

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

The Director of Field Services Division at IDHS is married to the Director of the Clay County EMA. Since the Division is responsible for conducting an annual assessment of the County EMA and awarding grants based on the outcome of this assessment, the Director inquired what she needed to do to comply with the Code. SEC found the Director would have a conflict of interest since her husband would have a financial interest in the outcome of her decision or vote on the grant award. SEC advised IDHS should designate an employee outside of the Director's chain of command and division to participate in any decisions or votes involving the County EMA in order to screen the Director from any matters involving her spouse.

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The Indiana State Ethics Commission ("Commission") issues the following advisory opinion concerning the State Code of Ethics pursuant to I.C. 4-2-6-4(b)(1).

BACKGROUND

An employee is the Ethics Officer for the Indiana Department of Homeland Security ("IDHS"). The Ethics Officer requests an advisory opinion on behalf of IDHS and a state employee. The state employee currently serves as the Director of Field Services Division of the IDHS. In this position, the Director serves as an immediate supervisor for the Field Division Team Leaders and District Services Branch Chief. The responsibilities of the Field Services Division include coordinating IDHS activities and centralizing the resources that are most directly involved in establishing, supporting, and communicating with the District Planning Oversight Committees, District Planning Councils, and District Task Forces. Field Services staff provides guidance and direction in support of local government (to include emergency responders) for technical assistance "subject matter expertise," in support of their efforts in planning, training, exercise, and response.

The Field Services Division staff also conducts an annual assessment of county emergency management agencies. The size of the grant award to a county for the reimbursement of a portion of their emergency management agency staff salaries is based on the outcome of this assessment. In addition, other grant funds may be awarded to a county based on the outcome of this assessment. Also, the Field Services staff assists in the administration of a number of the other grants that IDHS awards to the counties.

The Director's spouse is the Director of the Clay County Emergency Management Agency ("EMA"). IDHS awards grants to counties, including Clay County, through grant agreements. The EMA director of a County receiving a grant is usually the project manager for the grant on behalf of the County. The Director's spouse serves as the project manager for Clay County for most, if not all, grants that IDHS awards to Clay County.

The Director has been informally screening herself from agency decisions in which her spouse would have a financial interest. The Director and IDHS believe that this screening process should be formalized to avoid any appearance of conflict. Accordingly, the IDHS proposes a screening process in which the Executive Director of the IDHS will designate the Director's direct subordinate as the individual from the Field Services Division who will address any issues

and participate in any decisions that would have a financial impact on her spouse or Clay County. The direct subordinate would have the same authority with respect to these Clay County issues that the Director possesses over her Division and staff under the proposed screening mechanism.

ISSUE

Would a conflict of interest arise for the Director under I.C. 4-2-6-9 in the performance of her duties with IDHS given that her husband is the Director of the Clay County EMA? If so, would the screening procedure proposed by IDHS be appropriate in this case to prevent a conflict of interest from arising for the Director?

RELEVANT LAW

I.C. 4-2-6-9 (42 IAC 1-5-6)

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

I.C. 4-2-6-9 prohibits the Director from participating in any decision or vote if she has knowledge that various persons may have a “financial interest” in the outcome of the matter, including herself or her spouse. The term financial interest as defined in I.C. 4-2-6-1(a)(10) includes 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’s job duties at IDHS require her to participate in grant and funding decisions, including annual assessments of county emergency management agencies throughout the State. The Director serves as the Director of the Clay County EMA and is the project manager for the county for most, if not all, grants that IDHS awards to Clay County. The Director would appear to have a financial interest in the outcome of grant and/or funding decisions that the Director would participate in as an IDHS employee. Specifically, the Director’s spouse would appear to have a financial interest in the outcome of the annual assessment conducted by IDHS because the size of the grant award to a county for the reimbursement of a portion of their emergency management agency staff salaries is based on the outcome of this assessment. Since the Director’s spouses’ salary depends upon the outcome of the assessment, it is the opinion of the Commission that the Director’s spouses’ interest in this decision would appear to be greater than the interest of the general public. Accordingly, the Commission finds that the Director would be prohibited from participating in any decision or vote involving Clay County.

I.C. 4-2-6-9(b) provides that a state employee 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. In this case, the Director requested an advisory opinion from the Commission as provided in the rule and disclosed the potential conflict to her appointing authority.

I.C. 4-2-6-9(b)(1) further provides that when a potential conflict of interest arises, the Commission may, with the approval of the appointing authority, assign the particular matter to another person and implement all necessary procedures to screen the state employee seeking an advisory opinion from involvement in the matter. In this case, IDHS proposes a screening mechanism in which the Executive Director of IDHS will designate the Director’s direct subordinate as the individual from the Field Services Division who will address any issues and participate in any decisions that would have a financial impact on the Director’s spouse or Clay County. The Director’s direct subordinate would have the same authority with respect to these Clay County issues that the Director possesses over her Division and staff under the proposed screening mechanism.

The Commission finds that a screening procedure to screen the Director from participating in decisions or votes involving her spouse and/or Clay County is appropriate. However, the

Commission finds that the screening method proposed by IDHS would not be appropriate in this case since the Director's direct subordinate is a subordinate employee who directly reports to the Director. It is the opinion of the Commission that IDHS designate an employee outside of the Director's chain of command to address any issues and participate in any decisions that would have a financial impact on her spouse or Clay County. The designee should be from another division outside of the division the Director oversees.

CONCLUSION

The Commission finds that a conflict of interest does arise for the Director under I.C. 4-2-6-9 in the performance of her duties with IDHS given that her husband is the Director of the Clay County EMA. The Commission further finds that a screening procedure in which IDHS designates an employee to address any issues and participate in any decisions that would have a financial impact on the Director's spouse or Clay County is appropriate to prevent a conflict of interest from arising for the Director as long as the designated employee is outside of the Director's chain of command and is from a division outside of the division the Director oversees.