

42 IAC 1-5-5 Outside employment (IC 4-2-6-5.5)

42 IAC 1-5-6 Conflicts of interest; decisions and voting (IC 4-2-6-9)

An Administrative Secretary with the ATC sought advice on whether it was appropriate for her to seek outside employment with a private party as the instructor of a server training course that is mandated by the ATC. SEC found that, due to the nature of the Secretary's official duties with the ATC, no conflict of interest would arise in her obtaining outside employment to deliver a server training course with a private company that is regulated by her state employer.

January 2009

No. 09-I-01

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

A state employee who is currently employed as an Administrative Secretary with the Alcohol and Tobacco Commission ("ATC") would like to pursue an outside employment opportunity with a private company to provide a server training course that is being mandated by the ATC.

Beginning in 2010, a server training course will be mandated for all alcoholic beverage servers in the state of Indiana. Ind. Code 7.1-3-1.5. The ATC is currently drafting administrative rules to allow private party providers to conduct training for alcoholic beverage servers. The ATC is of the opinion that performing server training in a private setting is incompatible with an ATC employee's duties because the ATC will be issuing permits to the private companies to perform the training.

ISSUE

Does a conflict of interest under IC 4-2-6-5.5 arise for the Administrative Secretary if she seeks outside employment with a private company that is regulated by the ATC to deliver a server training course while still employed by the ATC?

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.

ANALYSIS

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

In this case, a conflict of interest under IC 4-2-6-5.5 would not arise for the Administrative Secretary if she seeks outside employment with a private company to deliver a mandatory server training course. Although the Administrative Secretary would be moonlighting with a company that is regulated by the ATC, her outside employment would not trigger the provision of IC 4-2-6-5.5. More specifically, because the Administrative Secretary does not have discretionary authority within the ATC, her outside employment would not require her to recuse herself from matters that are central or critical to the performance of her official duties. Similarly, she would not appear to be required to disclose confidential information in her outside employment. Finally, while the amount of compensation that the Administrative Secretary would receive for moonlighting is unknown at this point, it is unlikely that the Administrative Secretary would not appear to be in a position to secure unwarranted privileges because of her employment with the ATC.

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

Should the Administrative Secretary seek outside employment with a company to provide server training, she must ensure compliance with IC 4-2-6-9. In this case, the Administrative Secretary would be prohibited from participating in any decision or vote in which she or the company for which she would work for had a financial interest in the outcome of the matter.

CONCLUSION

Subject to the foregoing analysis, the Commission finds that a conflict of interest under IC 4-2-6-5.5 would not arise for the Administrative Secretary if she seeks outside employment to deliver a server training course with a private company that is regulated by her state employer.