

**42 IAC 1-5-5 Outside employment (IC 4-2-6-5.5)**  
**42 IAC 1-5-6 Conflict of interests; decisions and voting (IC 4-2-6-9)**  
**42 IAC 1-5-7 Conflict of interests; contract (IC 4-2-6-10.5)**

A DCS employee sought advice regarding whether working as a home-based caseworker and/or supervised visit facilitator for a DCS service provider, while still working full-time at DCS's Child Support Bureau, would create a conflict of interests for her under the Code of Ethics. SEC determined it could not approve the employee's outside employment opportunity because the employee failed to present a proposed screen; the employee failed to provide information regarding the vendor's methods of handling DCS cases; SEC was unable to determine whether the vendor could be financially impacted by any of the employee's actions in her role with DCS; and SEC was unable to determine whether the employee's salary for her position with the vendor would be derived from the vendor's contract with DCS. SEC also noted that this particular outside employment opportunity would be prohibited under DCS policy.

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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**

An employee serves as a Program Coordinator 6 at the Indiana Department of Child Services (DCS) Child Support Bureau. In this position, she assists the agency in child support enforcement and ensures children receive financial support from their parents by collecting information using multiple resources on custodial and non-custodial parents. She also conducts investigations in complex cases, which contributes to the collection of millions of dollars distributed on delinquent open cases in child support.

The employee requested advice regarding whether she can accept a part-time position with Journey Support Services, LLC (Journey) as a home-based caseworker and/or supervised visit facilitator while still working full-time for DCS's Child Support Bureau. The employee would be responsible for monitoring supervised visits with parents and children, home visits, facilitation and transportation, supporting and monitoring progress of parenting skills and other tools needed to help families with their journey to reunification.

Journey has a contract with DCS and the employee provides that she would be working as an employee sub-contractor for Journey. If she takes the outside position, she will have interaction with DCS caseworkers for each case she is required to complete. She will not be involved in the contract process for DCS or for the outside agency, and she does not participate in any decisions or votes at DCS that involve Journey.

The employee completed the Department of Child Services' Supplemental Employment Authorization on October 30, 2017. Her supervisor did not approve the outside employment position and instead referred the matter to DCS' Ethics Officer at that time. The Ethics Officer denied the request, noting that she believed there was too much potential for a conflict of interests with the employee's official DCS duties and referred the employee to the State Ethics Commission for a final determination on the matter. The employee advises that she respectfully disagrees with

the Ethics Officer's decision and believes that her current DCS position has no similarities with her prospective position at Journey. She is asking the Commission for a Formal Advisory Opinion so that she can have a final determination on this matter.

### **ISSUES**

- 1) Would the employee's prospective outside employment with Journey create any conflicts of interests for her under the Code of Ethics?
- 2) What other ethics issues, if any, arise for the employee given her position as a Program Coordinator and her prospective, simultaneous employment with Journey?

### **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).

## ANALYSIS

### *A. Outside employment*

An outside employment or professional activity opportunity creates a conflict of interests under IC 4-2-6-5.5(a) if it results in the employee: 1) receiving compensation of substantial value when 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 or her official duties that his or her 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 or her official position to secure unwarranted privileges or exemptions of substantial value that are not properly available to similarly situated individuals outside state government.

DCS Policy Number HR-3-5 requires DCS employees to obtain supervisory approval prior to engaging in outside employment. The employee completed the Department of Child Services' Supplemental Employment Authorization on October 30, 2017. Her supervisor did not approve the outside employment position and instead referred the matter to DCS' Ethics Officer at that time. The Ethics Officer denied the request, noting that she believed there was too much potential for a conflict of interests with the employee's official DCS duties and referred the employee to the State Ethics Commission for a final determination on the matter.

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).

The Commission finds that it is unable to provide a statement that the employee's outside employment opportunity with Journey would not violate subsection (a)(1) or (a)(2).

The Commission has concerns about conflicts of interests under this rule. Based on the information provided, Journey has a contract with DCS, and the employee would have clients who are also DCS clients while working for Journey. The employee would also potentially encounter child support related matters involving her Journey clients while performing her DCS duties. The Commission did not receive enough information from the employee to determine if she would be able to avoid violating these subsections.

