

**42 IAC 1-5-1 Gifts; travel expenses; waivers
IC 4-2-6-17 Use of state property
42 IAC 1-5-13 Ghost employment**

Chief Counsel and Ethics Officer for IVH sought advice regarding whether the acceptance and use of gifts, primarily monetary donations, made by donors, could be used for employee appreciation events held on IVH grounds during business hours using IVH property, as the employee believed these efforts would help improve morale, increase employee job satisfaction, and reduce turnover, thus creating a costs saving for the State. SEC determined it was permissible for the IVH to accept and utilize donations for employee appreciation events and to participate in these events on IVH grounds during business hours using IVH property so long as the IVH established a policy defining and governing these events and the donations used were made to IVH as a whole and not to individual employees.

January 2018
2018-FAO-005

The Indiana State Ethics Commission (Commission) issues the following advisory opinion concerning the State Code of Ethics 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 is the Chief Counsel and Ethics Officer for the Indiana Veterans' Home (IVH). She is requesting a formal advisory opinion on behalf of the IVH regarding the acceptance and use of gifts (primarily monetary donations) by the agency for employee appreciation efforts.

IVH frequently receives donations from individuals and veteran service organizations. Many of these donations are monetary donations of various amounts. In its enabling statute, the Indiana General Assembly granted IVH the authority to accept gifts of real and personal property to "expend as the donor directs". IC 10-17-9-2. In most instances, these donors contribute directly to IVH for items that they believe the State should fund, such as infrastructure and maintenance work or items IVH provides for routine care. In some instances, these donors specify their funds be used to memorialize a loved one.

Donors – whether individuals or veteran service organizations – also sometimes wish to donate funds to IVH to show appreciation for IVH employees and improve morale. For example, donors have requested that donated funds be used for an all-staff employee cookout or dinner or to provide snacks and coffee for quarterly all-staff meetings. The dollar amounts the donors wish to donate can vary; IVH has had requests from donors who have raised as much as \$500. Regardless of the amount or requested use of the funds, the funds do not go to any specific employee, but rather benefit all employees.

The employee provides that "Employee Appreciation" events are important tools for employee engagement and retention. She also notes that making state employment a competitive and dynamic workplace is a top priority for Governor Holcomb. The employee points out that in his Executive Order creating parental leave for state employees, Governor Holcomb noted that the "policy would assist in retaining a talented workforce by lowering employee turnover around increasing morale and engagement, and will work to foster a diverse, highly skilled, and

professional workforce”. The employee asserts that, particularly in the healthcare field, where high turnover is rampant, it is very important for IVH to find opportunities to show employee appreciation and help improve morale.

However, the employee is concerned about the funds that are donated for purposes of employee appreciation events and whether acceptance of these funds would be permissible under the Code of Ethics, specifically 42 IAC 1-5-1, the Gift rule. Further, if IVH accepted donations for employee appreciation events, the employee would like to know if holding such events on IVH grounds during business hours would be permissible under IC 4-2-6-17, which prohibits a state employee from using 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 State Ethics Commission.

The employee cites Formal Advisory Opinion (FAO) [17-I-6](#) as precedent to support a finding that using state resources for employee appreciation purposes would not violate the Code of Ethics if the agency can show that there is a benefit to the agency. In FAO [17-I-6](#) the Commission opined that an agency’s use of state funds to pay for professional association membership fees for its employees constitute official state business and would not violate IC 4-2-6-17 (Use of State Property) as long as there is a demonstrated benefit to the agency. In reaching this conclusion the Commission determined that “professional memberships provide many benefits for state agencies...including reduced continuing education fees, professional development of employees, retention of highly skilled professionals, and access to information...”

The employee asserts that employee appreciation events provide some of these benefits, such as retention of skilled employees, as well as other benefits such as reduced turnover and increased employee satisfaction. According to the employee, decreasing turnover within her agency would provide a major cost savings to the State as the average cost of turnover from a nurse ranges from \$37,700 to \$58,400 according to a statistic from the 2016 National Healthcare Retention & RN Staffing Report.

