

42 IAC 1-5-6 Conflicts of interest; decisions and voting

42 IAC 1-5-7 Conflicts of interest; contracts

A member of the RMDB also served as the principal investigator for a study that was funded by a grant that had been issued to his employer, Purdue University, by the RMDB's predecessor board prior to his appointment. The RMDB member consulted with an environmental engineer at IDEM, the RMDB's supervising agency, regarding his interest in the grant and agreed to recuse himself from any vote on the RMDB pertaining to the grant or to Purdue; however, Purdue expects to request a renewal or extension of the grant from the RMDB when the contract on the grant expires. SEC found that a conflict of interest would arise for the RMDB member if he were to vote on the renewal of the grant or were to continue to receive compensation from the grant while serving on the RMDB if the grant were to be renewed. Accordingly, the RMDB member would have to either (1) give up his financial interest in the grant or (2) terminate his service on the RMDB.

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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

A professor of mechanical engineering at Purdue University Calumet ("Purdue") also currently serves on the Indiana Recycling Market Development Board ("RMDB"). He was appointed to the RMDB in August 2007 and attended his first meeting of the RMDB in February 2008.

In addition to his employment with Purdue and his service on the RMDB, the Professor is also the principal investigator for a Municipal Solid Waste Characterization Study for Indiana ("Study"). The Study is being funded by a grant ("Grant") that was issued to Purdue by the Recycling and Energy Development Board ("RMDB"), the predecessor board of the RMDB. The Professor is compensated for his work on the study from the Grant.

Before joining the RMDB, the Professor consulted with an environmental engineer of the Indiana Department of Environmental Management ("IDEM") regarding possible conflicts of interest that could arise due to his service on the RMDB and his involvement with the Grant. It was determined by IDEM that the Professor would recuse himself from any vote pertaining to his contract or any other contract that involved Purdue.

The contract for the Grant began on April 1, 2007 and is scheduled to end May 31, 2009. The Study, however, will not be completed before the expiration of the Grant. Purdue, in turn, intends to request a renewal/extension of the Grant to complete the Study.

ISSUE

Does a conflict of interest arise for the Professor if he continues to receive compensation from the Grant while serving on the RMDB if Purdue requests a renewal/extension of the Grant to complete the Study?

RELEVANT LAW

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.

ANALYSIS

The Professor is a special state appointee by virtue of his service on the RMDB. As a special state appointee, the Professor is subject to the Code of Ethics including the conflicts of interest provisions set forth in IC 4-2-6-9 and IC 4-2-6-10.5. The application of both conflicts of interest provisions to the Professor's situation are analyzed below.

A. IC 4-2-6-9 Conflict of Economic Interests

In this case, Purdue has a contract with the RMDB for a Grant to complete the Study. The Professor receives compensation from the Grant for his work on the Study. Accordingly, both Purdue and the Professor would appear to have a financial interest in the Grant. While the Grant was issued to Purdue prior to the Professor's appointment to the RMDB, the contract is still ongoing and could be renewed. The Professor would thus be prohibited from participating in any RMDB decision or vote regarding the Grant because both he and his employer have a financial interest in the outcome of any decision or vote regarding the Grant.

B. IC 4-2-6-10.5 Prohibition against financial interest in contract; exceptions

Pursuant to IC 4-2-6-10.5, a special state appointee may not knowingly have a financial interest in a contract made by an agency. The restriction, however, does not apply to a special state appointee 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 to refer to contracting responsibilities.

As a member of the RMDB, the Professor participates in decisions regarding the issuance of contracts. The Professor would therefore have “official responsibilities” for purposes of IC 4-2-6-10.5 for the RMDB. Because he participates in contracting decisions and has official responsibilities for the RMDB, the contracting agency for the Grant, the prohibition set forth in this rule would apply to the Professor. Accordingly, he cannot have a financial interest in a contract made by the RMDB.

IC 4-2-6-10.5(b)(2) states that a special state appointee who, acting in good faith, learns of an actual or prospective violation of this rule, must, within 30 days, make a full written disclosure of any financial interests to the contracting agency and the Ethics Commission and terminate or dispose of the financial interest. The Professor filed a financial disclosure with the Commission within 30 days upon learning of the conflict. To be in compliance, the Professor must dispose of his financial interest in the Grant upon the renewal of the Grant in 2009.

CONCLUSION

The Commission finds that a conflict of interest would arise for the Professor if he continues to receive compensation from the Grant while serving on the RMDB if the Grant is renewed in May 2009. Accordingly, the Professor would have to either (1) give up his financial interest in the Grant or (2) terminate his service on the RMDB.