

42 IAC 1-5-1 Gifts; travel expenses, waivers
42 IAC 1-5-11 Divulging confidential information

IDHS was interested in having vendors provide training sessions to its inspectors regarding new products, technologies and designs as well as related codes and practices. SEC found that efforts by the agency to solicit such training would not be in violation of the Gifts rule; however, such training should only be made available to public sector employees in order to limit any appearance to private sector employees that IDHS was endorsing a specific company or product. SEC further advised IDHS to ensure its employees were mindful of the rule on Divulging confidential information since the vendors were regulated by the agency.

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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).

BACKGROUND

A state employee serves as the Education Committee Chairman for the IDHS Division of Fire and Building Safety (“Division”). The Division’s Fire and Building Code Enforcement Section (“Section”) is responsible for performing inspections of all buildings and structures other than 1 and 2 family houses and townhouses and for enforcing the rules of the Fire Prevention and Building Safety Commission (“FPBS Commission”) which are designed to regulate the safe construction and maintenance of sprinkler systems, protection of fire-rated construction, the safety of devices on required exit doors, and other related concerns.

Inspectors employed by IDHS are required to undergo continuing education provided by the Section to ensure they have up-to-date information on new products, technologies, and designs. The Section would like to seek the assistance of qualified companies and individuals from the private sector, with whom IDHS has a business relationship, to conduct some of these continuing education sessions. These persons possess special skills and knowledge they are willing to share with the Section at no charge and have staff that have researched the codes and developed products, technologies, and design/installation methods and practices of which inspectors need to be aware.

Examples of the types of educational seminars the Section is interested in pursuing with these persons include:

1. To have one or more installers of fire alarm systems teach a class on fire alarm systems (National Fire Protection Association (“NFPA”) Standard 72, as adopted in Indiana by the FPBS Commission). All inspectors have the need to understand how a code compliant fire alarm system should be installed.
2. To have specialized instruction in automatic sprinkler systems. NFPA 13, as adopted in Indiana by the FPBS Commission, which governs installation of such systems and NFPA 25, as adopted by the FPBS Commission, which directs maintenance and testing of sprinkler systems are two for which the updated training is essential for these inspectors. Such classes are already developed by many of the contractors/installers throughout the state.

3. To have manufacturers of fire stopping/fire blocking materials make presentations to inspectors about the required Underwriters Laboratories listed methods of installation of their products. The use of fire stopping and fire blocking materials is required to ensure that fire-rated construction under the Indiana Building Code is properly protected to function as intended. Fire-rated construction is an extremely important element of construction, especially in buildings without sprinkler systems, and it is critically important for the inspectors to be able to identify correct installation of these products.
4. To have door hardware manufacturers provide information on the locking and latching devices the inspectors encounter each day. Again, the manufacturers have presentations already prepared detailing the correct (and incorrect) installation of their products. They have the knowledge inspectors need in order to perform their jobs.

Some of these persons have already reached out to the Division's Education Committee and requested permission to make these educational sessions available to the IDHS inspectors. The courses could also be made available to local fire and building officials as well as Indiana licensed architects and engineers throughout the State. Approximately 100-125 individuals would be invited to each class, and the course presenter would be expected to comply with the following terms:

1. Develop a written learning objective for the class;
2. Deliver the course, as approved by the Division's Education Committee, without bias, marketing, or sales orientation;
3. Ensure that company logos, product names, and branding are limited to the first and last slides only of any presentation, recognizing that any handouts distributed are done with the intent of reinforcing the learning objectives;
4. Defer any product and proprietary specific questions for discussion either prior to the presentation of the course information or after the course has concluded;
5. Deliver the course as it relates to the learning objectives;
6. Strive to make the presentation and materials as accurate, appropriate, and interesting as possible within the timeframe provided.

The IDHS Ethics Officer requested an informal advisory opinion ("IAO") from the Office of Inspector General ("OIG") on January 11, 2013. While the IAO indicated that it did not appear as though this arrangement would be prohibited by the Code, the OIG advised that IDHS may want to seek a formal opinion on the matter in order to obtain an official, public determination from the Commission on the issues raised.

ISSUE

Whether IDHS is prohibited by the Code from soliciting educational sessions and training events for its employees from persons who have a business relationship with the agency?

RELEVANT LAW

42 IAC 1-5-1 Gifts; travel expenses; waivers

Authority: IC 4-2-7-3; IC 4-2-7-5

Affected: IC 3-9-2; IC 4-2-6

Sec. 1. (a) A state employee or special state appointee, or the spouse or unemancipated child of a state employee or special state appointee, shall not knowingly solicit, accept, or receive any:

- (1) gift;
- (2) favor;
- (3) service;
- (4) entertainment;
- (5) food;
- (6) drink;
- (7) travel expenses; or
- (8) registration fees;

from a person who has a business relationship with the employee's or special state appointee's agency or is seeking to influence an action by the employee or special state appointee in his or her official capacity.

