

**CAUTION:** The following advice may be based on a rule that has been revised since the opinion was first issued. Consequently, the analysis reflected in the opinion may be outdated.

**IC 4-2-6-5.5**

**IC 4-2-6-9**

A DOR Commissioner was subjected to a screening process where a conflict of interest existed due to his continued employment on the board of directors of a financial institution.

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No. 05-I-6

### **BACKGROUND**

The Commissioner for the Indiana Department of Revenue serves as a member of the board of directors of a financial institution and receives a stipend for that position. The Department of Revenue (DOR) administers the Financial Institutions Tax, but it does not otherwise participate in the regulation of financial institutions.

### **QUESTION**

Does the Commissioner's membership on the Board of Directors of a financial institution and the receipt of a stipend constitute a conflict of interest under IC 4-2-6-5.5 or IC 4-2-6-9?

### **RELEVANT LAW**

Moonlighting:

IC 4-2-6-5.5. (Amended, 2005)

Conflict of Interest:

IC 4-2-6-9 (AMENDED, 2005)

### **CONCLUSION**

The ethics officer of the Department of Revenue has issued an opinion that the Commissioner will not be required to recuse himself "from matters so central or critical to the performance of...official duties" to the extent that his ability to perform his duties would be "materially impaired." Nor will it require the Commissioner to "disclose confidential information that was gained in the course of state employment." The Ethics Commission concurs with this opinion.

The new conflict of financial interest statute is more restrictive than the prior statute. Mr. Eckart's personal financial interest in any DOR decision affecting the financial institution is minimal. However, the new law also restricts his decision or vote on any matter concerning a business organization in which he serves as a director. Thus, there is a conflict of interest if Mr. Eckart participates in any DOR decision regarding the financial institution. Section (b) of IC 4-2-6-9 sets forth the process of dealing with such a conflict. This process requires the Ethics Commission to establish a screening procedure for Mr. Eckart's conflict. The screen must provide that Mr. Eckart has no participation in any matter concerning the financial institution's state tax return. The screen must insure that Mr. Eckart cannot use his official position or attempt to use his position to secure unwarranted privileges or exemptions for the corporation.

When a tax return is filed with the DOR, if no complications are encountered, no individual is involved in any discretionary matter related to the return. The department's Returns Processing System mechanically processes the return. Should the return encounter a complication, it is normally resolved by a supervisor. If the supervisor cannot resolve a complication, it is normally referred to an administrator at the Returns Processing Center. If the administrator cannot resolve the matter, it is referred to a deputy commissioner.

The screening procedure recommended by the DOR and approved by the Ethics Commission is as follows: If the financial institution's tax return is referred to the administrator of the Returns Processing System, the administrator will contact the DOR ethics officer, who shall monitor the continued consideration of the matter until it is resolved to ensure that Mr. Eckart is shielded from any participation in that resolution. At the point a return would normally be referred by the Returns Processing Center's administrator to the deputy, the ethics officer will work with a Deputy Commissioner to resolve the matter without Mr. Eckart's involvement. The Deputy Commissioner that is assigned to handle the return will have full authority to make all final decisions regarding the tax return.