

**42 IAC 1-5-7 Conflicts of interest; contracts (IC 4-2-6-10.5)
IC 4-2-6-1 Definitions**

The IDHS General Counsel sought advice on behalf of LEPC members concerning whether the LEPC members had a “financial interest” in sub-grants between IDHS or the IDHS Foundation and the LEPC members’ political subdivisions due to the LEPC members’ status as employees or officials of those political subdivisions. SEC found that the LEPC members did not have an interest in the sub-grants that was greater than that of the general public and therefore did not have a “financial interest” in the sub-grants as defined by IC 4-2-6-1. Consequently, the LEPC members would not be subject to the prohibitions in IC 4-2-6-10.5.

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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).

BACKGROUND

A state employee serves as General Counsel for the Indiana State Department of Homeland Security (“ISDH”). In this capacity, the General Counsel requests an advisory opinion on behalf of Local Emergency Planning Committee (“LEPC”) members who also serve as an official or employee of a political subdivision.

The Indiana Emergency Response Commission (“IERC”) has established 91 emergency planning districts within Indiana and is required to establish and appoint members to a LEPC within each emergency planning district in accordance with IC 13-25-1-6 and IC 6-6-10-4.2, in compliance with 42 USC 11001(b) and (c) of the Emergency Planning and Community Right to Know Act.

There are approximately 1,400 LEPC members in Indiana. Each county LEPC’s membership is determined by the IERC; however, each LEPC submits its proposed roster to the IERC for approval. The IERC almost always appoints all of the individuals designated on the roster submitted by the LEPC.

LEPC membership is to consist of a minimum of 13 members of the community that include:

- Local Government
- Emergency Management
- Firefighting
- Law Enforcement
- Emergency Medical Service
- Health
- Environment
- Transportation
- Industry
- Hospital

- Community Groups
- Broadcast/Print Media

Based on the required membership of a LEPC, many LEPC members are also county commissioners or county employees. In opinion 06-I-13, the Commission determined that LEPC members were “special state appointees” who are subject to the application of IC 4-2-6-10.5 when contracting with any state agency.

US Department of Homeland Security grants to IDHS are commonly the subject of sub-grant agreements from IDHS to each Indiana County. The purposes of the sub-grant agreements vary, but many fall under the general area of responsibility of the County Emergency Management (“EMA”) Director. Indiana EMA directors are county employees and many also serve as LEPC members. IDHS completes over 200 sub-grant agreements between IDHS and various counties across Indiana each year.

ISSUE

For purposes of IC 4-2-6-10.5, does an LEPC member have a “financial interest,” as the term is defined in IC 4-2-6-1, in a sub-grant agreement between IDHS or the IDHS Foundation and the political subdivision they serve, because of their status as an official or employee of that political subdivision?

RELEVANT LAW

IC 4-2-6-10.5

Prohibition against financial interest in contract; exceptions

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:

(1) a state officer, an employee, or a special state appointee who does not participate in or have official responsibility for any of the activities of the contracting agency, if:

(A) the contract is made after public notice or, where applicable, through competitive bidding;

(B) the state officer, employee, or special state appointee files with the commission a statement making full disclosure of all related financial interests in the contract;

(C) the contract can be performed without compromising the performance of the official duties and responsibilities of the state officer, employee, or special state appointee; and

(D) in the case of a contract for professional services, the appointing authority of the contracting agency makes and files a written certification with the commission 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; or

(2) a state officer, an employee, or a special state appointee who, acting in good faith, learns of an actual or prospective violation of the prohibition in subsection (a), if,

not later than thirty (30) days after learning of the actual or prospective violation, the state officer, employee, or special state appointee:

(A) makes a full written disclosure of any financial interests to the contracting agency and the commission; and

(B) terminates or disposes of the financial interest.

IC 4-2-6-1

Definitions

Sec. 1. (a) As used in this chapter, and unless the context clearly denotes otherwise: (10) "Financial interest" means an interest:

(A) in a purchase, sale, lease, contract, option, or other transaction between an agency and any person; or

(B) involving property or services.

The term includes an interest arising from employment or prospective employment for which negotiations have begun. The term does not include an interest of a state officer or employee in the common stock of a corporation unless the combined holdings in the corporation of the state officer or the employee, that individual's spouse, and that individual's unemancipated children are more than one percent (1%) of the outstanding shares of the common stock of the corporation. The term does not include an interest that is not greater than the interest of the general public or any state officer or any state employee.

ANALYSIS

IC 4-2-6-10.5 prohibits a special state appointee from knowingly having a financial interest in a contract made by an agency. For purposes of ethics, the term "contract" includes a grant. In this case, the prohibition set forth in IC 4-2-6-10.5 will apply to a LEPC member who also serve as an official or employee of a political subdivision if the LEPC member has a "financial interest" in a sub-grant agreement between IDHS and their respective political subdivision.

The term financial interest is generally defined as an interest in a contract or other transaction between an agency and any person. *See* IC 4-2-6-1(1)(a)(10). While the term "person" is defined to include a political subdivision, the definition explicitly excludes an interest that is not greater than the interest of the general public or any state officer or any state employee. In this case, a LEPC member who also serves as an official or employee of a political subdivision has no personal interest in the sub-grant. Instead, the financial benefit of the sub-grant is for the county generally. Accordingly, to the extent that a LEPC member would have any interest in a sub-grant agreement, such interest would not appear to be greater than that of the general public. A separate analysis would have to be done if the LEPC member gains a greater interest in the sub-grant.

CONCLUSION

The Commission finds that for purposes of IC 4-2-6-10.5, a LEPC member who also serves as an official or employee of a political subdivision does not have a financial interest in a sub-grant agreement between IDHS or the IDHS Foundation and the political subdivision they serve because their interest is not greater than that of the general public. Accordingly, the prohibition set forth in IC 4-2-6-10.5 does not apply to those LEPC members who also serve as an official or employee of a political subdivision who receives a sub-grant from IDHS or the IDHS Foundation.