

**42 IAC 1-5-5 Outside employment (IC 4-2-6-5.5)**  
**42 IAC 1-5-6 Conflicts of interest; decisions and voting (IC 4-2-6-9)**  
**42 IAC 1-5-10 Benefiting from confidential information**  
**42 IAC 1-5-11 Divulging confidential information**  
**42 IAC 1-5-12 Use of state property**  
**42 IAC 1-5-13 Ghost employment**

The recently hired Director of the DFI has served as a Trustee of a university for several years. The Director sought approval for the procedures established by the DFI to screen the Director from all involvement with regulatory issues relating to the university so that he could continue his service to the university while simultaneously acting as Director. SEC found the arrangement proposed by the DFI sufficient to ensure the Director's continued service on the university's Board of Trustees would not be contrary to the Code of Ethics.

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No. 14-I-3

The Indiana State Ethics Commission ("Commission") issues the following advisory opinion concerning the State Code of Ethics 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 became the Director for the Department of Financial Institutions ("DFI") on March 10, 2014. As the Director, the state employee is the chief executive and administrative officer and has general supervision of the work of the DFI and each of the four divisions, subject to the orders and under the direction of the Board of Members of the DFI. The Director and staff are responsible for the regulation of state chartered banks, credit unions, and consumer credit organizations such as consumer credit lenders, mortgage lenders and originators, money transmitters, payday lenders, pawnbrokers, and check cashers. The vast majority of the Director's work involves issues of general applicability, such as interacting with executives of financial institutions and consumer credit organizations, dealing with federal regulators such as the Federal Deposit Insurance Corporation, Consumer Financial Protection Bureau and the Federal Reserve, other government officials, trade organizations representing the industries regulated by the DFI and members of the General Assembly. The Director is also a voting member of the DFI's seven-member board.

The Director has served as a Trustee of Butler University ("Butler") for at least five years. He also chairs the Finance Committee and is Treasurer. Butler is a private educational institution located in Indianapolis, Indiana and derives its income largely from student tuition and fees, investment returns and grants, operation of residence and dining halls and various related activities. The Board of Trustees is comprised of 28 members and is charged with fiscal and strategic oversight and governance of Butler. The Director receives no compensation, per diem payments or reimbursements for expenses in connection with his duties as a trustee, committee member and officer of the university. He pays all of his expenses in connection with meetings and other official functions he attends on behalf of the university. Meals are usually provided at the meetings and other university functions.

Butler has been a licensed consumer lender under IC 24-4.5 and a licensed money transmitter under IC 28-8-4 since 1994. The activity under these licenses is extremely modest and used to accommodate faculty and students. All consumer loans are closed-end loans made exclusively to Butler employees for computer purchase. No finance or additional charges are assessed on the loans. The loans are paid by payroll deduction and have varying maturities. Butler is one of the smaller licensed consumer lenders with outstanding accounts totaling less than \$100,000 as of its last examination in July 2013.

Butler also holds a money transmitter license which allows the University to issue money orders to students. Butler is one of the smaller money transmitters with less than \$10,000 in outstanding money orders as of June 2013.

To address any potential conflicts that may arise due to the Director's affiliation with Butler and to comply with the conflict of interest laws, the Director has notified his appointing authority. Further, the DFI has established the following procedures to screen the Director from all involvement with regulatory issues relating to Butler:

1. All reports of examinations will be reviewed and approved by the Deputy Director of the Consumer Credit Division. This is currently standard practice.
2. Should any issues with respect to Butler arise from a Report of Examination that the Deputy Director of the Consumer Credit Division believes require a higher authoritative response, the matter will be taken to the Board Members of the DFI. The Director will recuse himself from the portion of the meeting when the issue is discussed and any votes are taken. There have been no issues during the twenty years Butler has been licensed as a consumer lender and money transmitter that have required the Director's involvement.
3. Any future license applications that Butler may submit to the DFI will be voted on by the Board Members of the DFI instead of being approved under delegated authority by the Director. The Director will again recuse himself from that portion of the meeting when the application is discussed and any votes are taken.
4. All confidential information concerning Butler will be maintained by the Consumer Credit Division with instructions that the Director is not to have access to it without the written approval of the Ethics Officer.

### **ISSUE**

What ethics issues, if any, arise for the state employee given his position as the Director of the DFI and his service on the Butler Board of Trustees?

### **RELEVANT LAW**

#### **IC 4-2-6-5.5 (42 IAC 1-5-5)**

#### **Conflict of interest; advisory opinion by commission**

Sec. 5.5. (a) A current state officer, employee, or special state appointee shall not knowingly:

(1) accept other employment involving compensation of substantial value if the responsibilities of that employment are inherently incompatible with the responsibilities of

public office or require the individual's recusal from matters so central or critical to the performance of the individual's official duties that the individual's ability to perform those duties would be materially impaired;

(2) accept employment or engage in business or professional activity that would require the individual to disclose confidential information that was gained in the course of state employment; or

(3) use or attempt to use the individual's official position to secure unwarranted privileges or exemptions that are:

(A) of substantial value; and

(B) not properly available to similarly situated individuals outside state government.