(b) The following shall not be subject to this rule:

(1) Gifts, favors, services, entertainment, food, drink, travel expenses, or registration fees from public agencies or public institutions.

(2) Food or drink consumed at a public meeting to which at least twenty-five (25) individuals are invited. A meeting will be considered public if:

(A) the event is a reception or other gathering for public officials that is not arranged to solicit government

procurement of goods or services;

(B) the employee is giving a speech or participating in a presentation in the employee's official capacity; or

(C) the meeting has a formal educational program that the employee is attending to assist him or her in performing official duties.

(3) Mementos or souvenirs of nominal value.

(4) Food or drink consumed by an employee during negotiations or other activities related to an Indiana economic development corporation economic development project.

(5) Gifts, favors, services, entertainment, food, or drinks from relatives, or a person with whom the employee or special state appointee has an ongoing social relationship, so long as:

(A) the gifts or other items of value are not deducted as a business expense; and

(B) the gift giver is not seeking to influence an action by an employee or special state appointee in that person's official capacity.

(6) Political contributions subject to IC 3-9-2 that are reported in accordance with applicable law.

(7) Nominal refreshments offered to a state employee or a special state appointee conducting official state business while the employee or special state appointee is at a workplace of a person who:

(A) has a business relationship; or

(B) seeks to influence official action;

with the employee's or special state appointee's agency.

(8) Discount and other promotional programs approved and made available to state employees and special state appointees through the state personnel department or the Indiana department of administration.

(c) An employee's or special state appointee's state officer or appointing authority may waive application of subsection (a) of this rule in individual cases when consistent with the public interest. The waiver shall:

(1) be in writing; and

(2) identify the following:

(A) The employee or special state appointee.

(B) The nature and value of the gift.

(C) The donor of the gift.

(D) Why acceptance of the gift is consistent with the public interest.

(d) Written waivers must be filed with the commission within thirty (30) days of receipt of the gift. The commission may review the written waivers. An appointing authority or state officer may designate authority to the agency's ethics officer to waive application of this rule on behalf of the appointing authority or state officer. The designation shall be in writing and filed with the commission.

(e) If a person wishes to reimburse the state for any part or all of the expenses incurred by the state for appearances of a state officer, employee, or special state appointee or their official representatives on behalf of the state, the person shall remit to the treasurer of state any such amounts. The treasurer of the state shall quietus the funds into the general fund.

42 IAC 1-5-11 Divulging confidential information

Authority: IC 4-2-7-3; IC 4-2-7-5

Affected: IC 4-2-7

Sec. 11. A state officer, employee, or special state appointee shall not divulge information of a confidential nature except as permitted by law.

ANALYSIS

The proposed arrangement by IDHS implicates the ethics rules on Gifts; travel expenses; waivers and Divulging confidential information. The application of each provision to the agency is analyzed below.

A. Gifts rule

42 IAC 1-5-1 prohibits a state employee or special state appointee from knowingly soliciting, accepting, or receiving any: 1) gift; 2) favor; 3) service; 4) entertainment; 5) food; 6) drink; 7) travel expenses; or 8) registration fees from a person who has a business relationship with the employee's or appointee's agency or is seeking to influence an action by the employee or appointee in his or her official capacity. The Gifts rule enumerates eight exceptions to this broad prohibition and also allows an agency's appointing authority to waive application of the rule, subject to certain requirements. The definition of "business relationship" in IC 4-2-6-1(a)(5) includes the dealings a person has with an agency seeking, obtaining, establishing, maintaining, or implementing a license or permit requiring the exercise of judgment or discretion by the agency, such as the type of relationship IDHS has with the persons from whom it would be soliciting educational sessions.

The Gifts rule restricts the ability of state employees and special state appointees to solicit, accept, or receive certain gratuities from persons who have a business relationship with their agency. It does not, however, restrict the ability of an agency to solicit, accept, or receive these same gratuities for the benefit of the agency as a whole. Consequently, IDHS would not violate the Gifts rule by soliciting educational sessions and training events for its employees from persons who have a business relationship with the agency.

B. Confidential information

42 IAC 1-5-11 prohibits a state officer, employee or special state appointee from divulging information of a confidential nature except as provided by law. IDHS has not presented any facts to suggest its proposed arrangement would violate the rule against Divulging confidential information. However, the agency should ensure its employees are aware of this rule and do not disclose any “information of a confidential nature,” as defined in IC 4-2-6-1(a)(12), in the course of attending the educational sessions.

CONCLUSION

Subject to the foregoing analysis, the Commission finds that IDHS may solicit educational sessions and training events for its employees from persons who have a business relationship with the agency. The Commission further finds that, in addition to the terms IDHS has identified in its request for instructors to follow, invitations to architects, engineers, or other private individuals should not be extended to such events. While it is important for IDHS staff and state and local inspectors to receive this type of training in order to conduct more thorough and accurate inspections, inviting private individuals to attend the sessions may lead to the improper appearance that IDHS is endorsing a specific product or promoting a certain company, neither of which is the underlying purpose of these events.