

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

A member of the Indiana Charter School Board worked as the program director for a group that had applied to the Board to establish a charter school in Ft. Wayne. DOE—which is responsible for providing support to the Board—proposed a screening procedure under IC 4-2-6-9(b) to ensure the Board member would not violate the Conflict of interest rule. SEC found the procedures outlined by DOE were appropriate to ensure the Board member complied with the Code of Ethics with the additional conditions that she would not represent her employer either before the DOE third-party evaluator or at the Board’s public hearing on the application.

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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

A state employee is a member of the Indiana Charter School Board (“Board”). The Board was established for the purpose of sponsoring charter schools throughout Indiana. It is composed of seven members, which are appointed by various office holders such as the Governor, President Pro Tempore and Minority Leader of the Senate, and Speaker and Minority Leader of the House. The Board Member was appointed to the Board by a senator. The Board’s duties include reviewing and making decisions on proposals to establish charter schools. The Board is also responsible for monitoring the charter schools it sponsors. In addition, the Board must publish guidelines concerning the review process not later than December 31, 2011. I.C. 20-24-2.1-2(2).

The Board Member works for the Fort Wayne Urban League (“Urban League”) and currently serves as the organization’s program director. The Board Member advised the Executive Director of the Board that the Urban League wanted to submit an application (“Application”) to the Board to establish a charter school in the Fort Wayne area and requested an advisory opinion from the Commission. The Board Member was to be part of the team that completed the application in her capacity as the program director for the Urban League. The application submission deadline was October 31, 2011.¹ The Indiana Department of Education (“IDOE”) has proposed and implemented a screening procedure for the Board Member. She has been screened from any Board involvement with the Application.

ISSUE

Would a conflict of interest arise for the Board Member under I.C. 4-2-6-9 in the performance of her duties as a Board member given that she was involved in the Urban League’s submission of the Application to establish a charter school? If so, would the screening procedures proposed by

¹ The Board Member timely submitted her request for advice to be heard at the Commission’s meeting on October 13, 2011. However, that meeting was cancelled and as a result the Board Member’s request was not heard prior to the tolling of the deadline for the Application. The Board Member and the IDOE agreed to resubmit her request for advice at the Commission’s next meeting on November 10, 2011 and implement the screening procedure discussed below in the interim.

IDOE be appropriate in this case to prevent a conflict of interest from arising for the Board Member?

RELEVANT LAW

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

I.C. 4-2-6-9 prohibits the Board Member from participating in any decision or vote before the Board if she has knowledge that various persons may have a "financial interest" in the outcome of the matter, including a business organization in which she 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.

The Urban League would be considered a “business organization” for purposes of this rule, and it would have a financial interest in any of the Board’s decisions or votes regarding the Application. Furthermore, in the event the Application is approved, the Board would continue to monitor the charter school. The Urban League would also have a financial interest in the outcome of any of the Board’s decisions or votes involving any subsequent issues related to the charter school. Since the Board Member is employed by the Urban League and also serves on the Board, a conflict of interest would arise for her if she were to participate in any Board decision or vote related to the Application and the charter school if the school is established.

I.C. 4-2-6-9(b) provides that 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. In this case, the Board Member requested an advisory opinion from the Commission detailing the nature and circumstances of the particular matter and making full disclosure of any related financial interest in the matter as provided in the rule and has disclosed the potential conflict of interest to her appointing authority. Accordingly, the Board Member is 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, IDOE proposes to implement the following screening procedure:

- 1) The Board Member will have no involvement in reviewing any application submitted by the Urban League to the Board requesting that the Board serve as a sponsor for the organization.
- 2) The Board Member will have no involvement in the decision-making process on any application submitted by the Urban League to the Board.
- 3) If the Board approves any Urban League application, the Board Member will have no involvement in the Board’s monitoring of that school as the school’s sponsor.
- 4) In addition to the above restrictions, the Board Member, as a member of the Board, shall have no indirect involvement with the Board’s review, consideration or decision on any Urban League application or monitoring of a school if the Board approves any application.
- 5) The Executive Director of the Board, having been notified of the conflict, shall monitor the Board Member’s involvement in any matter before the Board involving the Urban League to ensure that the screening procedures are followed. Such monitoring shall continue for as long as the Board Member serves on the Board or leaves the organization.

CONCLUSION

The Commission finds that the screening procedure proposed by IDOE is appropriate to ensure the Board Member's compliance with the state's Code of Ethics. Additionally, the Board Member will not represent the Urban League before the IDOE third-party evaluator of the Application or in the Urban League's public hearing on the Application before the Board. Finally, the Board Member will annually submit a statement to the IDOE Ethics Officer and the Commission acknowledging that she has had no involvement in any Urban League matters before the Board.