

#### **42 IAC 1-5-12 (IC 4-2-6-17) Use of state property**

The Indiana Department of Transportation (INDOT) sought advice regarding the use of state funds to pay for professional membership fees, and requested that the Commission revisit its Advisory Opinion No. 08-I-22, wherein the Commission determined it was permissible to pay for continuing legal education for attorneys, but not for attorneys' professional membership fees. INDOT presented several examples of professional associations its employees belong to and how these memberships benefit the agency and individual employees, including continuing education credits at reduced costs, access to information that could be shared with the entire agency, leadership and speaking opportunities, and a network of colleagues to gain and share relevant, job-related information with. SEC found that an agency's use of state funds to pay for professional association membership fees was considered official state business and that doing so would not violate IC 4-2-6-17, so long as there was a benefit to the entire agency.

April 2017

No. 17-I-6

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 requestors.

#### **BACKGROUND**

The Prequalification and Permits Director and the Ethics Officer for the Indiana Department of Transportation (INDOT) and the Director of Talent Management requested a formal advisory opinion regarding the use of state funds to pay for professional memberships.

In Advisory Opinion No. 08-I-22, the Commission determined that it was appropriate for an agency to pay the continuing legal education fees for attorneys employed in that capacity, but that an agency was not permitted to pay professional association membership fees for attorneys. The Commission has not issued any opinions regarding the use of state funds to pay for professional fees related to other professions.

INDOT requested the Commission revisit Advisory Opinion No. 08-I-22 and re-examine the ability of state agencies to pay their attorneys' and other professionals' professional association fees. INDOT provided a list and a description of many, but not all of its professional memberships and their business purposes to demonstrate how INDOT and its employees benefit from these memberships.

These associations include the Metropolitan Indianapolis Board of Realtors, the National Association of State Aviation Officials, the NAFA Fleet Management Association, the National Institute of Governmental Purchasing, the Public Relations Society of America, and the National Institute of Governmental Purchasing. Among the benefits that the Director of Talent Management described, INDOT receiving through its employees' memberships in these professional associations, are cost-effective opportunities for continuing education credits and access to information that the member employees can bring back to share with the agency. In some cases, one membership covers the entire agency, and multiple employees can access the benefits with little cost to the agency. Furthermore, it was a recruiting and retention tool, and

part of an overall talent management strategy for the agency. It also offered leadership opportunities for staff, public speaking opportunities, and a network of colleagues from whom to gain and share relevant, job-related information.

INDOT's position in this matter is that state agencies have the discretion to pay the association fees of its professional employees. The INDOT employees provided that any payment of membership fees goes through a robust approval process to ensure the membership will benefit the entire agency. INDOT has secured letters of support for their position from the Commissioner of INDOT; the Director of State Personnel Department (SPD); the Secretary of the Family and Social Services Administration (FSSA); and the Commissioner of the Indiana Department of Environmental Management (IDEM).

The Commission also heard testimony at the public meeting from the Indiana Inspector General, and the Chief of Staff for the Office of Attorney General, who offered further support for agencies having the discretion to pay the professional association membership fees for approved employees.

### **ISSUE**

Does the Code of Ethics prohibit a state agency from paying professional association fees for employees in their agency?

### **RELEVANT LAW**

#### **IC 4-2-6-17 (42 IAC 1-5-12)**

#### **Use of state property for other than official business; exceptions; violations**

Sec. 17. (a) Subject to IC 4-2-7-5, a state officer, employee or special state appointee may not use state materials, funds, property, personnel, facilities or equipment for purposes 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. 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 rule is subject to action under IC 4-2-6-12.

### **ANALYSIS**

IC 4-2-6-17 (42 IAC 1-5-12) prohibits a state officer, employee or special state appointee from using 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.

In Advisory Opinion No. 08-I-22, the Commission determined that an agency would be permitted to use agency funds to pay for Continuing Legal Education (CLE) for attorneys employed within the agency. The Commission opined that attending CLE seminars would be considered official state business because these seminars provide legal training for an attorney that may be useful to an attorney in the performance of their duties within an agency. Further, obtaining CLE credit is one of the requirements for an attorney to maintain their license.

However, the Commission determined that an agency would not be permitted to use agency funds to pay for professional association fees for its attorneys because an attorney is able to perform their job duties without having to retain membership in professional associations. Accordingly, the Commission found that agencies would not be permitted to use state funds to pay for their attorneys to maintain professional memberships.

Advisory Opinion No. 08-I-22 was based on information provided by a former Inspector General without the benefit of input from other agencies as to the value of professional memberships for state employees serving as attorneys or in other professions within state government. INDOT and the other agencies who provided their letters of support believe that state agencies have a compelling interest to ensure that employees within their agencies have access to training and resources, including the latest industry information that may be necessary to the performance of their state duties.

Based on the information provided through this request, the Commission finds that professional memberships provide many benefits for state agencies, beyond those afforded to the employees who join the professional associations, including reduced continuing education fees, professional development of employees, retention of highly skilled professionals, and access to information that is valuable, and in some cases necessary, for state employees in carrying out their state responsibilities.

Accordingly, the Commission further finds that an agency's use of state funds to pay for professional association membership fees constitutes official state business and would not violate IC 4-2-6-17 as long as there is a demonstrated benefit to the agency.

### **CONCLUSION**

State agencies are not prohibited under the Code of Ethics from using state funds to pay the professional membership fees of state employees so long as agency leaders can demonstrate that the membership will benefit the agency.