

**42 IAC 1-5-1 Gifts; travel expenses; waivers**  
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**IC 4-2-6-17 Use of state property**  
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Senior Counsel for the SOS's Auto Dealer Services Division sought advice regarding whether it was permissible for her to serve as the chair-elect of the Sponsorship Committee for the Junior League of Indianapolis, which wanted to solicit sponsorship from a car dealership that had a business relationship with the SOS, and whether it was permissible for her to continue to serve on the Grants Committee, if the car dealership ultimately became a sponsor. SEC determined that the employee's membership on the Grants Committee as well as her service on the Sponsorship Committee would not violate the gift rule, so long as she was screened from all involvement with the car dealership and any other entity that had a business relationship with the SOS; her name was removed from all fundraising materials sent to these entities; she was not involved with the solicitation nor acceptance of any sponsorships from these entities; she did not divulge confidential information or use her official position to gain unwarranted privileges or benefits for herself, anyone else, or the Junior League of Indianapolis; and she did not use state property for non-state business.

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

### **BACKGROUND**

The employee serves as Senior Counsel for the Secretary of State's (SOS) Auto Dealer Services Division (ADSD). Pursuant to IC 9-32 et seq., the ADSD has licensing and regulatory authority over automobile dealers in the State of Indiana. In her position, as part of an agency team, the employee is involved with licensing activities and oversees certain enforcement activities involving specific auto dealers. The employee assists her division director with policy and legislative matters, acts as a subject matter expert for legal questions regarding licensing, is responsible for agency rulemaking, and supervises the ADSD's enforcement attorney who is responsible for bringing punitive actions against auto dealers.

The employee is also a volunteer member of the Junior League of Indianapolis (JLI.) JLI is a nonprofit organization whose mission is "promoting voluntarism, developing the potential of women, and improving the community through the effective action and leadership of trained volunteers." She pays annual dues to be a part of this organization, and she does not receive compensation for her involvement.

The employee has recently been appointed to serve in the organization as a member of the Grants Committee and as a chair-elect of the Sponsorship Committee. The JLI Sponsorship Committee

is responsible for seeking new corporate and in-kind sponsors and maintaining existing relationships with sponsors. The Sponsorship Committee works closely with other JLI committees to develop a list of donations that the Sponsorship Committee will seek and acts as a sponsorship clearinghouse to ensure that JLI does not contact a business multiple times. The Sponsorship Committee also does the following: seeks to build mutually beneficial relationships with sponsors; answers sponsors' questions about JLI; maintains agreements and forms for nonprofit organization audit purposes; and applies for grants from public and private foundations. Typically the Sponsorship Committee's leader is responsible for drafting sponsorship agreements and presenting them to JLI's president for approval. JLI's president has final authority regarding sponsorship agreements.

The JLI Sponsorship Committee held a meeting in November 2017; the employee did not attend this meeting. During the meeting it was proposed that a local auto dealership be approached about a sponsorship. Upon learning of this proposal, the employee informed the current Sponsorship Committee co-chairs that, as a state employee, she was prohibited under the Code of Ethics (primarily under 42 IAC 1-5-1, the Gift rule) from soliciting anything of value from businesses licensed and regulated by the SOS.

She provides that the Secretary of State's Office and her supervisor are generally supportive of her volunteer work with JLI. The JLI Sponsorship Committee co-chairs are understanding of her ethical obligations as a state employee, but the employee is seeking further guidance on the application of the ethics rules to her particular situation. She sought a formal advisory opinion to determine if it was permissible under the Code for her to continue to serve as a member of the JLI and as a member of the JLI Sponsorship Committee.

### **ISSUE**

- 1) What ethics issues, if any, arise for the employee given her position as Senior Counsel for the SOS and her simultaneous membership in the JLI?
- 2) Is it permissible under the Code for the employee to serve as the chair-elect of a JLI committee that is soliciting a sponsorship from an entity that has a business relationship with her state agency?
- 3) Is it permissible under the Code for the employee to serve as a member of the JLI if an entity that has a business relationship with her state agency is a sponsor of the organization?

### **RELEVANT LAW**

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

#### **Gifts; travel expenses; waivers**

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.

#### **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 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).

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

##### **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.

#### **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.

#### **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**

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. Gifts*

The gifts rule states, in part, that a state employee shall not knowingly solicit, accept, or receive any gift, favor, service, entertainment, food, drink, travel expenses, or registration fees from:

- 1) a person who has a business relationship with the employee's agency; or
- 2) a person who is seeking to influence an action by the employee in her official capacity.

In order for the gifts rule to apply the "person," defined in IC 4-2-6-1(a)(13), from whom the gift is being accepted or solicited must either have a "business relationship" with the employee's agency or must be seeking to influence an action by the employee in her official capacity. "Business relationship" is defined in IC 4-2-6-1(a)(5) to include the dealings of a person with an agency seeking, obtaining, establishing, maintaining, or implementing a license or permit requiring the exercise of an agency's judgment or discretion.

