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An IDEM employee sought approval to serve as a precinct committeeman. SEC found the employee's service as a precinct committeeman would not create a conflict of interests under IC 4-2-6-5.5. Specifically, the employee's outside employment would not provide him with compensation of substantial value nor would it require his recusal from matters that are critical to the performance of his state duties. SEC further determined that his service as a precinct committeeman would not be contrary to the Code of Ethics so long as he ensures compliance with the rules on political activity, conflict of interests; decisions and voting, use of state property, ghost employment and confidential information.

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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 employed as an Environmental Manager 2 in the Technical Support and Modeling Section with the Indiana Department of Environmental Management ("IDEM"), Office of Air Quality, Air Programs Branch. The Environmental Manager's job duties include reviewing air quality modeling analyses for Prevention of Significant Deterioration ("PSD") federal air permits and developing air quality modeling attainment demonstrations for State Implementation Plans ("SIPs") and revisions to SIPs. His salary comes from the Title V Air Permitting grant, which is an Environmental Protection Agency ("EPA") federal air permit program under Title V of the Clean Air Act. Companies obtaining a Title V air permit pay the Title V air permit fees, which support this federal program.

The Environmental Manager is interested in serving on a precinct committee either through an appointment or through an election. As a precinct committeeman, the Environmental Manager will be involved in the campaign and election process. His precinct committeeman duties will include registering voters on his own time, working at the polls on primary and general election days at the voter challenge table, campaigning for candidates on his own time, and attending county and state conventions where he will be involved in selecting the slated political party candidates. The current precinct committeeman for the voting precinct at which the Environmental Manager has been working as a poll worker is resigning, and the Environmental Manager expects to be appointed by the Marion County Chairman to complete the remainder of the term. It is the Environmental Manager's understanding that there is a possibility that a current precinct committeeman can be challenged for the position. If this occurs, an election may be held, and the names of the candidates from the same political party appear on an election ballot.

The Environmental Manager would not receive a salary for serving as a precinct committeeman. It is a volunteer position primarily involved with the election process. The only compensation received by a precinct committeeman is for working on primary and general election days. This is similar to the compensation received by clerks, judges, and inspectors who serve as Election Day poll workers. However, if requested, this compensation can be waived by the precinct committeeman.

The Environmental Manager requested an informal advisory opinion from the Office of Inspector General (“OIG”) for advice on whether, under the Code, he could be appointed to serve as a precinct committeeman. The OIG informal advisory opinion raised awareness of the prohibitions against engaging in political activity, outside employment that would create a conflict with state duties, ghost employment, the use of state property for purposes other than official state business, benefitting from or divulging confidential information, and the application of the federal Hatch Act.

ISSUE

Is the Environmental Manager prohibited under the Code from serving in both his position at IDEM and as a precinct committeeman?

RELEVANT LAW

42 IAC 1-5-4 Political activity

Authority: IC 4-2-7-3; IC 4-2-7-5

Affected: IC 3-9-2; IC 4-2-6-1

Sec. 4. (a) A state employee or special state appointee shall not engage in political activity including solicitation of political contributions from:

- (1) another employee or special state appointee; or
- (2) any other person;

when on duty or acting in an official capacity.

(b) This section does not prohibit a state employee or special state appointee from engaging in such activity when not on duty.

(c) A state employee or special state appointee shall not solicit political contributions at any time from:

- (1) persons whom the employee or special state appointee knows to have a business relationship with the employee’s or the special state appointee’s agency; or
- (2) state employees or special state appointees directly supervised by the employee or the special state appointee.

(d) The appointing authority of an agency and all employees or special state appointees with purchasing or procurement authority on behalf of the state shall not solicit political contributions on behalf of any candidate for public office, unless that individual is a candidate for public office himself or herself.

42 IAC 1-5-5 Outside Employment

Authority: IC 4-2-7-3; IC 4-2-7-5

Affected: IC 4-2-6-5.5; IC 4-2-7

Sec. 5. Outside employment restrictions are set forth in IC 4-2-6-5.5.