The employee requested that the Commission determine whether the IVH can accept donations for employee appreciation purposes and whether the IVH can use state property for employee appreciation events.

ISSUE

1. Is it permissible under the Code of Ethics for the IVH to accept donations that donors would like the IVH to use for employee appreciation purposes?
2. Is it permissible under the Code of Ethics for the IVH to hold employee appreciation events on IVH grounds during business hours?

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 4-2-6-17 (42 IAC 1-5-12)

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

Sec. 17. (a) Subject to IC 4-2-7-5, a state officer, employee or special state appointee may not use state materials, funds, property, personnel, facilities or equipment for purposes other than for 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 rule is subject to action under IC 4-2-6-12.

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.

“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 i) a pecuniary interest in a contract or purchase with the agency; ii) a license or permit requiring the exercise of an agency’s judgment or discretion or the relationship with a registered or unregistered lobbyist.

Accordingly, an individual IVH employee would be prohibited from accepting or soliciting donations from any person who has a business relationship with IVH or any person who is seeking to influence an action by the employee in the employee’s official capacity, regardless of the purpose for the donation.

However, this rule would not prohibit an IVH employee from accepting donations from any person who does not have a business relationship with IVH and who is not seeking to influence an official state action by the employee.

Further, it would be permissible for IVH, as an agency, to accept donations made to IVH for purposes of employee appreciation from donors who do not have a business relationship with IVH and are not seeking to influence the decision making and policy of the IVH.

In addition, the Commission finds that IVH is able to accept donations from donors who have a business relationship with the agency as long as the donations are being made to the IVH and not to any specific employees. This finding is consistent with the Commission’s previous findings in Formal Advisory Opinion [13-I-6](#) and Formal Advisory Opinion [13-I-8](#). In these opinions, the Commission found that the gift rule does not restrict the ability of an agency to solicit, accept, or receive gifts for the benefit of the agency as a whole.

B. Use of state property and Ghost employment

IC 4-2-6-17 (42 IAC 1-5-12) prohibits a state officer, employee or special state appointee from using 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.

Likewise, 42 IAC 1-5-13 prohibits a state officer, employee or special state appointee 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.

The IVH would like to use donated funds, designated by the donors for employee appreciation, to hold employee appreciation events on IVH grounds during business hours.

IVH’s enabling statute grants IVH the authority to accept gifts of real and personal property to “expend as the donor directs”. Accordingly, donations that donors designate as being for employee appreciation should be used in this matter, and such use would be considered official state business.

In FAO [17-I-6](#) the Commission opined that an agency’s use of state funds to pay for professional association membership fees for its employees constitute official state business and would not violate IC 4-2-6-17 (Use of State Property) as long as there is a demonstrated benefit to the agency. In reaching this conclusion the Commission determined that “professional memberships provide

many benefits for state agencies...including reduced continuing education fees, professional development of employees, retention of highly skilled professionals, and access to information...”

The employee asserts that employee appreciation events provide some of these same benefits, such as retention of skilled employees, as well as other benefits such as reduced turnover and increased employee satisfaction. According to the employee, decreasing turnover within her agency would provide a major cost savings to the State.

The employee advised that any employee appreciation events the IVH would hold would be limited to very short time durations such as an all-staff cookout over the lunch hour. Items such as hot dogs or bratwursts would be purchased using donations, and the food would be cooked and prepared on state-owned equipment by state employees. These events would take place on IVH grounds during business hours.

The Commission finds that IVH employees would not be in violation of the Use of State Property or Ghost Employment rules if they were to participate in employee appreciation events so long as the IVH has an appropriate policy in effect that defines the types of events it would be hosting, how and what state property would be used for the events, and the length of time employees could attend the events.

CONCLUSION

The Commission finds that the IVH may accept donations made to the IVH that donors designate to be used for employee appreciation events, even if the donors have a business relationship with the IVH. Further, the Commission finds that IVH employees may participate in employee appreciation events held on IVH grounds during their working hours so long as the IVH institutes a policy governing such events.

Respectfully Submitted,

Jennifer Cooper
Ethics Director