

**CAUTION:** The following advice may be based on a rule that has been revised since the opinion was first issued. Consequently, the analysis reflected in the opinion may be outdated.

**42 IAC 1-4-4**

The employer of the spouse of IDOI's Chief of Investigations—which was a subsidiary regulated by IDOI—offered to pay the cost of airfare and hotel for the spouse and her guest to attend a work-related conference. SEC found the Gifts rule was not violated since the benefits were considered part of the spouse's compensation and were therefore not gifts to the employee from a person who had a business relationship with his agency.

No. 05-I-13  
State Ethics Commission  
Official Advisory Opinion  
September 8, 2005

**Background:**

The Chief of Investigations for the Indiana Department of Insurance (“IDOI”) began his employment with the state on May 9, 2005. His spouse is a licensed insurance agent for an insurance company, a subsidiary that is regulated by IDOI. Thus the Chief of Investigations’ agency has a business relationship with the insurance company.

In September 2003, his spouse sat for and passed the Certified Financial Planner’s exam. She did so at the urging of her employer. As an incentive to study for and obtain this designation, she was offered various rewards including a pay increase and the ability to attend the Financial Planner’s Association annual conference. The insurance company was to pay the costs of the conference for her, as well as the cost of airfare and hotel for her and a guest/spouse and the cost of her meals only. The meals of her spouse/guest were not to be reimbursed. Because of military obligations, the Chief of Investigations did not attend the 2004 Conference, but did plan to attend the FPA Conference in San Diego on September 15-18, 2005. Travel arrangements, including airfare for both the Chief of Investigations and his spouse were paid for by the insurance company on March 14, 2005. It should be noted here, that at the time this was done, the Chief of Investigations was not a state employee.

Since the time of the payment of the travel arrangements, the Chief of Investigations has begun employment with IDOI, and has become aware of ethics rules for state employees. He has already taken steps to screen himself from involvement in any decisions or votes on matters involving the insurance company pursuant to IC 4-2-6-9.

**Question:**

1. Would the benefits the chief of investigations’ spouse receives through her employment be considered “gifts” to the “spouse” of a state employee from a person who has a business relationship with the Chief of Investigations’ agency within the meaning of the gift rule?

## **Relevant Law:**

### Gifts

#### 42 IAC 1-4-4

(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 gift, favor, service, entertainment, food, or drink from a person who has a business relationship with the employee's agency or is seeking to influence an action by the employee in his/her official capacity.

The following shall not be subject to this section:

(1) Gifts and favors, services, entertainment, food, or drink from public agencies or public institutions.

(2) Food or drink consumed at a public meeting to which at least 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, so long as:

(A) the gifts or other items of value are not deducted as a business expense;

(B) the gift giver is not seeking to influence an action by an employee in his or her official capacity. In cases involving ongoing social relationships, employees should seek a waiver under subsection (b) before accepting a gift.

(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 conducting official action with the employee's agency.

(8) Discount and other promotional programs approved and made available to state employees through the state personnel department or the Indiana department of administration.

(b) An employee's state officer or appointing authority may waive application of subsection (a) in individual cases when consistent with the public interest. The waiver shall be in writing and shall identify the following:

(1) The employee.

(2) The nature and value of the gift.

(3) The donor of the gift.

(4) Why acceptance of the gift is in the public interest.

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.

(c) A person who has a business relationship with an employee's agency shall not provide any:

- (1) gifts;
- (2) favors;
- (3) services;
- (4) entertainment;
- (5) food; or
- (6) drink;

to such employee if the employee would not be permitted to accept the gift, favor, service, entertainment, food, or drink under subsection (a).

(d) An employee shall not personally accept an honorarium for himself/herself for anything that may be considered part of the state employee's official duties. However, a state employee may accept an honorarium in this situation on behalf of the state. The state employee accepting the honorarium shall remit to the treasurer of state any amount received. The treasurer of state shall quietus such funds into the general fund. A state employee may personally accept an honorarium or fee for activities not done in connection with the employee's official duties and that are prepared on the employee's own time and without the use of state resources. However, in no case can a state employee accept an honorarium from a person who has a business relationship or seeks to influence an official action with the employee's agency.

(e) Nothing in this section prohibits contributions to agencies that are made in accordance with applicable law.

IC 4-2-6-1(a)

(4) "Business relationship" means dealings of a person with an agency seeking, obtaining, establishing, maintaining, or implementing:

- (A) a pecuniary interest in a contract or purchase with the agency; or
- (B) a license or permit requiring the exercise of judgment or discretion by the agency.

### **Conclusion:**

The Commission finds that the employee, in a situation where his spouse works for a company with a business relationship with his agency, should be screened from making a decision or vote where he or his immediate family may have a financial interest in the outcome, consistent with the conflict of interest rule in IC 4-2-6-9. The Chief of Investigations has already been screened from any matters involving the insurance

company and also their parent company. Therefore, the Chief of Investigations would not be placed in the position of making a decision or vote on a matter where he or his immediate family would have a financial interest in the outcome of the matter.

The Commission finds that the benefit to the spouse from her employer is not a “gift” to her since it would be part of her compensation as an employee of the company she works for. If the state employee then receives the benefit from the spouse it would not be considered a gift under the gift rule since the benefit does not come from a person with a business relationship with the person’s agency. The restrictions in subsection (5) of the gift rule would not apply. This Commission would still request the employee to make a disclosure to his appointing authority or agency ethics officer for each benefit received; however, no waiver under subsection (b) is required. This would satisfy the “disclose and recuse” policy which forms the basis of the gift rule.