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An IDHS employee sought advice to determine whether he could maintain his current full-time position as the Southwest Emergency Medical Services (EMS) District Manager within the State Fire Marshal's Office for District 7 and District 10, while at the same time, potentially taking on a part-time position as a paramedic with Riley Fire Department, which was one of almost 200 providers that the employee oversaw. SEC determined that the employee would not violate any ethics rules concerning conflicts of interest under IC 4-2-6-5.5; IC 4-2-6-9; and IC 4-2-6-10.5, and that he could immediately begin employment with the provider so long as he properly used the screening mechanism as proposed by the Ethics Officer for IDHS.

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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 currently serves as the Southwest Emergency Medical Services (EMS) District Manager within the State Fire Marshal's Office for District 7 and District 10. Prior to joining Indiana Department of Homeland Security (IDHS), he served as the Owen County Coroner as well as the EMS Division Chief for the Riley Fire Department in Vigo County, Indiana.

The employee would like to work part-time as a paramedic for Riley Fire Department. He anticipates that, if his outside employment is approved, he would only work one or two 12 hour shifts per month.

In his current role as the Southwest EMS District Manager, he is responsible for oversight of ambulance service, the EMS training center, and EMS Supervising Hospital certifications for Districts 7 and 10. His oversight of ambulance service includes routine ambulance compliance inspections, investigations into complaints and reports of violations, and renewal of provider certifications, which is done every two years.

As stated above, Riley Fire Department is located in Vigo County, Indiana. This is one of the 20 counties within the employee's purview, and Riley Fire Department is one of nearly 200 providers that the employee is responsible for overseeing. Due to the fact that Riley Fire Department falls within one of the employee's districts, he would be responsible for performing inspections on Riley Fire Department's ambulances and conducting an investigation in the event that Riley Fire Department was cited for violations related to its ambulance service.

IDHS has proposed a screening policy to ensure that the employee would not be involved in IDHS matters relating to Riley Fire Department. The IDHS screening policy would require the EMS Director to step in and handle certain matters that arise relating to Riley Fire Department so that the employee can be removed from these matters.

ISSUE

- 1) Would the employee's prospective outside employment with Riley Fire Department create any conflicts of interests for him under the Code of Ethics?
- 2) What other ethics issues, if any, arise for the employee given his position as Southwest EMS District Manager and his prospective, simultaneous employment with Riley Fire Department?

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 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).

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

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 4-2-6-10.5 (42 IAC 1-5-7)

Prohibition against financial interest in contract; exceptions; disclosure statement; penalty for failure to file statement

Sec. 10.5. (a) Subject to subsection (b), a state officer, an employee, or a special state appointee may not knowingly have a financial interest in a contract made by an agency.

(b) The prohibition in subsection (a) does not apply to a state officer, an employee, or a special state appointee who:

(1) does not participate in or have contracting responsibility for the contracting agency; and

(2) files a written statement with the inspector general before the state officer, employee, or special state appointee executes the contract with the state agency.

(c) A statement filed under subsection (b)(2) must include the following for each contract:

(1) An affirmation that the state officer, employee, or special state appointee does not participate in or have contracting responsibility for the contracting agency.

(2) An affirmation that the contract: (A) was made after public notice and, if applicable, through competitive bidding; or (B) was not subject to notice and bidding requirements and the basis for that conclusion.

(3) A statement making full disclosure of all related financial interests in the contract.

(4) A statement indicating that the contract can be performed without compromising the performance of the official duties and responsibilities of the state officer, employee, or special state appointee.

(5) In the case of a contract for professional services, an affirmation by the appointing authority of the contracting agency that no other state officer, employee, or special state appointee of that agency is available to perform those services as part of the regular duties of the state officer, employee, or special state appointee. A state officer, employee, or special state appointee may file an amended statement upon discovery of additional information required to be reported.

(d) A state officer, employee, or special state appointee who:

(1) fails to file a statement required by rule or this section; or

(2) files a deficient statement; before the contract start date is, upon a majority vote of the commission, subject to a civil penalty of not more than ten dollars (\$10) for each day the statement remains delinquent or deficient. The maximum penalty under this subsection is one thousand dollars (\$1,000).

42 IAC 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 IAC 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.

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

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 creates a conflict of interests 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, the employee is responsible for overseeing ambulance service within 20 counties and for nearly 200 providers in those counties. Riley Fire Department is one of those providers. Accordingly, the employee is responsible for conducting Riley Fire Department's ambulance inspections, approving its provider certifications, and conducting investigations into alleged violations of any EMS statutes or regulations.

