

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

A Deputy General Counsel with the Indiana Department of Insurance applied for an Associate General Counsel position with a healthcare company that is regulated by the agency. The Deputy sought advice from the SEC when he was contacted by the company for a telephone interview. SEC determined negotiations had commenced for purposes of IC 4-2-6-9 at that point and the Deputy would be prohibited from participating in any decision or vote related to an investigation of the company's subsidiary with which he had been involved. SEC further found IDOI's proposed screen was appropriate to ensure the Deputy 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 Deputy General Counsel, Enforcement Division, at the Indiana Department of Insurance ("IDOI"). The Deputy General Counsel recently applied for the position of Associate General Counsel, Regulatory Affairs, with a healthcare company. The healthcare company is an entity that is regulated by the IDOI. After applying for the position, the healthcare company contacted the Deputy General Counsel for an initial telephone interview.

Prior to the submission of his application, the Deputy General Counsel was involved with a pending investigation involving an insurance company, the healthcare company subsidiary (hereinafter referred to as the "the insurance company investigation"). The Deputy General Counsel notified his ethics officer and was screened from involvement in the insurance company investigation upon being contacted by the healthcare company to schedule the initial telephone interview. He also conducted an internal search for all pending cases in the office involving the healthcare company and its subsidiaries and found only one other pending investigation, identified as Enforcement Case # 9502.

#### **ISSUE**

Would a conflict of interest arise for the Deputy General Counsel if he participates in decision(s) and/or vote(s) in which the healthcare company and/or any of its subsidiaries have a financial interest in since the healthcare company has responded to the Deputy General Counsel's application for employment?

#### **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 Deputy General Counsel 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 Deputy General Counsel 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 Deputy General Counsel 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)(10) includes, "an interest arising from employment or prospective employment for which negotiations have begun."

In Advisory Opinion 10-I-7, the Commission determined that "negotiations" for purpose of this conflicts of interest rule meant dealings conducted between two or more parties for the purpose of reaching an understanding. Employment negotiations have commenced in this case. Specifically, the Deputy General Counsel submitted an application for employment to the healthcare company. The healthcare company responded and contacted him for an initial telephone interview. Since employment negotiations have commenced, a conflict of interest would arise for the Deputy General Counsel if he participates in any decision or vote in which the healthcare company would have a financial interest. In particular, the Deputy General Counsel has indicated that he was involved with the insurance company investigation. Because it would appear that the healthcare company would have a financial interest in the outcome of an investigation involving one of their subsidiaries, the Deputy General Counsel would be

prohibited from participating in any decision or vote involving the healthcare company 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 Deputy General Counsel requested an advisory opinion from the Commission as provided in the rule and has disclosed the potential conflict 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, IDOI proposes a screening mechanism where all of the matters involving the healthcare company and its subsidiaries that the Deputy General Counsel was working on will be reassigned. Specifically, he and IDOI General Counsel set up and propose the following internal screens:

- 1) The Deputy General Counsel will not be involved with the insurance company investigation going forward. The DOI Deputy General Counsel, Market Conduct Division, will supervise this matter from this point forward until otherwise notified and work with the investigator.
- 2) No new the healthcare company parent or subsidiary matters will be assigned or brought to the Deputy General Counsel.
- 3) The Chief Deputy Commissioner, Consumer Services Division, which receives complaints against insurance companies, has been notified to bring all the healthcare company complaints to the General Counsel.
- 4) The Deputy General Counsel is only aware of one other pending investigation involving the healthcare company, identified as Enforcement Case # 9502. He will have no involvement with and will not make any decisions concerning this matter going forward.

Furthermore, the Deputy General Counsel would only accept a position with the healthcare company if the appointing authority waives the post-employment restrictions. The Deputy General Counsel would also not become involved in any particular matter in which he was involved in as a state employee.

### **CONCLUSION**

The Commission finds that a conflict of would interest arise for the Deputy General Counsel if he participates in decision(s) and/or vote(s) in which the healthcare company and/or any of its subsidiaries have a financial interest in since employment negotiations between the healthcare company and the Deputy General Counsel have begun. Moreover, it is the opinion of this Commission that the screening procedure proposed by IDOI is appropriate to ensure the Deputy General Counsel's compliance with the Code of Ethics. Additionally, it is the Commission's determination that this screening procedure remain in place at least until a determination has been made on the investigation involving the insurance company, assuming it comes in before his acceptance of an employment offer from the healthcare company. The Deputy General Counsel

should return to the Commission for additional guidance if he is offered employment by the healthcare company before an agreement is reached in the insurance company investigation.