

42 IAC 1-5-4, Political activity

42 IAC 1-5-7 (IC 4-2-6-10.5), Conflicts of interest; contracts

As special state appointees, even the elected members of LEPCs were found to be precluded from engaging in political activity while on duty. On duty encompassed such involvements as working on or attending LEPC activities or acting in an official committee capacity. Regarding conflicts of interest, LEPC members were not required to obtain a list of stocks held in mutual funds or similar securities since the Conflict of interest rule only prohibits a direct interest in a contract by an agency.

July 12, 2007

No. 07-I-5

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

BACKGROUND

The Chairman Designee of the Indiana Emergency Response Commission (IERC) requests a formal advisory opinion from the Commission on behalf of the members of the Local Emergency Planning Committee (LEPC Members).

The Chairman Designee requests further clarification regarding the impact that a previous opinion issued by the Commission to the Indiana Department of Homeland Security (IDHS), opinion number 06-I-13, has on LEPC Members. In opinion number 06-I-13, the Commission determined that LEPC Members were "special state appointees" who are subject to the application of IC 4-2-6-10.5 when contracting with any state agency.

ISSUES

1. Is a special state appointee required to obtain a list of all stocks held in mutual funds or other similar securities where the special state appointee does not hold the stock directly, but only through the mutual fund, to determine whether any of the companies whose stock is held in the mutual fund has a contract with any state agency for purposes of IC 4-2-6-10.5(a)?
2. Do the provisions of 42 IAC 1-5-4, the political activity rule, apply to special state appointees? If so, how is the term "on duty" defined for purposes of 42 IAC 1-5-4 as it applies to LEPC Members that are elected officials?

RELEVANT LAW

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:

(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.

42 IAC 1-5-4 Political activity

Authority: IC 4-2-7-3; IC 4-2-7-5

Affected: IC 3-9-2; IC 4-2-6-1

Sec. 4. (a) A state employee or special state appointee shall not engage in political activity including solicitation of political contributions from:

- (1) another employee or special state appointee; or
- (2) any other person;

when on duty or acting in an official capacity.

(b) This section does not prohibit a state employee or special state appointee from engaging in such activity when not on duty.

(c) A state employee or special state appointee shall not solicit political contributions at any time from:

- (1) persons whom the employee or special state appointee knows to have a business relationship with the employee's or the special state appointee's agency; or
- (2) state employees or special state appointees directly supervised by the employee or the special state appointee.

(d) The appointing authority of an agency and all employees or special state appointees with purchasing or procurement authority on behalf of the state shall not solicit political contributions on behalf of any candidate for public office, unless that individual is a candidate for public office himself or herself.

ANALYSIS

ISSUE 1

For purposes of IC 4-2-6-10.5, LEPC members are not required to obtain a list of all stocks held in mutual funds or other similar securities. The prohibition against having a financial interest in a

contract is intended to apply when a state officer, employee, or special state appointee has a direct interest in a contract made by an agency.

ISSUE 2

The restrictions set forth in 42 IAC 1-5-4, the political activity rule, apply to special state appointees. As special state appointees, LEPC Members are prohibited from engaging in various activities while on duty or acting in an official capacity. Specifically, the rule prohibits a special state appointee from conducting any political activity, including solicitation of funds. See 42 IAC 1-5-4(a). While the term “on duty” is not defined by rule or statute, the term refers to the time that a special state appointee is working on or attending activities of the LEPC. For example “on duty” would refer to attending LEPC meetings or working on projects related to the LEPC. An LEPC Member is further prohibited from engaging in political activity when acting in an official capacity as an LEPC Member. *Id.*

In addition, an LEPC Member may, at no time, solicit political contributions from persons whom the LEPC Member knows to have a business relationship with the IDHS or is directly supervised by the LEPC member. 42 IAC 1-5-4(c)

Finally, any LEPC Member that has purchasing or procurement authority on behalf of the State is prohibited from soliciting political contributions on behalf of any candidate for public office, unless that LEPC Member is a candidate for public office himself or herself 42 IAC 1-5-4(d). Solicitation of political contributions on the LEPC Member’s own behalf must still be in accordance with the restrictions set forth in 42 IAC 1-5-4.

CONCLUSION

LEPC members are not required to obtain a list of all stocks held in mutual funds or other similar securities for purposes of IC 4-2-6-10.5.

With respect to political activity, the restrictions set forth in 42 IAC 1-5-4 apply to members of the LEPC as special state appointees. Accordingly, all members of the LEPC, including those who are elected officials, must abide by the restrictions set forth in 42 IAC 1-5-2 as detailed above.