

**42 IAC 1-5-5 Outside employment (IC 4-2-6-5.5)**  
**42 IAC 1-5-6 (IC 4-2-6-9)**  
**42 IAC 1-5-7(IC 4-2-6-10.5)**

A County Emergency Management Director who served on the county's Local Emergency Planning Committee sought advice on whether her outside employment as a training course instructor would violate the Code of Ethics. SEC reviewed each of the conflict of interest provisions in the Code and found the Director's outside employment would not create a conflict of interest under IC 4-2-6-5.5 or IC 4-2-6-9. SEC did conclude, however, that the Director would have a financial interest in a contract made by a state agency in situations where the salary from any of her outside employment were to be tied to a contract with a state agency, and she would need to abide by the requirements set forth in IC 4-2-6-10.5(b) to avoid violating the rule.

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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).

**BACKGROUND**

The Director of the Emergency Management for a county in Indiana also serves as a member of the county's local emergency planning committee ("LEPC"). LEPCs fall within the purview of the Indiana Department of Homeland Security ("IDHS"). LEPCs throughout the state report to the LEPC chairperson and the Indiana Emergency Response Commission ("IERC"), a Commission of the IDHS.

In addition to her duties as Director and LEPC member, the Director teaches emergency management related courses for other counties and districts throughout Indiana on a contractual basis. The Director is contracted by the IDHS as an authorized instructor to teach emergency management related courses.

On occasion, the Director is contracted directly by districts or counties throughout Indiana to teach an emergency management course since she is an authorized instructor. Attendees may only receive credit for attending a course when the course is taught by an authorized instructor. Districts or counties who wish to contract an instructor contact the Training Division within IDHS. The Division provides a list of authorized instructors. All instructors charge the same daily rate that IDHS pays. The district or county usually contacts the instructor who is located closest to avoid paying lodging and per diem fees. If that instructor is not available, the next instructor on the list will be contacted for a quote. A district or county who contracts with the Director will typically pay her with grant funding the entity has received from IDHS.

**ISSUE**

Whether a conflict of interest arises for the Director when she contracts with districts and counties throughout Indiana to teach emergency management courses that are paid for with IDHS funds.

## RELEVANT LAW

### **IC 4-2-6-5.5**

#### **Conflict of interest; advisory opinion by inspector general**

Sec. 5.5. (a) A current state officer, employee, or special state appointee shall not knowingly:

(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; or

(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 or the individual's appointing authority or agency ethics officer granting approval of outside employment is conclusive proof that an individual is not in violation of subsection (a)(1) or (a)(2).

### **IC 4-2-6-9**

#### **Conflict of economic interests**

Sec. 9. (a) A state officer, an employee, or a special state appointee may not participate in any 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 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 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:

(1) 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

(2) 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.

(c) A written determination under subsection (b)(2) 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)(2) shall be filed with the appointing authority.

#### **IC 4-2-6-10.5**

##### **Prohibition against financial interest in contract; exceptions**

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:

(1) a state officer, an employee, or a special state appointee who does not participate in or have official responsibility for any of the activities of the contracting agency, if:

(A) the contract is made after public notice or, where applicable, through competitive bidding;

(B) the state officer, employee, or special state appointee files with the commission a statement making full disclosure of all related financial interests in the contract;

(C) the contract can be performed without compromising the performance of the official duties and responsibilities of the state officer, employee, or special state appointee; and

(D) in the case of a contract for professional services, the appointing authority of the contracting agency makes and files a written certification with the commission 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; or

(2) a state officer, an employee, or a special state appointee who, acting in good faith, learns of an actual or prospective violation of the prohibition in subsection (a), if, not later than thirty (30) days after learning of the actual or prospective violation, the state officer, employee, or special state appointee:

(A) makes a full written disclosure of any financial interests to the contracting agency and the commission; and

(B) terminates or disposes of the financial interest.

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

##### **Definitions**

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

(8) "Employee" means an individual, other than a state officer, who is employed by an agency on a full-time, a part-time, a temporary, an intermittent, or an hourly basis. The term includes an individual who contracts with an agency for personal services.

(10) "Financial interest" means an interest:

(A) in a purchase, sale, lease, contract, option, or other transaction between an

agency and any person; or

(B) involving property or services.

