

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

The IG inquired about employment at a healthcare organization that is affiliated with a state educational institution. As a matter of precaution, he requested that the SEC screen him from any decisions related to requests to investigate the institution. The SEC made no finding that the IG had a potential conflict of interest pursuant to IC 4-2-6-9; however, it recommended any requests to investigate be reviewed by a staff attorney in the office rather than the IG.

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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 Indiana Inspector General (“IG”) and has served in this capacity since 2005. The IG is a position appointed by the Governor. With the conclusion of the Governor’s term, the IG has begun to explore potential employment opportunities in the event he is not reappointed by the new governor. Specifically, the IG has inquired about employment at a healthcare organization

The healthcare organization operates in Indianapolis and in various counties throughout the state of Indiana. No one at the healthcare organization has made or promised an employment offer, but they have indicated that he would be considered for a position if an opportunity presented itself. While the IG does not consider that such an expression of interest would be considered “negotiations” for purposes of IC 4-2-6-9, he nevertheless wishes to be screened from decisions involving the healthcare organization. Specifically, he wishes to be screened from decisions related to requests to investigate Indiana University (“IU”). Such requests do not involve IU Health or the IU School of Medicine.

ISSUE

Would a conflict of interest arise for the IG if he participates in decision(s) and/or vote(s) in which IU would have a financial interest in since the healthcare organization has indicated, while making no promises, that the IG would be considered for a position in an opportunity arose?

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 IG 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 IG 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)(4) prohibits the IG from participating in any decision or vote in which a person or organization with whom he 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)(11) includes, "an interest arising from employment or prospective employment for which negotiations have begun."

While the Commission does not make a finding that a potential conflict of interest would arise for the IG, the Commission does recommend a screening procedure for the IG regarding decisions related to requests to investigate IU. Specifically, it is the opinion of the Commission that screening decisions regarding requests to investigate IU should be handled by a staff attorney for the Office of Inspector General.

CONCLUSION

The Commission finds that, in an abundance of caution, the screening procedure proposed by the IG should be implemented. Specifically, the IG must be screened from requests to investigate IU and decisions regarding such requests must be handled by a staff attorney for the Office of Inspector General.