IC 4-2-6-5.5

Conflict of interest; advisory opinion by commission

Sec. 5.5. (a) A current state officer, employee, or special state appointee may not knowingly do any of the following:

(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.

(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 stating that an individual's outside employment does not violate subsection (a)(1) or (a)(2) is conclusive proof that the individual's outside employment does not violate subsection (a)(1) or (a)(2).

42 IAC 1-5-6 Conflicts of interest; decisions and voting

Authority: IC 4-2-7-3; IC 4-2-7-5

Affected: IC 4-2-6-9; IC 4-2-7

Sec. 6. Decision and voting restrictions are set forth in IC 4-2-6-9.

IC 4-2-6-9

Conflict of economic interests; commission advisory opinions; disclosure statement; written determinations

Sec. 9. (a) A state officer, an employee, or a special state appointee may not participate in any decision or vote, or matter relating to that 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 member, 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 ethics officer in writing and do either of the following:

(1) 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:

(A) 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

(B) 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.

(2) File a written disclosure statement with the commission that:

(A) details the conflict of interest;

(B) describes and affirms the implementation of a screen established by the ethics officer;

(C) is signed by both:

(i) the state officer, employee, or special state appointee who identifies the potential conflict of interest; and

(ii) the agency ethics officer;

(D) includes a copy of the disclosure provided to the appointing authority; and

(E) is filed not later than seven (7) days after the conduct that gives rise to the conflict.

A written disclosure filed under this subdivision shall be posted on the inspector general's Internet web site.

(c) A written determination under subsection (b)(1)(B) 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)(1)(B) shall be filed with the appointing authority.

IC 4-2-6-17

Use of state property for other than official business; exceptions; Violations

Sec. 17. (a) Subject to IC 4-2-7-5, a state officer, an employee, or a special state appointee may not use state materials, funds, property, personnel, facilities, or equipment for purposes other than official state business unless the use is expressly permitted by a general written agency, departmental, or institutional policy or regulation that has been approved by the commission. The commission may withhold approval of a policy or rule that violates the intent of Indiana law or the code of ethics, even if Indiana law or the code of ethics does not explicitly prohibit that policy or rule.

(b) An individual who violates this section is subject to action under section 12 of this chapter.

42 IAC 1-5-13 Ghost employment

Authority: IC 4-2-7-3; IC 4-2-7-5

Affected: IC 4-2-7

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.

42 IAC 1-5-10 Benefiting from confidential information

Authority: IC 4-2-7-3; IC 4-2-7-5

Affected: IC 4-2-7

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 IAC 1-5-11 Divulging confidential information

Authority: IC 4-2-7-3; IC 4-2-7-5

Affected: IC 4-2-7

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.

ANALYSIS

The Environmental Manager's request for a formal advisory opinion invokes consideration of the provisions of the Code pertaining to Political Activity, Conflicts of Interest, Use of State Property, Ghost Employment, and Benefitting from and Divulging Confidential Information. The application of each provision to the Environmental Manager is analyzed below. The Commission does not have jurisdiction to interpret or address concerns regarding the dual office holding prohibition in the Indiana State Constitution or the federal Hatch Act. Accordingly, the application, if any, of either provision is outside the scope of this opinion.

A. Political Activity

The political activity rule prohibits the Environmental Manager from engaging in political activity, including the solicitation of political contributions from anyone, when he is on duty or while acting in an official capacity for the State. This rule also prohibits the Environmental Manager from soliciting political contributions at any time, whether on duty or not, from persons with whom IDEM has a business relationship or from state employees or special state appointees he directly supervises. The Environmental Manager is also restricted from soliciting political contributions on behalf of any candidate for public office, unless he is a candidate for public office himself, if he has purchasing or procurement authority on behalf of the State.

