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The Ethics Officer for the Indiana State Police (ISP) sought advice on behalf of an ISP Trooper regarding outside employment/professional activities while employed by ISP. The Commission finds that the employment/professional activities would not be contrary to the Code of Ethics.

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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 Commander with the Office of Professional Standards and Ethics Officer (Ethics Officer) for the Indiana State Police (ISP) is requesting a Formal Advisory Opinion on behalf of a Master Trooper who serves as an Unarmed Response to Active Shooter Event (URASE) trained ISP instructor (Instructor), in addition to performing other duties.

The Instructor was trained in URASE in 2015 and has off-duty employment through his company, DC Consulting LLC (LLC), that ISP has approved. The Indiana Toll Road Concession Company LLC (ITRCC) has asked the LLC to put together a Workplace Violence presentation to train their remote employees (mowing crews, toll takers and roadside workers) in dealing with an active shooter/violence situation.

ITRCC has requested to purchase the Instructor's presentation and are asking that the presentation be approximately twenty to thirty minutes in length. The Instructor has met with ITRCC to discuss what information they would like included in the presentation. He also has met with a marketing company to discuss cost for the preparation of the presentation. During these talks, ITRCC's Chief Operating Officer informed the Instructor that ITRCC leases the Toll Road from the State of Indiana, and ITRCC does not receive any funding from the State. ITRCC is a subsidiary of IFM Global Fund.

The Ethics Officer requested an Informal Advisory Opinion (IAO) from the Office of Inspector General (OIG) on behalf of the Instructor in July of 2021. In this request, the Ethics Officer asked whether it would be permissible for the Instructor to produce and sell the requested training to ITRCC through his LLC. The IAO advised that the opportunity would likely not create any conflicts of interests for the Instructor but that the Ethics Officer could seek a Formal

Advisory Opinion from the Commission if they wanted a final determination that this outside employment activity would not create a conflict of interests for the Instructor.

After reviewing the IAO and having discussions with ISP legal personnel and executive staff, the Ethics Officer informed the Instructor that ISP was denying his request to engage in the off-duty employment opportunity of providing the training to ITRCC. ISP's response to the Instructor stated that "[t]his request from the [ITRCC] would be something you are paid by ISP to do as part of your assigned duties." The response also stated that if the Instructor was interested in developing a Workplace Violence presentation for his off-duty employment, such work would only be permitted for out-of-state clients, not Indiana clients.

The Instructor responded to the ISP denial of his request with additional information. The Instructor provided that ITRCC was not seeking the URASE training that he could provide as a State Trooper. He provided that ITRCC had already received that training. They were looking to purchase a training program designed specifically for ITRCC with specific training modules geared towards their organization, including their policies and procedures, that they can then provide to their current and new employees. He further provided that he cannot alter the URASE presentation to fit the needs and customization that ITRCC needs. He added that he does not intend to use the URASE training he received through ISP for his outside employment venture. Rather, the program he wishes to provide to ITRCC is based on his research of other workplace/violence prevention response training, other than the ISP URASE training, including: Run, Hide, Fight; Los Angeles Police Run, Hide, Fight training; OSHA Violence in the Workplace resources; and numerous other online articles and trainings.

The Ethics Officer is now requesting a Formal Advisory Opinion on behalf of the Instructor regarding whether he can accept the opportunity to produce a customized training program for ITRCC through his LLC. In addition to the workplace violence training program, ITRCC has more recently approached the Instructor, through his LLC, to produce an Impairment in the Workplace training. The Ethics Officer informed the Commission that the new information the Instructor provided clarified that he would not be performing the same training he provides for ISP to ITRCC; therefore, ISP did not have the same objection they had to the original request.

ISSUES

- 1) Would the Instructor's outside employment in the production and sale of training programs for ITRCC through his LLC create any conflicts of interests for him under the Code of Ethics?
- 2) What other ethics issues, if any, arise for the Instructor given his position with ISP and his simultaneous outside employment activity in producing and selling training programs to ITRCC through his LLC?

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 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.

IC 4-2-6-10.5 (42 IAC 1-5-7)

Prohibition against financial interest in contract; exceptions; disclosure statement; penalty for failure to file statement

Sec. 10.5. (a) Subject to subsection (b), a state officer, an employee, or a special state appointee may not knowingly have a financial interest in a contract made by an agency.

(b) The prohibition in subsection (a) does not apply to a state officer, an employee, or a special state appointee who:

- (1) does not participate in or have contracting responsibility for the contracting agency; and
- (2) files a written statement with the inspector general before the state officer, employee, or special state appointee executes the contract with the state agency.

