

42 IAC 1-5-4 Political activity
42 IAC 1-5-5 Conflicts of interest; advisory opinion by Commission (IC 4-2-6-5.5)
42 IAC 1-5-6 Conflicts of interest; decisions and voting (IC 4-2-6-9)
42 IAC 1-5-13 Ghost employment
IC 4-2-6-17 Use of state property

An ISP Officer, who attends law school after hours, was considering accepting a part-time paid internship with the local county prosecutor's office. The internship was limited to non-ISP cases and would not overlap with his ISP duties. SEC found that the Officer's internship would not create a conflict of interests because his internship would not involve ISP matters. SEC further determined that his internship would not be contrary to the Code of Ethics so long as he ensures compliance with the following rules: political activity; conflict of interests, decisions and voting; use of state property; ghost employment and confidential information.

June 2016
No. 16-I-10

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

The Ethics Officer for the Indiana State Police ("ISP") is requesting an advisory opinion on behalf of a law enforcement officer ("Officer") with the ISP. The Officer's job responsibilities primarily involve monitoring operations of the district from a dispatch center in Lowell, Indiana. The Officer works every other Thursday from 6 a.m. until 6 p.m. and every Friday-Sunday from 6 a.m. to 6 p.m.

The Officer is also a first year law school student at the IIT Chicago-Kent College of Law. He attends classes on Mondays and Wednesdays. The Officer has been offered a summer internship with the Lake County Prosecutor's Office. The internship would involve performing clerical duties primarily to assist deputy prosecutors in preparing for trials. The scope of the internship would be limited to non-ISP cases and would only involve typical intern duties, including making copies, distributing mail, and conducting limited legal research. The Officer provides that the internship would not overlap with his duties as an ISP officer. The internship is part-time, and he would work Tuesdays and Wednesdays from 9 a.m. until 4 p.m.; this schedule would not conflict with or coincide with his ISP schedule. The Officer advises that this would be a "paid" internship; therefore, he would receive compensation for his work in this role.

The Officer requested an informal advisory opinion from the Office of Inspector General ("OIG") for advice on whether accepting the internship would raise any ethics issues under the Code. An OIG Staff Attorney issued an opinion that raised awareness of the rules related to

outside employment/professional activity and advised the Officer that he could request a formal advisory opinion from the Commission if he would like a written statement that would serve as conclusive proof that his internship position would not create a conflict of interests under IC 4-2-6-5.5.

ISSUE

Is the Officer prohibited under the Code from serving in both his position at ISP and as an intern at the Lake County Prosecutor's Office?

RELEVANT LAW

42 IAC 1-5-4 Political activity

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

Affected: IC 3-9-2; IC 4-2-6-1

Sec. 4. (a) A state employee or special state appointee shall not engage in political activity including solicitation of political contributions from:

- (1) another employee or special state appointee; or
- (2) any other person;

when on duty or acting in an official capacity.

(b) This section does not prohibit a state employee or special state appointee from engaging in such activity when not on duty.

(c) A state employee or special state appointee shall not solicit political contributions at any time from:

- (1) persons whom the employee or special state appointee knows to have a business relationship with the employee's or the special state appointee's agency; or
- (2) state employees or special state appointees directly supervised by the employee or the special state appointee.

(d) The appointing authority of an agency and all employees or special state appointees with purchasing or procurement authority on behalf of the state shall not solicit political contributions on behalf of any candidate for public office, unless that individual is a candidate for public office himself or herself.

42 IAC 1-5-5 Outside Employment

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

Affected: IC 4-2-6-5.5; IC 4-2-7

Sec. 5. Outside employment restrictions are set forth in IC 4-2-6-5.5.

IC 4-2-6-5.5

Conflict of interest; advisory opinion by commission

Sec. 5.5. (a) A current state officer, employee, or special state appointee may not knowingly do any of the following:

(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.

(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 stating that an individual's outside employment does not violate subsection (a)(1) or (a)(2) is conclusive proof that the individual's outside employment does not violate subsection (a)(1) or (a)(2).

42 IAC 1-5-6 Conflicts of interest; decisions and voting

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

Affected: IC 4-2-6-9; IC 4-2-7

Sec. 6. Decision and voting restrictions are set forth in IC 4-2-6-9.

IC 4-2-6-9

Conflict of economic interests; commission advisory opinions; disclosure statement; written determinations

Sec. 9. (a) A state officer, an employee, or a special state appointee may not participate in any decision or vote, or matter relating to that 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 member, 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 ethics officer in writing and do either of the following:

(1) 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:

- (A) 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
 - (B) 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.
- (2) File a written disclosure statement with the commission that:
- (A) details the conflict of interest;
 - (B) describes and affirms the implementation of a screen established by the ethics officer;
 - (C) is signed by both:
 - (i) the state officer, employee, or special state appointee who identifies the potential conflict of interest; and
 - (ii) the agency ethics officer;
 - (D) includes a copy of the disclosure provided to the appointing authority; and
 - (E) is filed not later than seven (7) days after the conduct that gives rise to the conflict.

A written disclosure filed under this subdivision shall be posted on the inspector general's Internet web site.

