

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

The Director of the Division of Planning and Assessment at IDHS serves as a civilian member of Indiana Task Force 1, a Type 1 Urban Search and Rescue Team that is a participant in the National Urban Search and Rescue Response System. IDHS provides grants to the City of Indianapolis for its emergency management program. The City has contracts in place with Task Force 1 civilian members and pays these members if Task Force 1 is deployed. IDHS adopted a policy to screen the Director from any decisions or votes involving the City for the duration of the Director's employment (contractual or otherwise) with the City. The IDHS policy also assigned all such matters involving the City to the Director of the Division of Emergency Response and Recovery. SEC found the screen complied with IC 4-2-6-9(b).

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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). The following opinion is based exclusively on sworn testimony and documents presented by the requestor.

**BACKGROUND**

A state employee is the Director of the Division of Planning and Assessment ("Division") at the Indiana Department of Homeland Security ("IDHS"). In addition to his state employment, the Director serves as a civilian member of Indiana Task Force 1. Indiana Task Force 1 is a Type 1 Urban Search and Rescue Team that is a participant in the National Urban Search and Rescue Response System.

The Field Services and Grants Management Branches are two branches of the Division. IDHS provides grants to the City of Indianapolis ("City"). Some of these grants are managed by the Grants Management Branch of the Division. The Field Services Branch performs an annual assessment of the City's emergency management program. The results of the assessment affect the amount of grant funds that the City is eligible to receive.

The City has contracts in place with each civilian member of Task Force 1, including the Director. The Federal Emergency Management Agency ("FEMA") can activate Task Force 1 to provide search and rescue support in emergencies and disasters that occur outside of Indiana. The City Department of Public Safety is the sponsoring agency for Task Force 1. Accordingly, the City is responsible for paying the members of Task Force 1 and seeking reimbursement from FEMA when Task Force 1 is deployed. FEMA would not deploy Task Force 1 within Indiana; however, IDHS could request the deployment of the Task Force 1 resources for an incident that occurred within the State. If this occurred, IDHS could be responsible for reimbursing the City and/or the civilian members of Task Force 1 for the cost of this deployment. The Director will not deploy as a member of Task Force 1 for an incident within Indiana.

The IDHS Executive Director is supportive of the Director's participation as a member of Task Force 1 and has adopted a policy that screens the Director from agency decisions that could financially benefit the City.

## ISSUE

Would a conflict of interest arise for the Director if he participates in decision(s) and/or vote(s) in which the City has a financial interest given his participation as a member of Task Force1?

## 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

I.C. 4-2-6-9 (a)(1) prohibits the Director from participating in any decision or vote if he has a financial interest in the outcome of the matter. Similarly, I.C. 4-2-6-9(a)(3) prohibits the Director from participating in any decision or vote if a business organization that employs him has a financial interest in the matter. The definition of financial interest in I.C. 4-2-6-1(a)(11) includes, in relevant part, "an interest arising from employment."

The state employee is the Director of a division of IDHS that is responsible for making decisions in which the City would have a financial interest. While it is unclear whether the City would qualify as a "business organization" for purposes of this rule, it is arguable that the City is

the Director's employer pursuant to a contract for his services on Task Force 1. Since he is the Division Director, it is possible that the Director might be asked to participate in a decision or vote regarding the City, his outside employer. Accordingly, a conflict of interest would arise for the Director if he participates in a decision or vote in which the City would have a financial interest.

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 Director, through his agency's Ethics Officer, 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, IDHS adopted a policy to screen the Director from any decisions or votes involving the City. The Director of the Division of Emergency Response and Recovery and the current acting Director of the Division of Preparedness and Training will make decisions which would result in a benefit or detriment to the City including, but not limited to, grants which may be awarded to the City. The Director of the Division of Emergency Response and Recovery will also have decision making authority over the annual Emergency Management Performance Grant assessment of the City's emergency management capabilities. All matters related to the City shall be directed to him instead of the Director.

### **CONCLUSION**

The Commission finds that a potential conflict of interest arises for the Director under I.C. 4-2-6-9 if he participates in any decision or vote in which he or the City has a financial interest. Subject to the foregoing analysis, the Commission finds that the screening mechanism imposed by IDHS is appropriate and must remain in place for the duration of the Director's employment (contractual or otherwise) with the City.