(b) A written advisory opinion issued by the commission or the individual's appointing authority or agency ethics officer granting approval of outside employment is conclusive proof that an individual is not in violation of subsection (a)(1) or (a)(2).

#### **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.

#### **42 I.A.C. 1-5-10**

##### **Benefiting from confidential information**

Sec. 10. A state officer, employee, or special state appointee shall not benefit from, or permit any other person to benefit from, information of a confidential nature except as permitted or

required by law.

#### **42 I.A.C. 1-5-11**

##### **Divulging confidential information**

Sec. 11. A state officer, employee, or special state appointee shall not divulge information of a confidential nature except as permitted by law.

#### **IC 4-2-6-6**

##### **Present or former state officers, employees, and special state appointees; compensation resulting from confidential information**

Sec. 6. No state officer or employee, former state officer or employee, special state appointee, or former special state appointee shall accept any compensation from any employment, transaction, or investment which was entered into or made as a result of material information of a confidential nature.

#### **42 IAC 1-5-12 Use of state property**

Sec. 12. A state officer, employee, or special state appointee shall not make use of state materials, funds, property, personnel, facilities, or equipment for any purpose other than for official state business unless the use is expressly permitted by a general written agency, departmental, or institutional policy or regulation.

#### **42 IAC 1-5-13 Ghost employment**

Sec. 13. A state officer, employee, or special state appointee shall not engage in, or direct others to engage in, work other than the performance of official duties during working hours, except as permitted by general written agency, departmental, or institutional policy or regulation.

### **ANALYSIS**

#### *A. Outside employment*

An outside employment or professional activity opportunity creates a conflict of interest under IC 4-2-6-5.5 if it results in the employee: 1) receiving compensation of substantial value if the responsibilities of the employment are inherently incompatible with the responsibilities of public office or require the employee's recusal from matters so central or critical to the performance of his official duties that his ability to perform them would be materially impaired; 2) disclosing confidential information that was gained in the course of state employment; or 3) using or attempting to use his official position to secure unwarranted privileges or exemptions of substantial value that are not properly available to similarly situated individuals outside state government.

Based on the information provided by the DFI, it does not appear that the Director's service on the Butler Board of Trustees would create a conflict under this provision. Specifically, the information provided indicates that the Director does not receive "compensation of substantial value", nor would he be required to recuse himself from matters that are critical to the

performance of his state employment duties. Moreover, while he is the chair of the finance committee for the Butler Board of Trustees, nothing presented suggests that the Director would be required to disclose confidential information that he may have access to by virtue of his state employment. Similarly, nothing presented suggests that he would use or attempt to use his state position for any unwarranted privileges or exemptions.

*B. Conflict of interests*

IC 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, IC 4-2-6-9(a)(3) prohibits the Director from participating in any decision or vote if a business organization in which he is serving as a trustee has a financial interest in the outcome of the matter.

The state employee is the Director of the DFI. He also serves as a trustee for Butler. The DFI is the state institution responsible for granting and maintaining consumer lender and money transmitter licenses for Butler. While it is unlikely, a remote possibility exists that would require the Director's involvement in a review of the existing licenses granted to Butler and/or future licensure issues. To the extent that Butler would have a financial interest in any such decision or vote, a conflict of interest would arise for the Director if he would participate.

IC 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 Ethics Officer requested an advisory opinion from the Commission as provided in the rule and has disclosed the potential conflict to his appointing authority.

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 DFI has established the following procedures to screen the Director from all involvement with regulatory issues relating to Butler:

1. All reports of examinations will be reviewed and approved by the Deputy Director of the Consumer Credit Division. This is currently standard practice.
2. Should any issues with respect to Butler arise from a Report of Examination that the Deputy Director of the Consumer Credit Division believes require a higher authoritative response, the matter will be taken to the Board Members of the DFI. The Director will recuse himself from the portion of the meeting when the issue is discussed and any votes are taken. There have been no issues during the twenty years Butler has been licensed as a consumer lender and money transmitter that have required the involvement of the Director.
3. Any future license applications that Butler may submit to the DFI will be voted on by the Board Members of the DFI instead of being approved under delegated authority by the Director. The Director will again recuse himself from that portion of the meeting when the application is discussed and any votes are taken.

4. All confidential information concerning Butler will be maintained by the Consumer Credit Division with instructions that the Director is not to have access to it without the written approval of the Ethics Officer.

### *C. Confidential information*

The 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 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.

To the extent the Director is exposed to or has access to such confidential information in his position as the DFI Director, he would be prohibited not only from divulging that information but from ever using it to benefit anyone in any manner.

### *D. Use of state property and Ghost employment*

42 IAC 1-5-12 prohibits the Director from using state property for any purpose other than for official state business unless the use is expressly permitted by a general written agency, departmental, or institutional policy or regulation. Likewise, 42 IAC 1-5-13 prohibits the Director from engaging in, or directing others to engage in, work other than the performance of official duties during working hours, except as permitted by general written agency, departmental, or institutional policy or regulation.

To the extent that the Director complies with these provisions in serving as a trustee for Butler, such outside professional activity would not violate these ethics laws.

## **CONCLUSION**

Subject to the foregoing analysis and the implementation of the screening procedures established by the DFI, the Director's continued service on the Butler Board of Trustees would not be contrary to the Code of Ethics.