

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

The IDOI's Director of the Title Insurance Division was contacted by the owner of an entity regulated by the agency regarding prospective employment. The Director sought advice from the SEC to determine whether the screens set up by the agency sufficiently addressed any potential conflicts of interest. SEC determined negotiations had commenced for purposes of IC 4-2-6-9 and the Director would be prohibited from participating in any decision or vote related to the entity. SEC further found IDOI's proposed screen was appropriate to ensure the Director avoided any conflict of interest.

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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 the Director of the Title Insurance Division for the Indiana Department of Insurance ("IDOI"). The state employee recently found out during a routine examination that a position with an entity regulated by the IDOI was available. The state employee made her interest known to the owner of the company. She was subsequently contacted by the owner who expressed an interest in speaking with her about working with the entity. After the initial telephone conversation, the state employee alerted the Ethics Officer of IDOI. The Ethics Officer requested an informal advisory opinion and it was determined that a Formal Advisory Opinion would need to be requested.

The following internal screens have been set up for the state employee and she will not be involved in final decisions made on two matters which are currently open with the Title Division. One matter is an examination of the entity's business operation which she attended to train a new examiner. She has had no involvement in the examinations since she notified the entity's owner of her interest in the open position. The second matter is a file that has been open for over a year and was originally assigned to an enforcement attorney who is no longer with the Department. The state employee's participation in this matter was to attend a meeting along with the attorney to assist. Both files on these matters have been given to one of the Title Division's Senior Examiners. She will have no involvement in the completion of the examination report, further investigation, or final disposition of either file.

Since the date of this request, the entity has extended an offer of employment to the state employee. She would only accept a position if the appointing authority waives the post-employment restrictions.

**ISSUE**

Would a conflict of interest arise for the state employee if she participates in decision(s) and/or vote(s) in which the entity and/or any of its subsidiaries have a financial interest since the entity has responded to the state employee's employment inquiry?

## 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

State employees are 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 state employee from participating in any decision or vote if she has a financial interest in the outcome of the matter. Similarly, IC 4-2-6-9(a)(4) prohibits the state employee from participating in any decision or vote in which a person or organization with whom she is negotiating or has an arrangement concerning prospective employment has a financial interest in the outcome of the matter. The definition of financial interest in IC 4-2-6-1(a)(10) includes, "an interest arising from employment or prospective employment for which negotiations have begun."

In Advisory Opinion 12-I-9, the Commission determined that negotiations commence for purposes of this rule as soon as an employer and state employee begin to discuss potential employment, regardless of which party initiates the communications. Employment negotiations have commenced in this case. Specifically, the entity has responded to the state employee's

employment inquiry and expressed an interest in speaking with her about working for the entity. In fact, the entity has extended the state employee an employment offer. Since employment negotiations have commenced, a conflict of interest would arise for the state employee if she participates in a decision or vote in which the entity would have a financial interest. The state employee has indicated that two matters involving the entity are currently open with the Title Division. To the extent that the entity would have a financial interest in the outcome of those matters or any other matters involving one of their subsidiaries, the state employee would be prohibited from participating in any decision or vote involving the entity or its subsidiary.

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 state employee requested an advisory opinion from the Commission as provided in the rule and appears to have disclosed the potential conflict to her appointing authority.

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, the IDOI proposes to continue the screening mechanism that was put in place at the time that the state employee disclosed her initial telephone conversation with the entity to the agency. Specifically, the two matters involving the entity have been reassigned and while one of the two matters has been closed, the state employee will be screened from both of them for the remainder of her state employment.

### **CONCLUSION**

The Commission finds that a conflict of interest would arise for the state employee if she participates in decision(s) and/or vote(s) in which the entity and/or any of its subsidiaries have a financial interest since employment negotiations between the entity and the state employee have begun. Moreover, it is the opinion of the Commission that the screening procedure proposed by the IDOI is appropriate to ensure the state employee's compliance with the Code of Ethics and should remain in place until she commences her employment with the entity.