

#### **42 IAC 1-5-1 Gifts; travel expenses; waivers**

The IAC sought advice to determine whether the acceptance of complimentary tickets by state employees and special state appointees in order to gain access to publicly-funded activities for the purpose of on-site grant monitoring, an important part of the IAC's work, was consistent with the Code of Ethics. The SEC determined that allowing the IAC to continue to accept complimentary tickets from entities who have business relationships with the IAC by virtue of grant agreements, did not violate 42 IAC 1-5-1, as long as the tickets were used by state employees or special state appointees to gain access to IAC funded events, for grant monitoring purposes. The SEC further recommended that the IAC update its Policy Manual regarding the acceptance of complimentary tickets to ensure that state employees and special state appointees were not accepting tickets directly from grantees and state employees and special state appointees who attended events completed and provided documentation to demonstrate that they were in fact engaged in official state business while attending the ticketed event.

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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).

#### **BACKGROUND**

A state employee serves as the Deputy Director and Ethics Officer for the Indiana Arts Commission (IAC). The Indiana Arts Commission (IAC) is an agency of state government funded by the Indiana General Assembly and the National Endowment for the Arts, a federal agency. On behalf of the people of Indiana, the IAC advocates engagement with the arts to enrich the quality of individual and community life. The IAC encourages the presence of the arts in communities of all sizes while promoting artistic quality and expression. The IAC advocates arts development opportunities across the State and stewards the effective use of public and private resources for the arts. It stimulates public interest in, and participation with, Indiana's diverse arts resources and cultural heritage. The IAC works to enhance public awareness of the arts, lifelong learning opportunities, and arts education programs. Governed by a 15-member board of gubernatorial appointees, the IAC serves all citizens and regions of the State.

The IAC awards more than 500 grants annually to arts, culture and community-based providers, and IAC-funded activities take place in 91 of 92 counties in the State. These grants are adjudicated and funding recommendations are made by citizen panels and appointed citizen Commissioners. Grants are adjudicated based on criteria, which include community engagement, organizational excellence, project management and artistic quality, and each grantee is bound by a contract that identifies the specific funded activities and requires specific reporting including public crediting of the state and federal funds awarded by the IAC. Final reporting by grantees and monitoring of funded activities provide the compliance protocol for the agency to ensure judicious use of public funds. Not only has this protocol been utilized by this agency for nearly the entirety of its 50 year history, but also by its federal funding partner, the National Endowment for the Arts, as well as other state arts agencies around the country.

Activity attendance for the purposes of monitoring publicly-funded activities is an important component of the IAC's work and is done by both staff and Commissioners. Although the agency cannot attend every activity due to time constraints, efforts are made to attend as many as possible throughout the State.

While some funded activities are free, most require a paid admission charge or fee to attend. The IAC respectfully requests a formal advisory opinion on 42 IAC 1-5-1 as it relates to the IAC's current policy (adopted in 2006) related to activity tickets for IAC staff and appointed Commissioners for grant monitoring purposes. The policy reads as follows:

No IAC Commissioner, staff member or advisory panel member, by reason of his or her relationship to the IAC, may obtain, or seek to obtain complimentary tickets or waiver of admission fees from any cultural organization in the state of Indiana (currently receiving or not receiving IAC funding), except for use in official site visits. Grantees may be asked to make available to the Commission one (1) complimentary ticket to IAC-funded programs and events for the purpose of on-site monitoring. (Indiana Arts Commission Policy Manual, adopted 2006)

The IAC interprets the intent of the gift rule as written as a prohibition of individual state employees or other citizens in an official public capacity from accepting "entertainment" (such as tickets) from persons who have or who seek business relationships with state government as part of a larger list of other examples of disallowed "gifts". The IAC contends that an event ticket utilized so that a grantee's compliance with a grant award can be monitored is not a gift to an individual staff member or Commissioner, but instead a means by which the IAC is allowed access to the activity to fulfill its monitoring requirements related to the expenditure of public funds.

Unlike other state agencies where compliance monitoring can occur without a ticket (inspecting the work of a highway contractor, for example), the monitoring of an activity that requires a fee for the public to attend provides a unique challenge for the IAC. It is the longstanding view of the IAC that the inclusion of "entertainment" in the gift rule is meant to capture those types of activities that might be considered "gifts" for those individuals that do not work for an agency such as the IAC that funds many of these "entertainment" activities as its core service to citizens throughout the State. In this case, a strict interpretation of "entertainment" in the gifts rule as it relates to event admission or tickets is particularly detrimental to the IAC.

The IAC requested an opinion from the Commission regarding whether IAC staff and special state appointees are allowed, under the Code of Ethics, to continue monitoring publically funded activities through the ticket procedures outlined in its Policy Manual.

### ISSUE

Is IAC's policy regarding acceptance of complimentary tickets for publically funded activities in order to monitor grantees' use of public funds consistent with the Code of Ethics?

### **RELEVANT LAW**

#### **42 IAC 1-5-1 Gifts; travel expenses; waivers**

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

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

Sec. 1. (a) A state employee or special state appointee, or the spouse or unemancipated child of a state employee or special state appointee, shall not knowingly solicit, accept, or receive any:

- (1) gift;
- (2) favor;
- (3) service;
- (4) entertainment;
- (5) food;
- (6) drink;
- (7) travel expenses; or
- (8) registration fees;

from a person who has a business relationship with the employee's or special state appointee's agency or is seeking to influence an action by the employee or special state appointee in his or her official capacity.