(c) A statement filed under subsection (b)(2) must include the following for each contract:

- (1) An affirmation that the state officer, employee, or special state appointee does not participate in or have contracting responsibility for the contracting agency.
- (2) An affirmation that the contract:
 - (A) was made after public notice and, if applicable, through competitive bidding;
 - or
 - (B) was not subject to notice and bidding requirements and the basis for that conclusion.
- (3) A statement making full disclosure of all related financial interests in the contract.
- (4) A statement indicating that the contract can be performed without compromising the performance of the official duties and responsibilities of the state officer, employee, or special state appointee.
- (5) In the case of a contract for professional services, an affirmation by the appointing authority of the contracting agency that no other state officer, employee, or special state appointee of that agency is available to perform those services as part of the regular duties of the state officer, employee, or special state appointee. A state officer, employee,

or special state appointee may file an amended statement upon discovery of additional information required to be reported.

(d) A state officer, employee, or special state appointee who:

(1) fails to file a statement required by rule or this section; or

(2) files a deficient statement; before the contract start date is, upon a majority vote of the commission, subject to a civil penalty of not more than ten dollars (\$10) for each day the statement remains delinquent or deficient. The maximum penalty under this subsection is one thousand dollars (\$1,000).

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. 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.

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).

The Commission generally defers to an agency's Ethics Officer regarding outside employment opportunities because it views them as being in the best position to determine whether a conflict of interests might exist between an employee's state duties and an outside employment opportunity.

Regarding subsection (a)(1), nothing in the information the Ethics Officer provided indicates that the Instructor's potential production and sale of the training programs for ITRCC through his LLC is inherently incompatible with his ISP position or would require his recusal from his official state duties to the extent that his ability to perform them would be materially impaired. The duties of each position are similar, but they do not overlap. Further, the Instructor will be providing the training services through his LLC during his off-duty time.

As for subsection (a)(2), the Commission confirmed that this arrangement would not require the Instructor to disclose confidential information learned in the course of state employment; therefore, such employment will not violate this subsection.

The Commission also confirmed that the Instructor is aware that he is prohibited from using his official ISP position to secure unwarranted privileges or exemptions that subsection (a)(3) prohibits.

Accordingly, the Commission finds that the Instructor's outside employment opportunity in producing and selling the customized training programs for ITRCC while also working for ISP would not create a conflict of interests under IC 4-2-6-5.5.

B. Conflict of interests-decisions and votes

IC 4-2-6-9 (a)(1) prohibits the Instructor from participating in any decision or vote, or matter relating to that 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 Instructor from participating in any decision or vote, or matter relating to that decision or vote, if a business organization in which he is serving as an officer, a director, a member, a trustee, a partner, or an employee has a financial interest in the matter.

The Code defines “financial interest” in IC 4-2-6-1(a)(11) to include “an interest . . . in a purchase, sale, lease, contract, option, or other transaction between an agency and any person; or . . . involving property or services. . .”

A potential conflict of interests would arise for the Instructor if he participates in any matter related to a decision/vote in which his LLC has a financial interest. This restriction goes beyond the actual decision/vote and prohibits his participation in any matter related to the decision/vote.

Based on the information provided, the Commission finds that the Instructor is not in a position at ISP in which he would participate in decisions or votes, or matters related to such decisions or votes, in which his LLC would have a financial interest in the outcome.

If, however, the Instructor’s circumstances change and a potential conflict of interests is identified in the future, he must follow the disclosure requirements in IC 4-2-6-9(b), including notifying his agency’s ethics officer and appointing authority in writing and either (1) seek a formal advisory opinion from the Commission; or (2) file a written disclosure form with the OIG.

C. Conflict of interests – contracts

Pursuant to IC 4-2-6-10.5, a state employee may not knowingly have a financial interest in a contract made by any state agency. The Code defines “financial interest” to include an interest arising from employment. The Commission has interpreted this rule to apply when a state employee derives compensation from a contract between a state agency and a third party. This prohibition however does not apply to an employee that does not participate in or have official responsibility for any of the activities of the contracting agency, provided certain statutory criteria are met.

The Instructor’s outside business has received requests to provide customized training presentations that ITRCC would purchase from the LLC. According to the information provided by the Ethics Officer, ITRCC does not receive any funding from ISP or the State. Accordingly, the Commission finds that the Instructor’s compensation for production of these training presentations would not be derived from a state contract or state fund, and this rule would not apply.

D. Confidential information

The Instructor 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 Instructor from accepting any compensation from any employment, transaction or investment that 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 Instructor is exposed to or has access to such confidential information in his position with ISP, he would be prohibited not only from divulging that information but from ever using it to benefit any person, including his outside business or its clients, in any manner.

E. Use of state property and Ghost employment

IC 4-2-6-17 prohibits the Instructor 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 Instructor 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 Instructor observes these provisions in his outside training work, such outside employment activity would not violate these ethics laws.

CONCLUSION

Subject to the foregoing analysis, the Commission finds that the Instructor’s outside employment in producing and selling the customized training programs for ITRCC through his LLC would not be contrary to the Code of Ethics.

Respectfully Submitted,

Jennifer Cooper
Ethics Director