

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

The ICJI's Ethics Officer sought advice on behalf of an employee who had disclosed possible conflicts of interest issues. Specifically, the employee's spouse works for a law firm that represents clients that may have contracts with the ICJI and the employee's father was working on a contract with the IDOC. SEC found that a conflict of interest would arise for the employee under IC 4-2-6-9 if she were to participate in decisions or votes in which her spouse would have a financial interest. Moreover, SEC found that the screen proposed by ICJI was appropriate so long as the Ethics Officer maintains continual oversight of the screen. Though SEC determined that a potential conflict of interest does not arise under IC 4-2-6-9 for decisions or votes regarding the employee's father due to the corresponding definition of "immediate family" excluding a parent, SEC strongly recommended that the ICJI implement the proposed screening procedures for matters related to the employee's father to prevent even the appearance of a conflict.

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The Indiana State Ethics Commission ("Commission") issues the following advisory opinion concerning the State Code of Ethics ("Code") pursuant to IC 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 Ethics Officer for the Indiana Criminal Justice Institute ("ICJI"). He requests an advisory opinion from the Commission on behalf of the ICJI's Deputy Director of Policy and Planning.

The ICJI is a state agency charged with developing policy, strategic planning, research and administering funds associated with criminal justice, juvenile justice, traffic safety, and victim services (Indiana Code 5-2-6 *et seq.*). As part of its fiscal responsibilities the ICJI acts as the designated State Administering Agency (SAA) for a large variety of federal grants. (*Id.*) The ICJI also administers a number of funds which are appropriated by the General Assembly.

The Deputy Director's responsibilities as Deputy Director of Policy include reviewing and approving grant solicitations, assisting in and guiding agency decision making, developing agency policy towards what programs may be funded, and assisting in agency operations related to policy matters.

The Deputy Director disclosed to the Executive Director of the ICJI on her first day of employment with the agency that she may have two potential conflict of interest issues. The first arises from her spouse, who is a registered executive branch lobbyist with a major law firm, and who also represents clients that have or may be seeking to have contracts with the ICJI. Though the Deputy Director is currently in dissolution proceedings, she is still married at this time. The potential second conflict of interest arises from her father and his work in the area of traumatic brain injury ("TBI"). The Deputy Director's father is currently working on a contract basis with the Indiana Department of Correction ("DOC") on a TBI-related study of inmates housed in the DOC. This work is funded by a grant that is administered by the ICJI. The Deputy Director's father routinely accepts contracts with the state because of his expertise in TBI.

The ICJI is seeking to formalize a screening process when dealing with potential and perceived conflicts, and is seeking a formal advisory opinion regarding potential or perceived conflicts of interest for the Deputy Director under IC 4-2-6-9. Specifically, the ICJI intends to screen the Deputy Director from any and all decisions, planning, and involvement in any matters relating to her father, her husband or his clients, or matters that may include her father's or her husband's current employers. This would be done by:

- 1) Excluding the Deputy Director from any and all communications involving her father or her husband, their clients, contracting entity, and employers;
- 2) Excluding the Deputy Director from participating in any decision-making processes involving her father or her husband, their clients, the contracting entity, and their employers; and
- 3) The Deputy Director will not be involved in oversight, program management, audit, or any other agency activity related to projects, contracts, or grants which may be related to her father or her husband, their clients, the contracting entity, and their employers.

ISSUE

1. Would a conflict of interest arise for the Deputy Director under IC 4-2-6-9?
2. If so, would the screening procedure proposed by ICJI be appropriate to prevent a conflict of interest from arising for her?

RELEVANT LAW

IC 4-2-6-9 (42 IAC 1-5-6)

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

A. Conflict of Interests

IC 4-2-6-9(a)(1) prohibits the Deputy Director, as a 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)(2) prohibits the Deputy Director from participating in any decision or vote if a member of her immediate family has a financial interest in the matter. "Immediate family" is defined in 42 IAC 1-3-13 to include a person's (1) spouse; (2) partner; (3) housemate; or (4) unemancipated dependent.