IDEM's Ethics Officer advised that the Environmental Manager does not have purchasing authority and that she has discussed this rule and its restrictions with him. So long as the Environmental Manager adheres to the above restrictions, his appointment to the precinct committee and his service as a precinct committeeman would not appear to be contrary to the political activity rule.

B. Outside Employment/Professional Activity

IC 4-2-6-5.5 prohibits the Environmental Manager from 1) accepting other employment involving compensation of substantial value if those responsibilities are inherently incompatible with his responsibilities in his state employment or would require his recusal from matters so central or critical to the performance of his duties with the State that his ability to perform them would be materially impaired; 2) accepting employment or engaging in business or professional activity that would require him to disclose confidential information that was gained in the course of his employment with the State; and 3) using or attempting to use his position with the State to secure unwarranted privileges or exemptions that are of substantial value and not properly available to similarly situated individuals outside state government.

Based on the information provided by the Environmental Manager and the Ethics Officer, the Commission finds that the Environmental Manager's activities as a precinct committeeman would not create a conflict under this provision. Specifically, the Environmental Manager's responsibilities as a precinct committeeman would not be inherently incompatible with his IDEM responsibilities nor would they create a conflict with his state duties or require him to recuse himself from matters that are so central or critical to the performance of his duties with the State that his ability to perform them would be materially impaired. Moreover, nothing presented suggests that his service as a precinct committeeman would require the Environmental Manager to disclose confidential information that he may have access to by virtue of his state position. Similarly, nothing presented suggests that he would use or attempt to use his state position for any unwarranted privileges or exemptions.

The Commission points out that this determination is fact-sensitive and applies only to the Environmental Manager's specific circumstances. This determination is not a general approval of state employees serving in other similar outside political employment/professional activities.

C. Conflicts of Interest

IC 4-2-6-9(a) prohibits a state employee from participating in any decision or vote, or matter relating to that decision or vote, if he has knowledge that various persons may have a "financial interest" in the outcome of the matter, including himself. The term financial interest, as defined in IC 4-2-6-1(a)(11), includes an interest involving property or services. However, the term does not include an interest that is not greater than the interest of the general public or any state officer or any state employee.

Based on the information provided, the Environmental Manager would not be required to participate in decisions or votes in his employment at IDEM that would relate to or affect him or his role as precinct committeeman. So long as no such decisions or votes, or matters related to such decisions or votes, come before the Environmental Manager in his position at IDEM, he would not be in violation of this rule. In the event he would otherwise participate in any such matters during the course of his state employment, he must follow the procedure set forth in IC 4-2-6-9 (b) to disclose the conflict.

D. Use of State Property

The use of state property rule prohibits a state employee from using state property for purposes other than official state business absent a written policy allowing for such use that has been

approved by the Commission. To the extent that the Environmental Manager refrains from using state property for duties related to his role as precinct committeeman, he would not be in violation of this rule.

E. Ghost Employment

The ghost employment rule prohibits a state employee from engaging in or directing others to engage in work other than the performance of official duties during working hours absent a written policy allowing it. In this case, the Environmental Manager indicates that he would complete his precinct committeeman duties related to registering voters and campaigning for candidates on his own time, separate from his state hours. He also indicates he would work the polls on primary and general election days, days on which state offices are closed. To the extent that the Environmental Manager refrains from engaging or directing other to engage in work other than official state duties during his working hours, he would not be in violation of this rule.

F. Confidential Information

The Environmental Manager is prohibited under 42 IAC 1-5-10 and 42 IAC 1-5-11 from benefitting from or divulging confidential information except as permitted or required by law.

To the extent that the Environmental Manager has access to such information by virtue of his state position, he must comply with these restrictions to avoid violation of these rules.

CONCLUSION

Subject to the foregoing analysis, the Commission finds that the Environmental Manager's intended outside employment/professional activity as a precinct committeeman would not create a conflict of interest under the Code of Ethics.