

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

The wife of the Legislative Director for the Office of the Governor worked for IU Health, and the Director sought advice on whether the screen established by the Office was sufficient to avoid any potential conflicts of interest. SEC found that although the Director's wife might not have a "financial interest" in any decisions or votes he would be involved with for the Office, the procedure proposed by the Office to screen him off of major IU Health matters was sufficient to ensure he avoided violating IC 4-2-6-9.

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No. 13-I-39

The Indiana State Ethics Commission ("Commission") issues the following advisory opinion concerning the State Code of Ethics pursuant to I.C. 4-2-6-4(b)(1). The following opinion is based exclusively on sworn testimony and documents presented by the requestor.

BACKGROUND

A state employee serves as the Ethics Officer for the Office of the Governor ("Office"), requests an advisory opinion on behalf of the Legislative Director for the Office. The Legislative Director started with the Office on September 18, 2013, after leaving his position as the Commissioner of the Department of Labor. He reports to the Governor's Chief of Staff and has two legislative staff members that report to him as Legislative Director. As the Governor's Legislative Director, his duties primarily involve ushering the Governor's legislative agenda through the Indiana General Assembly. He and his staff also follow and evaluate bills that may come to the Governor's desk for signature. The vast majority of the Legislative Director's work will involve issues of general applicability such as legislative actions. Because of his background in state government, the Legislative Director may also be involved in assisting the Chief of Staff and Deputy Chief of Staff on triaging issues for state agencies. This might include working with state agencies such as the Indiana State Department of Health ("ISDH") on contracts, projects, or other specific matters.

The Legislative Director's wife is employed in a marketing capacity at IU Health. The Legislative Director received a formal advisory opinion (Opinion No. 11-I-9) on this matter in May of 2011 when he served as Chief of Staff for the ISDH. The Legislative Director's wife's current position is similar to what it was in 2011 when the Commission issued Opinion 11-I-9; however, she no longer concentrates on orthopedics and trauma. She now concentrates on marketing involving onsite clinics, health exchanges, and the Affordable Care Act. She still works in a marketing support role and does not have authority over the actual service lines (meaning she does not control budgets, operations, decisions, or administration). A separate person is in charge of those service lines. The Legislative Director's wife does not report directly to the person in charge nor is she supervised by that person. She also does not have any ownership interest in IU Health or its facilities.

Although it is unknown whether an issue involving IU Health or its facilities will come to the Office for consideration, The Legislative Director will be screened from participating in decisions or communications on such matters. Traditionally, the Governor's policy staff, which is separate from the legislative staff, has handled specific agency matters. Although the

Legislative Director may work on some specific agency matters on a case by case basis, the Governor's policy team, Deputy Chief of Staff, or Chief of Staff will handle any matters involving IU Health or its facilities without the Legislative Director's involvement.

ISSUE

Does the screening mechanism proposed by the Office adequately address any potential conflicts of interest that may arise for the Legislative Director due to his wife's employment with IU Health?

RELEVANT LAW

I.C. 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

As a state employee, the Legislative Director is subject to the Code of Ethics including the conflicts of interest provision set forth in I.C. 4-2-6-9. I.C. 4-2-6-9(a)(1) prohibits the Legislative Director from participating in any decision or vote if he has a financial interest in the outcome of the matter. Similarly, I.C. 4-2-6-9(a)(2) provides in relevant part that a state

employee may not participate in any decision or vote if the state employee has knowledge that a member of his immediate family has a financial interest in the outcome of the matter. The term “immediate family” is defined to include a spouse. *See* 42 IAC 1-3-13.

The Legislative Director would be prohibited from participating in any decision or vote involving IU Health if he has knowledge that he or his spouse would have a financial interest in the outcome of the matter. The term financial interest as defined in I.C. 4-2-6-1(a)(10) includes an interest in a purchase, sale, lease, contract, option, or other transaction between an agency and any person. The term does not include an interest that is not greater than the interest of the general public or any state employee.

Although the Legislative Director’s wife may not have a direct financial interest in decisions or votes in which he may participate while with the Office, it would be prudent for him to avoid involvement in major matters in which he knows IU Health has a financial interest. With that in mind, the screen proposed by the Office in which matters involving IU Health specifically will be directed to the Chief of Staff, the Deputy Chief of Staff, or the Policy Team is appropriate to ensure the Legislative Director avoids any potential conflict of interest.

CONCLUSION

Based on the foregoing analysis, the Commission finds that the screen proposed by the Office is sufficient to ensure the Legislative Director does not participate in major matters involving IU Health.