(b) The following shall not be subject to this rule:

(1) Gifts, favors, services, entertainment, food, drink, travel expenses, or registration fees from public agencies or public institutions.

(2) Food or drink consumed at a public meeting to which at least twenty-five (25) individuals are invited. A meeting will be considered public if:

(A) the event is a reception or other gathering for public officials that is not arranged to solicit government

procurement of goods or services;

(B) the employee is giving a speech or participating in a presentation in the employee's official capacity; or

(C) the meeting has a formal educational program that the employee is attending to assist him or her in performing official duties.

(3) Mementos or souvenirs of nominal value.

(4) Food or drink consumed by an employee during negotiations or other activities related to an Indiana economic development corporation economic development project.

(5) Gifts, favors, services, entertainment, food, or drinks from relatives, or a person with whom the employee or special state appointee has an ongoing social relationship, so long as:

(A) the gifts or other items of value are not deducted as a business expense; and

(B) the gift giver is not seeking to influence an action by an employee or special state appointee in that person's official capacity.

(6) Political contributions subject to IC 3-9-2 that are reported in accordance with applicable law.

(7) Nominal refreshments offered to a state employee or a special state appointee conducting official state business while the employee or special state appointee is at a workplace of a person who:

(A) has a business relationship; or

- (B) seeks to influence official action;  
with the employee's or special state appointee's agency.
- (8) Discount and other promotional programs approved and made available to state employees and special state appointees through the state personnel department or the Indiana department of administration.
- (c) An employee's or special state appointee's state officer or appointing authority may waive application of subsection (a) of this rule in individual cases when consistent with the public interest. The waiver shall:
- (1) be in writing; and
  - (2) identify the following:
    - (A) The employee or special state appointee.
    - (B) The nature and value of the gift.
    - (C) The donor of the gift.
    - (D) Why acceptance of the gift is consistent with the public interest.
- (d) Written waivers must be filed with the commission within thirty (30) days of receipt of the gift. The commission may review the written waivers. An appointing authority or state officer may designate authority to the agency's ethics officer to waive application of this rule on behalf of the appointing authority or state officer. The designation shall be in writing and filed with the commission.
- (e) If a person wishes to reimburse the state for any part or all of the expenses incurred by the state for appearances of a state officer, employee, or special state appointee or their official representatives on behalf of the state, the person shall remit to the treasurer of state any such amounts. The treasurer of the state shall quietus the funds into the general fund.

### ANALYSIS

The ethics rule pertaining to gifts, 42 IAC 1-5-1, prohibits a state employee or special state appointee from knowingly soliciting, accepting, or receiving any: 1) gift; 2) favor; 3) service; 4) entertainment; 5) food; 6) drink; 7) travel expenses; or 8) registration fees from a person who has a business relationship with the employee's or appointee's agency or is seeking to influence an action by the employee or appointee in his or her official capacity. The gift rule enumerates eight exceptions to this broad prohibition and also allows an agency's appointing authority to waive application of the rule, subject to certain requirements. The definition of "business relationship" in IC 4-2-6-1(a)(5) includes the dealings a person has with an agency seeking, obtaining, establishing, maintaining, or implementing a pecuniary interest in a contract (including a grant agreement) with an agency.

The employee explained that the IAC provides approximately 500 grants around the State. These grants are provided to organizations and individuals in order to fund arts and cultural activities. Attending arts and cultural events put on by IAC grantees is an important way for the IAC to monitor grant compliance. While some funded activities are free, most require a paid admission charge or fee to attend. The IAC adopted a policy in 2006 that makes it clear that IAC employees and commissioners may not seek or accept complimentary tickets from any cultural organization in the State except for use in official site visits. The employee advised that the IAC occasionally asks grantees to make available to the

IAC one complimentary ticket to IAC-funded programs and events for the purpose of on-site monitoring.

The Commission finds that the acceptance of these tickets by the IAC is permissible under the rule as long as the tickets are provided to the IAC as an agency for grant compliance purposes and not directly to individual employees or special state appointees for non-official state business purposes such as entertainment that other members of the public are required to pay for. This finding aligns with the IAC's policy on acceptance of such tickets that has been in place since 2006. The Commission determined that this policy is appropriate but made several recommendations to ensure that individual employees or special state appointees are not personally accepting the tickets for entertainment purposes.

First, the Commission recommended that the IAC develop a form that employees and special state appointees can use to document their attendance at an event for monitoring purposes and provide information to the IAC regarding their observations related to the compliance, or noncompliance, with the grant requirements.

The Commission also recommended that IAC amend the policy to include a standard procedure for accepting and distributing complimentary tickets. Specifically, all complimentary tickets should be sent to and distributed by the IAC staff in a standardized way so that tickets are not being sent directly to any individual employees or special state appointees. The IAC should make efforts to notify grantees that tickets to their events should be sent to the IAC main office and not to individual staff members or commissioners. The IAC should distribute the tickets received to an assigned staff member or commissioner who will be able to attend the event and monitor whether the public funds are being used in accordance with the grant agreement.

### **CONCLUSION**

The Commission finds that the IAC may continue to accept complimentary tickets from entities who have a business relationship with the IAC by virtue of grant agreements as long as the tickets will be used by a state employee or special state appointee to gain access to an IAC funded event for grant monitoring purposes. The Commission recommended that the IAC update its policy on acceptance of such tickets to ensure individual employees and special state employees are not accepting the tickets directly from grantees and to ensure the employees and special state appointees attending the event complete documentation to demonstrate they were engaged in official state business while attending the ticketed event.

Respectfully Submitted,

Jennifer Cooper  
Ethics Director