1. The Deputy Director's spouse

The Deputy Director's spouse is a registered executive branch lobbyist with a major law firm. The Deputy Director's spouse also represents clients that have or may be seeking to have contracts with the ICJI. Though the Deputy Director is currently in dissolution proceedings, she is still married to her spouse at this time. A conflict of interest would arise for the Deputy Director if she were to participate in a decision or vote in which her spouse would have a financial interest in the outcome of the matter. It appears that the Deputy Director's responsibilities as Deputy Director of Policy, which include reviewing and approving grant solicitations, assisting in and guiding agency decision making, developing agency policy towards what programs may be funded, and assisting in agency operations related to policy matters, may require her to be involved in decisions or votes in which her spouse may have a financial interest.

IC 4-2-6-9(b) provides that an 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. IC 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 ICJI proposes a screening procedure that would screen the Deputy Director from any and all decisions, planning, and involvement in any matters relating to her spouse or his clients, or matters that may include her husband's current employers. To accomplish this the proposed screen would exclude the Deputy Director from (1) any and all communications involving her spouse, his clients, contracting entity, and employer; (2) participating in any decision-making processes involving her spouse, his clients, the contracting entity, and his employer; and (3) involvement in oversight, program management, audit, or any other agency

activity related to projects, contracts, or grants which may be related to her spouse, his clients, the contracting entity, and his employer.

2. The Deputy Director's father

The Deputy Director's father works in the field of TBI and is currently working on a contract basis with the DOC on a TBI-related study of inmates housed in the DOC. This work is funded by a grant that is administered by the ICJI. The Deputy Director's father routinely accepts contracts with the state because of his expertise in TBI.

A parent is not included in the definition of "immediate family" for the purposes of IC 4-2-6-9. Therefore, a conflict of interest under this provision would not arise for the Deputy Director if she were to participate in a decision or vote in which her father would have a financial interest in the outcome of the matter as long as her relationship with her father would not be considered that of a housemate. However, to avoid even the appearance of impropriety, it would be advisable for the ICJI to implement their proposed screening procedures to prevent the Deputy Director from involvement in any and all decisions, planning, and involvement in any matters relating to her father or his clients, or matters that may include her father's current employers. To accomplish this, the proposed screen would exclude the Deputy Director from (1) any and all communications involving her father, his clients, contracting entity, and employer; (2) participating in any decision-making processes involving her father, his clients, the contracting entity, and his employer; and (3) involvement in oversight, program management, audit, or any other agency activity related to projects, contracts, or grants which may be related to her father, his clients, the contracting entity, and his employer.

B. Confidential information

The Deputy Director is prohibited under 42 IAC 1-5-10 and 42 IAC 1-5-11 from benefitting from, permitting any other person to benefit from, or divulging information of a confidential nature except as permitted or required by law. Similarly, IC 4-2-6-6 prohibits the Deputy Director from accepting any compensation from any employment, transaction, or investment which is entered into or made as a result of material information of a confidential nature. The term "person" is defined in IC 4-2-6-1(a)(13) and the definition of "information of a confidential nature" is set forth in IC 4-2-6-1(a)(12).

To the extent the Deputy Director is exposed to or has access to such confidential information in her position as ICJI's Deputy Director of Policy and Planning she would be prohibited not only from divulging that information but from ever using it to benefit anyone in any manner, including her spouse and father.

CONCLUSION

The Commission finds that a potential conflict of interest could arise for the Deputy Director if she participates in decisions and/or votes in which her husband would have a financial interest. The Commission further finds that the screening mechanism proposed by the ICJI is appropriate so long as the Ethics Officer maintains continual oversight of the screen. On the other hand, the Commission finds that a potential conflict of interest does not arise under IC 4-2-6-9 for decisions or votes regarding the Deputy Director's father. Nevertheless, the Commission strongly recommends that the ICJI implement the proposed screening procedures for matters related to the Deputy Director's father to prevent even the appearance of a conflict.