

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

INDOT is currently working with the Illinois Department of Transportation (IDOT) and the Federal Highway Administration to identify land in Indiana and Illinois over which an Illiana Corridor could be developed. The INDOT Commissioner inherited land in Illinois from his grandparents that is located close to—but not part of—the current proposed alignment for the Corridor. However, out of an abundance of caution, the Commissioner screened himself from participating in any decisions or votes involving the alignment selection (decisions regarding Illinois property have been made exclusively by IDOT) and disclosed his ownership interest in the land to the SEC. SEC determined that a potential conflict of interest could arise for the Commissioner since he has a financial interest in the property. Consequently, the screen imposed by INDOT on the Commissioner’s involvement in the selection of the alignment of the Corridor should remain in place.

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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**

The Commissioner of the Indiana Department of Transportation (“INDOT”) oversees INDOT’s efforts to construct, reconstruct, improve, maintain, and repair Indiana’s state highways, toll roads, and bridges. Under I.C. 8-23-2-5, INDOT has the responsibility to develop, continuously update, and implement long range comprehensive transportation plans “to assure the orderly development and maintenance of an efficient statewide system of transportation.” This responsibility includes identifying state transportation needs and developing plans to address those needs.

INDOT and the Illinois Department of Transportation (“IDOT”) staffs and consultants, in conjunction with the Federal Highway Administration (“FHWA”), have been working to advance a project known as the Illiana Corridor. Indiana and Illinois’ (collectively referred to herein as the “States”) goal for the Illiana Corridor is to identify a long term transportation solution in a study area extending from I-55 in Illinois on the west to I-65 in Indiana on the east. To date, the planning process for the Illiana Corridor has involved a great deal of public input through various methods, including meetings with individual stakeholders, public meetings, a project website, and newsletters.

INDOT and IDOT have used public input to develop and evaluate alternative routes for the Illiana Corridor as requested by the National Environmental Policy Act (“NEPA”) such that the States selected the route that meets the defined “purpose and need” of the project in light of all environmental, cost, and societal impacts. IDOT is managing the consulting contracts and overall study. INDOT is participating financially in the study and will provide leadership for the Indiana portion of the study area.

Through the public involvement process, INDOT and IDOT identified approximately eighty proposed corridors and evaluated these alternatives. The States narrowed the alternatives to a few general alignments and performed additional traffic performance studies on these

alignments. The alignments are approximately 2,000 feet wide and the actual highway “routes” inside the alignments from border to border would be approximately 400 feet wide.

In 1950, the Commissioner’s grandfather purchased approximately 250 acres of farm property in rural Will County, Illinois. In the early 1970’s, his grandfather sold all but forty acres of his Will County property. The forty acre parcel he retained is located on Kedzie Road near Kennedy Road. In 1995, subsequent to the passing of the Commissioner’s grandparents, the forty acre parcel was put into a land trust, known as the Tomik Land Trust (the “Trust”). The Commissioner currently has a ten percent, non controlling financial interest in the Trust. His annual income in the Trust is approximately \$400.

Because the Trust property is in Will County, the Commissioner screened himself from any decision or vote pertaining to the examination or selection of a preferred 2,000 foot alignment. He instructed INDOT’s Deputy Commissioner of Capital Program Management, to make all decisions regarding alternative selections. The INDOT’s Director of Project Management and a direct report to the Deputy Commissioner, is directly overseeing the project. He did not inform the Deputy Commissioner or the Director of Project Management of the reason for screening himself from decisions and votes on this matter.

Through the selection process, it appears (although the States and the FHWA have not made a final decision) a route known as B3 is the likely preferred 2,000 foot alignment. The southern boundary of the 2,000 foot B3 alignment is near but does not include the Trust property. None of the Trust property is in the 2,000 foot B3 alignment.

By definition, none of the 400 foot highway route inside the 2,000 food alignment will include or require Trust property. The Commissioner will, however, continue to screen himself from decisions pertaining to selection of the highway route. While decisions with respect to potential interchanges will be made by the States in the Tier 2 NEPA process, there is no major road near the Trust Property that would merit an interchange.

However, the Commissioner’s concern was, and continues to be, that as INDOT Commissioner, public disclosure of even a remote possibility that within a 950 square mile study area, the 40 acres of Trust property might somehow be in or near one of the many highway alignments (even though he has been screened from the selection process) might cause the public or some project supporters or opponents to believe or advocate that selection decisions were made for reasons other than those required by the NEPA and in the best interest of the public.

The Commissioner believes that the potential for a conflict of interest is so remote (given that the Trust property is in Illinois and controlled by Illinois law, the alternative selection process is very public, conducted with the oversight of the FHWA, highly documented, and controlled by the tight constraints of the NEPA) that the existence of his interest in the Trust will not affect the integrity of the services the State of Indiana should expect from him. However, he believes that the best course of action is to publicly disclose his interest in the Trust property and continue to be screened from the highway route selection process as he has been thus far. Accordingly, the Commissioner has notified his appointing authority about this matter and has requested an advisory opinion from the Commission.

## ISSUE

Would a conflict of interest arise for the Commissioner if he participates in decision(s) and/or vote(s) related to the Illiana highway route selection process since the Commissioner has a financial interest in the Trust property that could potentially be located near one of the proposed highway routes?

## RELEVANT LAW

### **I.C. 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 Commissioner is subject to the Code of Ethics including the conflicts of interest provision set forth in I.C. 4-2-6-9. I.C. 4-2-6-9 (a)(1) prohibits the Commissioner from

participating in any decision or vote if he or a member of his immediate family has a financial interest in the outcome of the matter. The definition of financial interest in I.C. 4-2-6-1(a)(11) includes “an interest involving property or services.”

In this case, it appears that the Commissioner has a financial interest in the Trust property. Specifically, he has a ten percent, non-controlling financial interest in the Trust and he receives a minimal annual income for his interest. Because the alignment and/or highway route could potentially be on or near the Trust property, the Commissioner could potentially have a financial interest, albeit minimal, in the outcome of the decision of the ultimate alignment and/or highway route selected. Accordingly, a potential conflict of interest could arise for the Commissioner if he were to participate in the alignment/highway route selection process.

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 Commissioner requested an advisory opinion from the Commission as provided in the rule and, as INDOT's appointing authority, has disclosed this information to his 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, INDOT proposes that the screening process already in place continue. Specifically, the Commissioner would be screened from and officially assign the alignment selection process and the actual highway route selection to the Deputy Commission and the Director of Project Management.

### **CONCLUSION**

The Commission finds that a potential conflict of interest could arise for the Commissioner if he participates in decision(s) and/or vote(s) related to the Illiana highway route selection process since the Commissioner has a financial interest in the Trust property that could potentially be located near one of the proposed highway routes. Moreover, it is the opinion of the Commission that the screening procedure proposed by INDOT is appropriate and should remain in place to ensure the Commissioner's compliance with the Code of Ethics.