

42 IAC 1-5-6 Conflicts of interest; decisions and voting (IC 4-2-6-9)

A member of the IRMDB questioned whether he would be permitted to apply for a loan from the Board for his family's farm which was involved in composting and organic recycling efforts that comported with the goals the Board was trying to promote. SEC found that this presented a conflict of interest, and a screening mechanism would be inappropriate since the board member could not be adequately screened from involvement in the matter due to the lack of independent oversight over the application process and administration of the loan, if it were to be awarded to the board member.

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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 on the Indiana Recycling Market Development Board ("IRMDB") and is a farmer from Lebanon. The IRMDB distributes grant and loan money to promote recycling efforts throughout Indiana by focusing on economic development efforts. The board member's farm is involved in composting and organic recycling efforts that generally fit many of the goals that the IRMDB is trying to promote. To further the recycling efforts of his family's farm, the board member would like to request a loan from the IRMDB.

ISSUES

Would a conflict of interest arise for the board member if he were to apply for a loan from the IRMDB?

RELEVANT LAW

IC 4-2-6-9

Conflict of economic interests

Sec. 9. (a) A state officer, an employee, or a special state appointee may not participate in any 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 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 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:

(1) 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

(2) 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.

(c) A written determination under subsection (b)(2) 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)(2) shall be filed with the appointing authority.

ANALYSIS

A conflict of interest would arise for the board member under IC 4-2-6-9 if he participates in the IRMDB's decision or vote to make the loan he is requesting. Specifically, because the loan would be made to the board member for use on his farm, the board member would have a financial interest in the IRMDB's decision to provide the loan. Accordingly, the board member would be prohibited from participating in the IRMDB's decision or vote regarding his request for a loan.

Upon disclosure of a potential conflict of interest, the Commission is authorized to take two courses of action under IC 4-2-6-9(b). First, with the approval of a person's appointing authority, the Commission may recommend assigning the matter giving rise to the conflict of interest to another person and further recommend the implementation of all necessary procedures to screen the state officer, employee, or special state appointee seeking an advisory opinion from involvement in the matter. Second, the Commission may 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. In this case, the Commission finds that the board member cannot be adequately screened from involvement in this matter due to the lack of independent oversight over the application process and administration of the loan, if it were to be awarded to the board member.

CONCLUSION

The Commission finds that a conflict of interest would arise for the board member if he were to apply for a loan from the IRMDB while serving on the board. The Commission further finds that the application of a screen mechanism would not be appropriate in this case.