

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

The wife of the ISDH Chief of Staff was responsible for overseeing marketing for certain IU Health facilities. Since ISDH is responsible for licensing, surveying, and certifying IU Health facilities, the Chief of Staff sought advice from the SEC under IC 4-2-6-9(b) to address any potential conflict of interest. SEC found that a conflict of interest could potentially arise for the Chief of Staff by virtue of his wife's employment with IU Health and that the screening procedure proposed by ISDH would be appropriate to prevent a conflict from arising for him under this rule.

May 2011  
No. 11-I-9

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**

An employee is the Chief of Staff for the Indiana State Department of Health ("ISDH") and as Chief of Staff he has global responsibilities at ISHD similar to the responsibilities of the State Health Commissioner and the Deputy State Health Commissioner. His global responsibilities ultimately include oversight of the Health Care Quality and Regulatory Services Commission and the Acute Care Division ("ACD") – the entities responsible for licensing, surveying, and certifying Indiana University Health's ("IU Health") facilities.

The Chief of Staff's spouse is employed by IU Health. IU Health owns or is a majority owner of a network of hospitals and other health related businesses in and around central Indiana (collectively referred to as "Subsidiaries").

The Chief of Staff's spouse oversees marketing at IU Health for orthopedics and trauma at the following IU Health facilities: IU Health Methodist Hospital, IU Health University Hospital and the level 1 trauma center at IU Health Methodist Hospital. She works in a marketing support role and does not have authority over the actual service lines (meaning she does not control budgets, operations, decisions or administration). A separate person is in charge of those service lines. The Chief of Staff's spouse does not report directly to the person in charge nor is supervised by that person.

ISDH, specifically, the ACD, licenses a number of facilities including hospitals, home health agencies, hospice agencies, end stage renal disease facilities, birthing centers, and blood centers. ACD also performs federal surveys of laboratories. ISDH is responsible for licensing, surveying, and certifying IU Health's facilities. IU Health encompasses hospitals, home health agencies, hospice agencies, end stage renal disease facilities, blood centers and laboratories.

Identifying a potential conflict of interest, the Chief of Staff requested an advisory opinion from his agency ethics officer and the Commission.

## ISSUE

Would a conflict of interest arise for the Chief of Staff if he participates in decision(s) and/or vote(s) pursuant to his duties with the ISDH involving IU-Health given that his spouse is employed by IU Health? If so, does the conflict of interest extend to Subsidiaries?

## RELEVANT LAW

### **IC 4-2-6-9**

#### **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

As a state employee, the Chief of Staff is subject to the Code of Ethics including the conflicts of interest provision set forth in IC 4-2-6-9. IC 4-2-6-9 (a)(1) prohibits the Chief of Staff from participating in any decision or vote if he has a financial interest in the outcome of the matter. Similarly, IC 4-2-6-9(a)(2) provides in relevant part that a state employee may not participate in any decision or vote if the state employee has knowledge that a member of their immediate family has a financial interest in the outcome of the matter. The term "immediate family member" is defined to include a spouse. *See* 42 IAC 1-3-13.

The Chief of Staff would be prohibited from participating in any decision or vote involving IU Health and/or any of its Subsidiaries if he has knowledge that he or his spouse would have a financial interest in the outcome of the matter. The determinative factor in this case is whether the Chief of Staff and his spouse would have a financial interest in the outcome of decisions or votes the Chief of Staff may participate in as a state employee because of his spouse's employment with IU Health. The term financial interest as defined in I.C. 4-2-6-1(a)(10) includes an interest in a purchase, sale, lease, contract, option, or other transaction between an agency and any person. The term does not include an interest that is not greater than the interest of the general public or any state employee.

In this case, the Commission finds that it is possible that the Chief of Staff's spouse would have a financial interest in the outcome of decisions or votes that the Chief of Staff may participate in as a state employee involving IU Health. Accordingly, pursuant to I.C. 4-2-6-9(b)(1), 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, the ISDH proposes screening the Chief of Staff from any decision or vote related to IU Health and/or its Subsidiaries. Pursuant to the proposed screen, ISDH staff would be instructed not to discuss any matter involving IU Health and/or its Subsidiaries. It is unlikely that the Chief of Staff's spouse would have a financial interest in decisions or votes the Chief of Staff may participate in as a state employee regarding the IU Health Subsidiaries except for those related to IU Health Methodist Hospital, IU Health University Hospital and the level 1 trauma center at IU Health Methodist Hospital. However, the procedure proposed by ISDH of screening the Chief of Staff from decisions and/or votes involving all of IU Health and its Subsidiaries would address any potential conflicts of interest that may arise should the Chief of Staff's spouse's duties with IU Health change.

### **CONCLUSION**

The Commission finds that a conflict of interest pursuant to I.C. 4-2-6-9 could potentially arise for the Chief of Staff in the performance of his duties with ISDH since his spouse is employed by IU Health. Moreover, the Commission finds that the screening procedure proposed by ISDH which would screen the Chief of Staff from any decision or vote involving IU Health and/or its Subsidiaries would be appropriate to prevent a conflict of interest from arising for the Chief of Staff.