter. In this case, the Programs Specialist requested an advisory opinion from the Commission as provided in the rule. To the extent that the Programs Specialist also discloses the potential conflict of interest to his appointing authority, the Commission finds that he would be in compliance with this provision.

I.C. 4-2-6-9(b)(1) further provides that when a potential conflict of interest arises, the Commission may, with the approval of the appointing authority, assign the particular matter to another person and implement all necessary procedures to screen the state employee seeking an advisory opinion from involvement in the matter. In this case, IDHS proposes screening the Programs Specialist from any decision, vote, or inspection related to the Fire Department.

CONCLUSION

The Commission finds that a conflict of interest pursuant to I.C. 4-2-6-9 could potentially arise for the Programs Specialist in the performance of his duties with IDHS if he accepts an offer to serve as a volunteer firefighter/emergency medical technician with the Fire Department. The Commission further finds that a screening procedure in which the Programs Specialist is removed by IDHS from any decision, vote, or inspection related to the Fire Department is appropriate to prevent a conflict of interest from arising for the Programs Specialist.