

**42 IAC 1-5-5 Outside employment (IC 4-2-6-5.5)**  
**42 IAC 1-5-6 Conflicts of interest; decisions and voting (IC 4-2-6-9)**  
**42 IAC 1-5-10 Benefiting from confidential information**  
**42 IAC 1-5-11 Divulging confidential information**  
**42 IAC 1-5-12 Use of state property**  
**42 IAC 1-5-13 Ghost employment**

The recently hired Public Finance Director of the IFA has served as a Trustee of a university for several years. The Public Finance Director sought approval for the procedures established by the IFA to screen the Public Finance Director from all involvement with matters relating to the university so that he could continue his service to the university while simultaneously acting as Public Finance Director. SEC found the arrangement proposed by the IFA sufficient to ensure the Director's continued service on the university's Board of Trustees would not be contrary to the Code of Ethics so long as the IFA took measures to prohibit the Public Finance Director's access to any and all of IFA's information related to the university.

April 2015  
No. 15-I-9

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). The following opinion is based exclusively on sworn testimony and documents presented by the requestor.

**BACKGROUND**

A state employee is the General Counsel and Ethics Officer for the Indiana Finance Authority ("IFA"). He requests an advisory opinion from the Commission on behalf of another state employee who will become the State's Public Finance Director in April of 2015. As the Public Finance Director, he will administer, manage, and direct the affairs and activities of the IFA. The Public Finance Director will also be responsible for the general supervision of the work of the IFA, subject to the orders and under the direction of the Members of the IFA. The vast majority of the Public Finance Director's work will involve issues of general applicability, such as managing the IFA's public and private partnership projects; managing the IFA's outstanding debt portfolio and the issuance of future debt on behalf of the State; dealing with federal regulators, other government officials, and trade organizations; and interacting with investment bankers as well as members of the General Assembly.

The Public Finance Director has served as a Trustee of Butler University ("Butler") for over five years. He also chairs the Finance Committee and serves as Treasurer. Butler is a private educational institution located in Indianapolis, Indiana and derives its income largely from student tuition and fees, investment returns and grants, operation of residence and dining halls and various related activities. The Board of Trustees is comprised of 28 members and is charged with fiscal and strategic oversight and governance of Butler. The Public Finance Director receives no compensation, per diem payments, or reimbursements for expenses in connection with his duties as a trustee, committee member and officer of the university. He pays all of his expenses in connection with meetings and other official functions he attends on behalf of the university. Meals are usually provided at the meetings and other university functions.

From time to time, Butler has historically used and may continue to use the IFA's tax exempt bond financing program for the financing of its infrastructure projects.

To address any potential conflicts that may arise due to the Public Finance Director's affiliation with Butler and to comply with the conflict of interest laws, he has notified his appointing authority and the IFA has established a screening mechanism for the Commission's consideration. This screen recognizes that a potential conflict of interest would arise for the Public Finance Director if he were to discuss any matters related to Butler that may come before the IFA and requests that all IFA staff screen the Public Finance Director from any and all involvement in matters involving Butler and the IFA. The screen also requests that IFA staff refrain from any discussion in the Public Finance Director's presence that might be related to matters involving the IFA and Butler or any of Butler's related entities.

### **ISSUE**

What ethics issues, if any, arise for the state employee due to his position as the Public Finance Director and his simultaneous service as a Butler trustee, committee member and officer?

### **RELEVANT LAW**

#### **IC 4-2-6-5.5 (42 IAC 1-5-5)**

##### **Conflict of interest; advisory opinion by commission**

Sec. 5.5. (a) A current state officer, employee, or special state appointee shall not knowingly:

(1) accept other employment involving compensation of substantial value if the responsibilities of that employment are inherently incompatible with the responsibilities of public office or require the individual's recusal from matters so central or critical to the performance of the individual's official duties that the individual's ability to perform those duties would be materially impaired;

(2) accept employment or engage in business or professional activity that would require the individual to disclose confidential information that was gained in the course of state employment; or

(3) use or attempt to use the individual's official position to secure unwarranted privileges or exemptions that are:

(A) of substantial value; and

(B) not properly available to similarly situated individuals outside state government.

(b) A written advisory opinion issued by the commission or the individual's appointing authority or agency ethics officer granting approval of outside employment is conclusive proof that an individual is not in violation of subsection (a)(1) or (a)(2).

#### **IC 4-2-6-9 (42 IAC 1-5-6)**

##### **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.

#### **42 IAC 1-5-10**

##### **Benefiting from confidential information**

Sec. 10. A state officer, employee, or special state appointee shall not benefit from, or permit any other person to benefit from, information of a confidential nature except as permitted or required by law.

#### **42 IAC 1-5-11**

##### **Divulging confidential information**

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

#### **IC 4-2-6-6**

##### **Present or former state officers, employees, and special state appointees; compensation resulting from confidential information**

Sec. 6. No state officer or employee, former state officer or employee, special state appointee, or former special state appointee shall accept any compensation from any employment, transaction, or investment which was entered into or made as a result of material information of a confidential nature.