The term includes an interest arising from employment or prospective employment for which negotiations have begun. The term does not include an interest of a state officer or employee in the common stock of a corporation unless the combined holdings in the corporation of the state officer or the employee, that individual's spouse, and that individual's unemancipated children are more than one percent (1%) of the outstanding shares of the common stock of the corporation. The term does not include an interest that is not greater than the interest of the general public or any state officer or any state employee.

### **ANALYSIS**

As a member of an LEPC, the Director is as a special state appointee. However, as a person who contracts directly with the IDHS for personal services, the Director can also be classified as a state employee. *See* IC 4-2-61(8). Under either classification, the Director is subject to the application of the Code of Ethics including the conflicts of interest provisions set forth in IC 4-2-6-5.5, IC 4-2-6-9, and IC 4-2-6-10.5. The application of each conflict of interest provision to the Director's contractual work to teach emergency management classes is analyzed below.

#### *A. IC 4-2-6-5.5, Conflict of Interest, Outside Employment*

In relevant part, IC 4-2-6-5.5 provides that a current state employee may not 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. In this case, the Commission finds no evidence to suggest that the Director's outside employment would involve compensation of substantial value or that her outside employment teaching emergency management classes would require her to recuse herself from matters so central or critical to the performance of her official duties on the LEPC.

IC 4-2-6-5.5 would also prohibit the Director from accepting employment that would require her to disclose confidential information that was gained in the course of state employment. The Commission finds no evidence to suggest that the Director would be required to disclose confidential information in her outside employment teaching emergency management classes.

Finally, there is nothing to suggest that the Director would use or attempt to use her position as an LEPC member to secure unwarranted privileges or exemption in her outside employment.

#### *B. IC 4-2-6-9, Conflicts of Interest, Decisions and Voting*

In relevant part, IC 4-2-6-9(a)(3) provides that a special state appointee or state employee may not participate in any decision or vote if the special state appointee or state employee has knowledge that the appointee/employee has a financial interest in the outcome of the matter. While it does not appear that a conflict of interest would arise for the Director under this rule given her teaching duties with the state, she should be cautious to ensure compliance with this rule in her role as an LEPC member. Specifically, she should be aware that a conflict of interest could arise in the event that a decision or vote to hire an authorized instructor is presented before the LEPC.

*C. IC 4-2-6-10.5, Prohibition against financial interest in contract; exceptions*

Pursuant to IC 4-2-6-10.5, a state employee may not knowingly have a financial interest in a contract made by an agency. 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 term “official responsibility” has been interpreted by the Commission as contracting responsibilities.

The first step in the analysis is to determine whether the Director would have a financial interest in contracts that districts or counties she works with have with a state agency. To make this determination, the definition of the term financial interest must be examined.

In relevant part, the term “financial interest” is defined as the interest in a purchase, sale, lease, contract, option, or other transaction between an agency and any person. The term does not include an interest that is not greater than the interest of the general public or any state officer or any state employee.

In this case, the Director would be contracting directly with districts and counties throughout Indiana to teach emergency management classes. The Director’s payment for the work would be paid directly from grant funding received from IDHS. Accordingly, the Commission finds that the Director would have an interest in the contract made between districts/counties and IDHS because her salary is directly contingent on contracts made by a state agency.

Having determined that the Director would have a financial interest in contracts between her outside employers and IDHS, the analysis then turns to whether the Director has “official responsibilities” for IDHS. Determining that the Director does not have contracting duties for IDHS, the Commission finds that the prohibition set forth in IC 4-2-6-10.5 would not apply to the Director when the salary for her outside employment is funded by a state contract so long as she ensures compliance with the criteria set forth in IC 4-2-6-10.5 (b)(1)(A)-(D). With respect to the IC 4-2-6-10.5(b)(1)(A), the Commission recommends that IDHS take appropriate action when awarding contracts/grants to ensure that

individuals such as the Director can be in compliance with this subsection of the rule.

### **CONCLUSION**

Based on the foregoing analysis, the Commission finds that the Director's outside employment with districts and counties throughout Indiana to teach emergency management courses would not create a conflict of interest under IC 4-2-6-5.5 or IC 4-2-6-9.

The Commission further finds that for purposes of IC 4-2-6-10.5, the Director would have a financial interest in a contract made by a state agency in situations where salary from any of her outside employment is tied to a contract with a state agency. However, this prohibition will not apply as long as the Director does not have contracting duties for IDHS, the agency awarding the contract and is in full compliance with the requirements sets forth in IC 4-2-6-10.5 (b)(1)(A)-(D).