

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

The Ethics Officer for the Office of the Lt. Governor sought guidance on the definition of “member” as used in IC 4-2-6-9(a)(3), and whether special state appointees serving on the Tourism Council would have a conflict of interests due to their membership in trade organizations under certain circumstances. SEC declined to provide a general definition of the term “member”, but opined that a special state appointee who is a member of a business organization would have a conflict of interest under IC 4-2-6-9 if he or she participates in a decision or vote, or matter related to such decision or vote, in which the organization would have a financial interest in the outcome of the matter.

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The Indiana State Ethics Commission (Commission) issues the following advisory opinion concerning the State Code of Ethics (Code) pursuant to IC 4-2-6-4(b)(1). The following opinion is based exclusively on sworn testimony and documents presented by the requestor.

BACKGROUND

A state employee is the Ethics Officer for the Office of the Lieutenant Governor. The Lieutenant Governor’s Office oversees the Indiana Tourism Council (Council). The Ethics Officer is requesting advice on behalf of the Council, which is established in IC 5-29-4-1. The Council would like guidance on the definition of “member” as it is used in IC 4-2-6-9(a)(3). Several special state appointees who are members of the Council either represent, are employed by, or are members of various membership-based trade organizations. In addition, several of the special state appointees on the Council are members of more than one trade organization. These membership-based organizations collect dues from members as part of their revenue structure. Some of the organizations’ members may apply for grant funding, which is ultimately approved by the Council pursuant to IC 5-29-4-4.

The Ethics Officer brings two specific questions to the Commission, which are based on two membership situations the Council has encountered:

1. The Executive Director of the Indiana Tourism Association is also a special state appointee on the Council. Connor Prairie is also a member of the Indiana Tourism Association. Connor Prairie applies for and was recommended to receive a grant that came before the Council. Does the fact that Connor Prairie is a member of the organization in which the Executive Director/special state appointee works create a conflict of interest?
2. One of the Council’s special state appointees represents her local county’s Convention and Visitors Bureau. All of the Convention and Visitors Bureaus in that region belong to a particular regional group. This regional group applies for a grant from the council. The special state appointee is a member of the group but did not have any say in the application being submitted? Is this a conflict of interest?

In addition, the Ethics Officer more generally requests that the Commission clarify or define the term “member” for purposes of IC 4-2-6-9. She explains that “member” is defined in another title of the Indiana Code, IC 23-18-1-15, for purposes of business organizations (specifically Limited Liability Companies) as “a person admitted to membership in a limited liability company under IC 23-18-6-1 and as to whom an event of dissociation has not occurred. “ The Ethics Officer asserts that under this definition, a “member” appears to refer to a more direct financial interest in the decisions of a board or commission.

ISSUE

1. Would a special state appointee’s participation in a decision or vote, or matter related to a decision or vote, in which a member of the special state appointee’s employer has a financial interest in the outcome, create a conflict of interest under IC 4-2-6-9?
2. Would a special state appointee have a conflict of interest under IC 4-2-6-9 if she participated in a decision or vote, or matter related to a decision or vote, in which an organization of which she is a member has a financial interest, even if she was not involved in bringing the matter before the Council?

RELEVANT LAW

IC 4-2-6-1 Definitions

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

...

(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.

IC 4-2-6-9 (42 IAC 1-5-6)

Conflict of economic interests; commission advisory opinions; disclosure statement; written determinations

Sec. 9. (a) A state officer, an employee, or a special state appointee may not participate in any decision or vote, or matter related to that 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 member, 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 ethics officer in writing and do either of the following:

(1) 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:

(A) 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

(B) 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.

(2) File a written disclosure statement with the commission that:

(A) details the conflict of interest;

(B) describes and affirms the implementation of a screen established by the ethics officer;

(C) is signed by both:

(i) the state officer, employee, or special state appointee who identifies the potential conflict of interest; and

(ii) the agency ethics officer;

(D) includes a copy of the disclosure provided to the appointing authority; and

(E) is filed no later than seven (7) days after the conduct that gives rise to the conflict.

A written disclosure filed under this subdivision shall be posted on the inspector general's Internet web site.

(c) A written determination under subsection (b)(1)(B) 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)(1)(B) shall be filed with the appointing authority.

ANALYSIS

Pursuant to IC 4-2-6-9(a)(3), a state officer, an employee, or a special state appointee may not participate in any decision or vote, or matter relating to that decision or vote, if the state officer, employee, or special state appointee has knowledge that a business organization in which the state officer, employee, or special state appointee is serving as an officer, a director, a member, a trustee, a partner, or an employee has a financial interest in the outcome of the matter. The Indiana General Assembly added the term "member" during the 2015 legislative session in HEA 1002; the term is not defined in IC 4-2-6-1, and the Commission has not interpreted the term.

1. Defining "member" for purposes of IC 4-2-6-9(a)(3)

While the Commission declines the request to provide a general definition for the term "member" as used in IC 4-2-6-9(a)(3) it does find that the definition of the term "member" found

in IC 23-18-1-15, defining members as individuals who are part of a Limited Liability Company, does not define or relate to the term “member” as used in IC 4-2-6-9(a)(3). The Commission is of the opinion that a state employee, officer, or special state appointee who is a member of a business organization would have a conflict of interest under IC 4-2-6-9 if he or she participates in a decision or vote, or matter related to a decision or vote, in which the organization would have a financial interest in the outcome of the matter.

2. *Conflicts of Interest for Council Members*

The Ethics Officer presented two scenarios that specifically identified special state appointees on the Council and described their relationship to various membership based trade organizations.

a. Connor Prairie

Connor Prairie is a member of the Indiana Tourism Association. The Executive Director of the Indiana Tourism Association is a special state appointee who serves on the Council. Connor Prairie applied for and was recommended to receive a grant that came before the Council.

In this situation, the Executive Director of the Indiana Tourism Association would not have a conflict if she were to participate in the decision or vote regarding whether or not Connor Prairie receives the grant. Specifically, she is not participating in a decision or vote, or matter related to a decision or vote, in which her *employer* or an *organization of which she is a member* would have a financial interest in the outcome of the matter. She is an employee of the Indiana Tourism Association, not Connor Prairie. Accordingly, Connor Prairie’s status as a member of the special state appointee’s employer does not create a conflict of interest for the special state appointee under this rule.

b. County Convention and Visitors Bureau

One of the Council’s special state appointees represents her local county’s Convention and Visitors Bureau. All of the Convention and Visitors Bureaus in that region belong to a particular regional group. This regional group applies for a grant from the Council. The special state appointee is a member of the group but did not have any say in the application being submitted to the Council.

This special state appointee, regardless of whether her membership afforded her the ability to vote on or otherwise participate in the submission of the application, would have a conflict of interest under IC 4-2-6-9 if she were to participate in a decision or vote on the grant, or matter related to this decision or vote, because the organization in which she is a member has a financial interest in the outcome of this matter.

CONCLUSION

The Commission declines to define the term “member” as used in IC 4-2-6-9(a)(3), but finds that all special state appointees on the Council should refrain from participating in any decisions or votes, or matters related to such decisions or votes, in matters if trade organizations that they are members of have a financial interest in the outcome.