According to the proposed screening policy provided by the Ethics Officer for IDHS, the employee would be screened from all matters involving Riley Fire Department that he would normally oversee as the Southwest EMS District Manager. These matters would instead be overseen by the EMS Director for IDHS.

The Commission finds that the employee's recusal from Riley Fire Department matters would not result in him being unable to perform official duties that are central and critical to his position with IDHS because Riley Fire Department is only one of nearly 200 providers he oversees in his district. In addition, the employee would not have to divulge confidential information he gained as an IDHS employee while serving as a part-time paramedic. Further, the employee previously served as the EMS Division Chief for Riley Fire Department and was told he could continue serving the department if he accepted the IDHS position, so he did not use his state position to secure the part-time paramedic opportunity.

Accordingly, the Commission finds that the employee's outside employment with Riley Fire Department would not create a conflict of interests for him under this rule as long as he complies with the IDHS screening policy presented by the Ethics Officer for IDHS.

B. Conflict of interests - decisions and votes

IC 4-2-6-9 (a)(1) prohibits the employee from participating in any decision or vote, or matter relating to that 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 employee from participating in any decision or vote, or matter relating to that decision or vote, if he or a business organization which employs him has a financial interest in the matter. The definition of "financial interest" in IC 4-2-6-1(a)(11) includes, in part, "an interest arising from employment".

The employee will be serving as the Southwest EMS District Manager and will also be employed as a part-time paramedic by Riley Fire. Although it is unclear if Riley Fire Department would be considered a "business organization" for purposes of this rule, Riley Fire Department is the employee's employer. As the Southwest EMS District Manager, the employee's responsibilities include regulatory and compliance oversight of Riley Fire Department. Decisions he would have to make in this capacity could have a financial impact on himself, as an employee of Riley Fire Department, and Riley Fire Department.

Accordingly, the Commission finds that the employee would have a potential conflict of interests if he were to participate in decisions and votes, or matters related to such decisions or votes, that would affect Riley Fire Department. IC 4-2-6-9(b) requires that an employee who identifies a potential conflict of interests notify their ethics officer and appointing authority and seek an advisory opinion from the Commission or file a written disclosure statement.

The Ethics Officer for IDHS and the employee have requested this formal advisory opinion, and the Ethics Officer has proposed a screening mechanism, through a policy approved by the IDHS appointing authority, which requires the EMS Director for IDHS to retain complete decision-making authority with respect to any decision or delegation of any decision that would potentially result in a benefit (or detriment) to Riley Fire Department. This includes, but is not limited to, routine ambulance inspections at the

Riley Fire Department, investigations into complaints and reports of violations by the Riley Fire Department, renewal of the Riley Fire Department's provider certifications, and other matters involving Riley Fire Department. The screening policy requires that when such a matter involving Riley Fire Department arises that would normally be submitted to or discussed with the employee, the matter shall be directed to the EMS Director.

In the event that Riley Fire is a "business organization" under IC 4-2-6-9(3), the Commission finds this screening policy to be satisfactory to prevent the employee from having a conflict of interest in violation of IC 4-2-6-9.

C. Conflict of interests – contracts

Pursuant to IC 4-2-6-10.5, a state employee may not knowingly have a financial interest in a contract made by an agency. This prohibition however does not apply to an employee that does not participate in or have official responsibility for any of the activities of the contracting agency, provided certain statutory criteria are met. The Commission has interpreted the term "official responsibility" as contracting responsibilities.

The Ethics Officer for IDHS provides that Riley Fire Department does not receive funding through IDHS. Accordingly, the employee would not have a financial interest in a state contract through his position at Riley Fire Department and would not be in violation of this rule.

D. Confidential information

The employee 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 employee 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) to encompass both an individual or an entity, such as Riley Fire Department. In addition, the definition of "information of a confidential nature" is set forth in IC 4-2-6-1(a)(12).

To the extent the employee is exposed to or has access to such confidential information in his position as Southwest EMS District Manager, he would be prohibited not only from divulging that information but from ever using it to benefit any person, including Riley Fire Department, in any manner.

E. Use of state property and Ghost employment

42 IAC 1-5-12 prohibits the employee 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 that has been approved by the

Commission. Likewise, 42 IAC 1-5-13 prohibits the employee 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 employee observes these provisions regarding his employment with Riley Fire Department, such outside professional activity would not violate these ethics laws.

CONCLUSION

Subject to the foregoing analysis, the Commission finds that the employee's intended outside employment with Riley Fire Department would not create a conflict of interests for him under the Code of Ethics.