In this case, the employee would be prohibited from accepting or soliciting donations from any person who has a business relationship with SOS or any person who is seeking to influence an action by her in her official capacity even if the donations/sponsorships are going directly to JLI and not to the employee herself. (See FAO [13-I-24](#); FAO [13-I-34](#))

The employee provides that the JLI Sponsorship Committee decided to seek the sponsorship of a car dealership that is regulated by SOS. The Sponsorship Committee took this action during a meeting in which the employee was not present.

The gifts rule applies to the employee, as a state employee, and not the JLI. The JLI, itself and through other members, can solicit and accept donations and sponsorships from car dealerships that have a business relationship with SOS, and the employee would not be in violation of the gifts rule under these circumstances so long as she was not directly involved in the solicitation or acceptance process.

The Commission finds that the employee's services as a member of the JLI and on the Sponsorship Committee would not put her in a position where she would be considered to be soliciting or accepting current, or future, sponsorships from the car dealership as long as she is not directly involved in this process.

In order to ensure she is not directly involved, or perceived to be directly involved, in this process, the employee's name must not appear on any fundraising letters sent to entities who have a business relationship with SOS; and the employee's name must not appear on the JLI website as a chair of the Sponsorship Committee. These steps are consistent with the Commissions' determination in FAO [13-I-24](#) that an employee who was involved in fundraising activities for outside organizations was prohibited from using his name on fundraising letters and/or websites of the organizations he is associated with for the purpose of soliciting or accepting donations from any person who had a business relationship with his agency.

#### *B. Outside employment*

An outside employment or professional activity opportunity creates a conflict of interests under IC 4-2-6-5.5(a) if it results in the 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 or her official duties that his or her 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 or her official position to secure unwarranted privileges or exemptions of substantial value that are not properly available to similarly situated individuals outside state government.

The employee is a volunteer for the JLI, and she is not receiving any compensation for her work with the organization. In addition, the employee's service as a member of JLI or as chair of the Sponsorship Committee would not require her to disclose confidential information she gained through her state employment.

Chief Counsel and Ethics Officer for SOS attended the meeting with the employee. Chief Counsel advised that the SOS is aware of and supports the employee's activities with the JLI. Chief Counsel provided that the employee would be screened from all involvement with the car dealership or any other entity that has a sponsorship agreement with the JLI. Any ADSD matters involving a car dealership that is also a sponsor of the JLI would be assigned to another attorney.

Accordingly, the Commission finds that the employee's service as a member of the JLI and as co-chair of the JLI Sponsorship Committee would not create a conflict of interests for her under this rule. The employee must also ensure that she does not use her official position to secure unwarranted privileges for herself or JLI for the duration of her membership in the JLI.

*C. Conflict of interests-decisions and votes*

IC 4-2-6-9 (a)(1) prohibits the employee from participating in any decision or vote, or matter relating to that decision or vote, if she has a financial interest in the outcome of the matter. Similarly, IC 4-2-6-9(a)(3) prohibits the employee from participating in any decision or vote, or matter relating to such a decision or vote, if she has knowledge that a business organization with whom she is negotiating employment with or serving as an officer, director, trustee, partner, member, or employee has a financial interest in the matter.

The employee is and wishes to continue serving as a member of the JLI. Accordingly, this rule would be triggered if the employee participates in any matter related to a decision or vote that could financially impact JLI. Specifically, if the JLI is considered a business organization with which she is serving as a member and it has a financial interest in any decisions or votes the employee would make or participate in as Senior Counsel, she could have a potential conflict of interests under this rule.

The Commission finds that the employee's responsibilities as Senior Counsel would not require her to participate in matters in which JLI would have a financial interest at this time as matters concerning JLI do not come before the SOS. In addition, Chief Counsel provided that, as a precautionary measure, the employee would be internally screened from participating in matters, including licensing and enforcement matters, involving any car dealerships who enter into a sponsorship agreement with the JLI in order to avoid any appearance of impropriety.

*D. Confidential information*

The employee 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 employee 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. The



term “person” is defined in IC 4-2-6-1(a)(13) to encompass both an individual and a corporation. In addition, the definition of “information of a confidential nature” is set forth in IC 4-2-6-1(a)(12).

To the extent the employee is exposed to or has access to such confidential information in her position with SOS, she would be prohibited not only from divulging that information but from ever using it to benefit any person, including JLI, in any manner.

*E. Use of state property and Ghost employment*

IC 4-2-6-17 prohibits the employee 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 employee 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 employee observes these provisions while serving as a member of JLI, such outside professional activity would not violate these ethics laws.

**CONCLUSION**

Subject to the foregoing analysis, the Commission finds that the employee’s membership in the JLI and her service as co-chair of the Sponsorship Committee would not create a conflict of interests for her under the Code of Ethics. Further the employee’s membership in the JLI and her service on the Sponsorship Committee would not violate the Gift rule so long as she refrains from any direct involvement in the solicitation or acceptance of sponsorships from entities that have a business relationship with the SOS.

Respectfully Submitted,

Jennifer Cooper  
Ethics Director