DCS Policy Number HR-3-5 also provides in part that "no employee of DCS shall have any outside employment or hold any contractual relationship that is with any business entity, agency, or individual that is subject to regulation by, or is doing business with, DCS..."

Accordingly, the Commission cannot approve the employee's outside employment opportunity with Journey.

*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 she 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 a business organization in which she is negotiating employment with or serving as an employee 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 currently works as a Program Coordinator 6 for DCS and is seeking outside employment with Journey. As she is negotiating employment, and if she begins working for Journey, she would be prohibited from participating in any decisions or votes, or matters relating to those decisions or votes, in which she or Journey would have a financial interest in the outcome.

IC 4-2-6-9(b) requires that when a potential conflict of interests is identified, a state employee shall notify their appointing authority and ethics officer in writing and either (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; or (2) file a written disclosure to be filed with the Commission meeting the requirements of IC 4-2-6-9(b)(2)(A)-(D). Both options require the implementation of a screen that would ensure the employee does not participate in the matters that would create a conflict of interests.

As a Program Coordinator 6, the employee is responsible for assisting DCS in child support enforcement. At its public meeting on January 11, 2018, the Commission found that there is a possibility that the employee could encounter individuals who owe child support and who are also clients of Journey. The Commission further found that it is also possible that the employee could encounter her own Journey clients while carrying out her DCS duties. The Commission requested that the employee work with DCS to set up a screen that would prevent her from working on any cases for DCS that would intersect with her clients at Journey. The Commission further requested that the employee provide additional information regarding how Journey handles its cases and whether it would be possible for the employee to work on only non-DCS cases.

On March 8, 2018, the employee and DCS' Ethics Officer, appeared before the Commission again. The Ethics Officer provided that she had contacted the employee's supervisor, who advised that it was not feasible to screen the employee from cases that might involve Journey clients. Consequently, the Ethics Officer was not able to establish or implement a screen that would meet the requirements under IC 4-2-6-9(b)(1)(A). Further, the employee did not have additional information regarding the manner in which Journey handled DCS cases.

Without a proposed screen and without additional information regarding Journey's methods of handling DCS cases and whether or not Journey could be financially impacted by any of the employee's actions in her role with DCS, the Commission cannot approve a screening mechanism that would prevent the employee from having a potential conflict of interests under the rule.

### *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 any state agency. The Code defines "financial interest" to include an interest arising from employment. The Commission has interpreted this rule to apply when a state employee derives compensation from a contract between a state agency and a third party. 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 term "official responsibility" has been interpreted by the Commission as contracting responsibilities.

The employee provides that she will be serving as an "employee sub-contractor" of Journey. If she is a sub-contractor on the contract that Journey has with DCS, she would have a financial interest in a state contract. Further, if she is not officially a sub-contractor, but her salary is derived from or is tied to Journey's contract with DCS, or any state agency, she would have a financial interest in a state contract under this rule.

It does not appear that the employee has contracting responsibilities for DCS so she is not prohibited from having a financial interest in Journey's contract with DCS so long as she follows the guidelines in IC 4-2-6-10.5(b) and files the written disclosure statement with

the Office of Inspector General. If the employee does not have contracting responsibilities for DCS and meets all of the disclosure requirements under IC 4-2-6-10.5(b), she would not have a conflict of interests under this rule.

At its January 11, 2018 meeting, the Commission requested that the employee return to a future meeting and provide additional information regarding whether her salary/compensation for the Journey position would be derived from Journey's contract with DCS. The employee attended the March 8, 2018 Commission meeting, but she was not able to provide the additional information requested. Consequently, the Commission was unable to determine whether the employee's salary for her position with Journey would be derived from Journey's contract with DCS.

### **CONCLUSION**

The Commission is unable to approve the employee's outside employment position with Journey. Journey's contract with DCS creates potential conflicts of interests for the employee under the Code of Ethics from which DCS was not able to screen her. Further, outside employment with a DCS contractor is prohibited by DCS policy.

Respectfully Submitted,

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Ethics Director