

**42 IAC 1-5-1 Gifts; travel expenses; waivers**  
**42 IAC 1-5-2 Donor restrictions**

The Standardbred Breed Development Director for the Indiana Horse Racing Commission (IHRC) sought advice regarding accepting a donation from the Indiana Standardbred Association (ISA) to help her spouse with medical bills. The Commission finds that while a business relationship exists between IHRC and ISA that would prohibit the spouse from accepting a donation from ISA, an exception found in 42 IAC 1-5-1(b)(5), pertaining to a gift from a person who has an ongoing social relationship with the state employee or the state employee's spouse, would apply. Accordingly, the donation from ISA may be accepted so long as IHRC receives a written confirmation from ISA that the organization will not deducting the donation off as a business expense.

January 21, 2021  
2021-FAO-001

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 General Counsel and Ethics Officer (Ethics Officer) for the Indiana Horse Racing Commission (IHRC) is requesting a formal advisory opinion on behalf of an IHRC employee (Employee). The Employee serves as Standardbred Breed Development Director and has been employed with the IHRC for over twenty years.

The Employee's husband trains and races horses at the county fairs throughout Indiana. The Employee's husband has been training horses for many years and is well known and well respected in the Indiana Standardbred industry. Recently, the Employee's husband has had health setbacks that have resulted in significant medical bills. The Indiana Standardbred Association (ISA) has inquired about the appropriateness of offering a donation to the Employee's husband given that his spouse is an employee of the IHRC.

Under IC 4-35-7-12, money that is collected from casinos is known as Adjusted Gross Receipts (AGR). AGR funds are distributed to various equine welfare and promotion organizations known as "Horsemen's Associations." IHRC Commissioners determine whether a Horsemen's Association will receive AGR funds. IHRC staff members also participate in this decision by making recommendations regarding whether a Horsemen's Association will receive AGR funds. The Employee, in her role with IHRC, has not been and is not responsible for making recommendations regarding which of the Horsemen's Associations will receive AGR funds.

ISA is a Horsemen's Association that receives AGR funds, and part of ISA's AGR funding is set aside as a sort of "disaster relief" type fund for its members and Indiana Standardbred horsemen. ISA wants to donate a portion of its AGR funds to the Employee's husband. ISA has assured

IHRC that the donation amount would be consistent with the amount that is donated to any other member receiving assistance from the fund.

The Ethics Officer requested an informal advisory opinion from the Office of Inspector General (OIG) regarding whether the Employee's husband could accept the donation from ISA. The informal advisory opinion determined that ISA's relationship with IHRC likely qualifies as a business relationship for purposes of the gifts and donor restrictions rules, 42 IAC 1-5-1 and 42 IAC 1-5-2, and that The Employee's husband would therefore be prohibited from accepting the donation in light of the Employee's employment with IHRC.

The informal advisory opinion also determined that an exception to the gifts rule may be applicable to this circumstance. The exception outlined in subsection (b)(5) permits state employees *or their spouses* to accept gifts, favors, services, entertainment, food or drinks from a person with whom the employee has an ongoing social relationship, so long as the gifts or other items of value are not deducted as a business expense and the gift giver is not seeking to influence an action by an employee or special state appointee in that person's official capacity.

The Ethics Officer is seeking a formal advisory opinion from the Commission to determine whether the exception to the gifts rule set forth in 42 IAC 1-5-1(b)(5) would be applicable and whether it would be appropriate for the Employee's husband to accept the donation under his specific circumstances.

### **ISSUE**

1. Does the gifts rule, 42 IAC 1-5-1, prohibit the Employee's husband from accepting the donation from ISA due to The Employee's employment with IHRC and IHRC's business relationship with ISA?
2. Would the exception to the gifts rule found in 42 IAC 1-5-1(b)(5) apply and would it permit the Employee's husband to accept the donation from ISA?

## RELEVANT LAW

### **IC 4-2-6-1**

#### **Definitions**

Sec. 1. (a) As used in this chapter, and unless the context clearly denotes otherwise:

...

(5) "Business relationship" includes the following:

(A) 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; or
- ii. a license or permit requiring the exercise of judgment or discretion by the agency.

(B) The relationship a lobbyist has with an agency.

(C) The relationship an unregistered lobbyist has with an agency.

(13) "Person" means any individual, proprietorship, partnership, unincorporated association, trust, business trust, group, limited liability company, or corporation, whether or not operated for profit, or a governmental agency or political subdivision.

### **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.

#### **42 IAC 1-5-2 Donor restrictions**

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

Affected: IC 4-2-7-3

Sec. 2. A person who has a business relationship with an employee's or a special state appointee's agency shall not provide any:

- (1) gifts;
- (2) favors;
- (3) services;

- (4) entertainment;
- (5) food;
- (6) drink;
- (7) travel expenses; or
- (8) registration fees;

to such employee or special state appointee if the employee or special state appointee would not be permitted to accept the gift, favor, service, entertainment, food, drink, travel expenses, or registration fees under this rule.

### ANALYSIS

The gifts rule prohibits state employees *or their spouses* from knowingly soliciting or accepting 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.

The donor restrictions rule mirrors the gifts rule and prohibits those with a business relationship with a state employee's agency from offering a gift in that same circumstance.

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.

The Commission finds that ISA has a business relationship with IHRC by virtue of ISA's receipt of AGR funds from IHRC. Although there may not be a contract between IHRC and ISA, the transmittal of AGR funds in accordance with IC 4-35-7-12 creates a financial relationship akin to a grant.

Accordingly, the Employee's husband would be prohibited under the gifts rule from accepting the donation from ISA because he is the spouse of an IHRC employee unless an exception to the rule applies or if IHRC waives application of the rule in accordance with 42 IAC 1-5-1(c) and (d).

The Commission finds that one exception to the gifts rule is applicable to this circumstance. The exception outlined in subsection (b)(5) permits state employees or their spouses to accept gifts, favors, services, entertainment, food or drinks from a person with whom the employee has an ongoing social relationship, so long as the gifts or other items of value are not deducted as a business expense and the gift giver is not seeking to influence an action by an employee or special state appointee in that person's official capacity.

The Ethics Officer provides that the Employee's husband has been training horses for many years and is well known and well respected in the Indiana Standardbred industry and in ISA itself. He has been an active member of ISA since he began training horses at eighteen years of age. The members of ISA are his colleagues and many of the members are also his friends.

Thus, the Commission finds that an ongoing social relationship exists between ISA and the Employee's husband. Further, so long as ISA does not deduct the donation as a business expense and ISA is not seeking to influence the Employee in her official capacity, the gifts rule would not prohibit the Employee's husband from accepting the donation for his medical expenses. The Commission requested that IHRC obtain a written statement from ISA confirming that the donation will not be written off as a business expense before the Employee's husband accepts the donation.

### **CONCLUSION**

The Commission finds that a business relationship exists between IHRC and ISA that would prohibit the Employee's husband from accepting a donation from ISA absent an exception to the gifts rule. The Commission further finds that the exception found in 42 IAC 1-5-1(b)(5), pertaining to a gift from a person who has an ongoing social relationship with the state employee or the state employee's spouse, would apply. Accordingly, the Employee's husband may accept the donation from ISA so long as IHRC receives a written confirmation from ISA that the organization will not deducting the donation off as a business expense.

Respectfully Submitted,

Jennifer Cooper  
Ethics Director