(c) A written determination under subsection (b)(1)(B) 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)(1)(B) shall be filed with the appointing authority.

IC 4-2-6-17

Use of state property for other than official business; exceptions; Violations

Sec. 17. (a) Subject to IC 4-2-7-5, a state officer, an employee, or a special state appointee may not use state materials, funds, property, personnel, facilities, or equipment for purposes other than official state business unless the use is expressly permitted by a general written agency, departmental, or institutional policy or regulation that has been approved by the commission. The commission may withhold approval of a policy or rule that violates the intent of Indiana law or the code of ethics, even if Indiana law or the code of ethics does not explicitly prohibit that policy or rule.

(b) An individual who violates this section is subject to action under section 12 of this chapter.

42 IAC 1-5-13 Ghost employment

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

Affected: IC 4-2-7

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.

42 IAC 1-5-10 Benefiting from confidential information

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

Affected: IC 4-2-7

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

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.

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.

ANALYSIS

The Officer's request for a formal advisory opinion invokes consideration of the provisions of the Code pertaining to Political Activity, Conflicts of Interest, Use of State Property, Ghost Employment, and Benefitting from and Divulging Confidential Information. The application of each provision to the Officer is analyzed below.

A. Political Activity

The political activity rule prohibits the Officer from engaging in political activity, including the solicitation of political contributions from anyone, when he is on duty or while acting in an official capacity for the State. This rule also prohibits the Officer from soliciting political contributions at any time, whether on duty or not, from persons with whom ISP has a business relationship or from state employees or special state appointees he directly supervises. If he has purchasing or procurement authority on behalf of the State, the Officer is also restricted from soliciting political contributions on behalf of any candidate for public office unless he is a candidate for public office himself. The Commission finds that so long as the Officer adheres to the above restrictions, his service as an intern at the Lake County Prosecutor's Office would not appear to be contrary to the political activity rule.

B. Outside Employment/Professional Activity

IC 4-2-6-5.5 prohibits the Officer from 1) accepting other employment involving compensation of substantial value if those responsibilities are inherently incompatible with his responsibilities in his state employment or would require his recusal from matters so central or critical to the performance of his duties with the State that his ability to perform them would be materially impaired; 2) accepting employment or engaging in business or professional activity that would require him to disclose confidential information that was gained in the course of his employment with the State; and 3) using or attempting to use his position with the State to secure unwarranted privileges or exemptions that are of substantial value and not properly available to similarly situated individuals outside state government.

Based on the information provided by the Officer and ISP's Ethics Officer, the Commission finds that the Officer's activities as a summer intern with the Lake County Prosecutor's Office would not create a conflict of interests under this provision. Specifically, the Officer's duties as a part-time intern would be related to his law school studies, not his ISP responsibilities, and he would not be working on any cases or other matters as an intern that involve the ISP. Moreover, nothing presented suggests that the Officer's employment as an intern would require him to disclose confidential information that he may have access to by virtue of his state position. Similarly, nothing suggests that he would use or attempt to use his state position for any unwarranted privileges or exceptions.

C. Conflicts of Interest

IC 4-2-6-9(a) prohibits a state employee from participating in any decision or vote, or matter relating to that decision or vote, if he has knowledge that various persons may have a "financial interest" in the outcome of the matter, including himself. The term financial interest, as defined in IC 4-2-6-1(a)(11), includes an interest involving property or services. However, 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.

Based on the information provided, the Officer would not be required to participate in decisions or votes, or matters relating to such decisions or votes, in his employment at ISP that would relate to the Lake County Prosecutor's Office or affect him or his role as a legal intern. So long as no such decisions or votes, or matters related to such decisions or votes, come before the Officer in his position at ISP, he would not be in violation of this rule. In the event he would otherwise participate in any such matters during the course of his state employment, he should follow the procedure set forth in IC 4-2-6-9(b) to disclose the conflict.

D. Use of State Property

The use of state property rule prohibits a state employee from using state property for purposes other than official state business absent a written policy allowing for such use that has been approved by the Commission. To the extent that the Officer refrains from

using state property for duties related to his role as a legal intern, he would not be in violation of this rule.

E. Ghost Employment

The ghost employment rule prohibits a state employee from engaging in or directing others to engage in work other than the performance of official duties during working hours absent a written policy allowing it. In this case, the Officer has indicated that he would complete his legal intern duties on his own time, separate from his state hours. Specifically, he attends law school classes and will complete his internship on the days of the week he is not scheduled to work at the ISP, and the schedules will never overlap. To the extent that the Officer refrains from engaging or directing others to engage in work other than official state duties during his working hours, he would not be in violation of this rule.

F. Confidential Information

42 IAC 1-5-10 and 42 IAC 1-5-11 prohibit a state employee from benefitting from or divulging confidential information. To the extent that the Officer complies with these restrictions, he would not be in violation of these rules.

CONCLUSION

Subject to the foregoing analysis, the Commission finds that the Officer's intended outside employment with the Lake County Prosecutor's Office would not create a conflict of interests under the Code of Ethics.

Respectfully Submitted,

Jennifer Cooper
Ethics Director