#### **42 IAC 1-5-12**

##### **Use of state property**

Sec. 12. A state officer, employee, or special state appointee shall not make use of state materials, funds, property, personnel, facilities, or equipment for any purpose other than for official state business unless the use is expressly permitted by a general written agency, departmental, or institutional policy or regulation.

#### **42 IAC 1-5-13**

##### **Ghost employment**

Sec. 13. A state officer, employee, or special state appointee shall not engage in, or direct others to engage in, work other than the performance of official duties during working hours, except as permitted by general written agency, departmental, or institutional policy or regulation.

## ANALYSIS

### *A. Outside employment*

An outside employment or professional activity opportunity creates a conflict of interest under IC 4-2-6-5.5 if it results in a state employee: 1) receiving compensation of substantial value when the responsibilities of the employment are inherently incompatible with the responsibilities of public office or require the employee's recusal from matters so central or critical to the performance of his official duties that his ability to perform them would be materially impaired; 2) disclosing confidential information that was gained in the course of state employment; or 3) using or attempting to use his official position to secure unwarranted privileges or exemptions of substantial value that are not properly available to similarly situated individuals outside state government.

Based on the information provided by the IFA Ethics Officer and the state employee, it does not appear that the Public Finance Director's service to Butler as a trustee, committee member and officer would create a conflict under this provision. Specifically, the Public Finance Director does not receive compensation of substantial value, nor would he be required to recuse himself from matters that are critical to the performance of his state duties. Moreover, nothing presented suggests that his service to Butler would require the Public Finance Director to disclose confidential information that he may have access to by virtue of his state position. Similarly, nothing presented suggests that he would use or attempt to use his state position for any unwarranted privileges or exemptions.

### *B. Conflict of interests*

IC 4-2-6-9 (a)(1) prohibits the Public Finance Director from participating in any decision or vote if he has a financial interest in the outcome of the matter. Similarly, IC 4-2-6-9(a)(3) prohibits the Public Finance Director from participating in any decision or vote if a business organization in which he is serving as a trustee has a financial interest in the matter.

The state employee will soon become the Public Finance Director for the IFA. He also serves as a trustee, committee member and officer for Butler. Therefore, a conflict of interest would arise for the Public Finance Director if he participates in a decision or vote in which Butler would have a financial interest in the outcome of the matter. Butler has used the IFA's tax exempt bond financing program in the past and may continue to use the program for the financing of its infrastructure projects. Therefore, it is possible that a decision or vote concerning the issuance of a tax exempt bond to Butler or another matter in which Butler would have a financial interest may come before the state employee as the Public Finance Director.

IC 4-2-6-9(b) provides that a state employee 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. In this case, the Public Finance Director, through the IFA's Ethics Officer, requested an advisory opinion from the Commission as provided in the rule and has disclosed the potential conflict to his appointing authority.

IC 4-2-6-9(b)(1) further provides that when a potential conflict of interest arises, the Commission may, with the approval of the appointing authority, assign the particular matter to another person and implement all necessary procedures to screen the state employee seeking an advisory opinion from involvement in the matter. In this case, IFA has established a screen to prevent the Public Finance Director's participation in all matters involving Butler. The screen requests that IFA staff screen the Public Finance Director from any and all involvement in matters involving Butler and the IFA. The screen also requests that IFA staff refrain from any discussion in the Public Finance Director's presence that might be related to matters involving the IFA and Butler or any of Butler's related entities.

This screen must remain in place for the duration of the Public Finance Director's employment with the IFA and his service as a Butler trustee and should be revised to restrict him from accessing any and all information, including hard copies and digital files stored on shared drives the IFA receives related to Butler. Additionally, the IFA must provide written notice to the Commission anytime the screen is implemented.

### *C. Confidential information*

The Public Finance Director is prohibited under 42 IAC 1-5-10 and 42 IAC 1-5-11 from benefitting from, permitting any other person to benefit from, or divulging information of a confidential nature except as permitted or required by law. Similarly, IC 4-2-6-6 prohibits the Public Finance Director from accepting any compensation from any employment, transaction, or investment which is entered into or made as a result of material information of a confidential nature.

To the extent the state employee is exposed to or has access to such confidential information in his position as Public Finance Director, he would be prohibited not only from divulging that information but from ever using it to benefit any person, including himself and Butler, in any manner.

### *D. Use of state property and Ghost employment*

42 IAC 1-5-12 prohibits the Public Finance Director from using state property for any purpose other than for official state business unless the use is expressly permitted by a general written agency, departmental, or institutional policy or regulation. Likewise, 42 IAC 1-5-13 prohibits the Public Finance Director from engaging in, or directing others to engage in, work other than the performance of official duties during working hours, except as permitted by general written agency, departmental, or institutional policy or regulation.

To the extent that the Public Finance Director observes these provisions in serving as a trustee, committee member and officer for Butler, such outside professional activity would not violate these ethics laws.

### **CONCLUSION**

Subject to the foregoing analysis and the implementation of the screening procedures established by the IFA, the Public Finance Director's continued outside professional activity with Butler would not be contrary to the Code so long as the IFA submits a revised screen with the addition of measures to prohibit the Public Finance Director's access to any and all of IFA's information related to Butler. In addition, the IFA must notify the Commission in writing anytime the screen is implemented.