

**42 IAC 1-5-4 Political activity
Executive Order 93-12**

An ALJ with the IURC sought clarification on the political activity she was allowed to engage in in light of the restrictions outlined in an Executive Order that predated the current Code of Ethics. After being advised by the Attorney General that the EO was still in effect, SEC determined an ALJ for the IURC was subject to the limitations set forth in the EO.

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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 state employee serves as an administrative law judge (“ALJ”) for the Indiana Utility Regulatory Commission (“IURC”). The IURC is a body that is required by state statute to make decisions that balance the interests of all parties to ensure the utilities provide adequate and reliable service at reasonable prices. In 1993, Governor Evan Bayh issued Executive Order (“EO”) 93-12 which established a Code of Ethics for the IURC. In 2002, the Attorney General for the State of Indiana (“AG”) issued an official opinion indicating that the Commission had the authority to enforce the terms of EO 93-12 establishing the standards of conduct for the IURC. Accordingly, the AG considered EO 93-12 to still be binding upon the IURC as of 2002.

In 2005, the present Governor, Mitchell E. Daniels, issued EOs 05-03 and 05-12, establishing the Office of the Inspector General and modifying existing ethics rules applicable to state employees. For purposes of this opinion, EO 05-12 modified the ethics rule pertaining to political activity that state employees were permitted to engage in. While agencies are still able to adopt policies, rules, or regulations concerning the subject matter of the rules set forth in the Code of Ethics (“Code”), such policies, rules, or regulations are to be at least as strict as those set forth in the Code.

The ALJ recently requested clarification of the IURC ethics rules regarding political activity from her agency Ethics Officer. She was informed that current IURC ethics rules, mainly EO 93-12 would forbid her from participating in the political process in any way other than through the act of casting a vote.

ISSUE

- (1) Does EO 93-12 remain in effect in light of EO 05-03 and 05-12?
- (2) If EO 93-12 is still in effect, what level of political activity is allowable for IURC ALJs and Division Directors who are not precinct committee people?

RELEVANT LAW

42 IAC 1-5-4 Political activity

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.

Executive Order 93-12, Code of Ethics for the IURC

Section 7. Commissioners shall refrain from political activity inappropriate to their office.

- A. Political conduct in general.
 1. Commissioner shall not:
 - a. Act as leader or hold any office in a political organization;
 - b. Make speeches for a political organization or candidate or publicly endorse a candidate for public office.
 2. Commissioners shall resign their office when they become candidates either in a party primary or in a general election except that they may continue to hold the office while being a candidate for election to or serving as a delegate in a state constitutional convention if is otherwise permitted by law.
 3. A Commissioner shall not engage in any other political activity except on behalf of measures to improve the regulation of utility services subject to Commission jurisdiction.

Section 8. All administrative law judges and division directors shall adhere to the same standard of conduct and responsibilities required of Commissioners by this Code except as provided by this section.

- A. Administrative Law Judges and Division Directors:

1. may engage in remunerative activity which does not constitute a potential conflict of interest nor is incompatible with the performance of the duties required of them by their employment with the Commission;
2. are not required to comply with Section 6C of this order
3. may not practice their profession before this or any other Commission with similar regulatory jurisdiction or before any agency of the State of Indiana, unless required in the performance of their duties at the Commission;
4. may serve as members of a school board or an election board; and
5. may serve as precinct committeemen or vice committeemen.

ANALYSIS

In an opinion issued to the Commission, the AG's office determined that EO 93-12 is still in effect. Since EO 93-12 remains in effect, an ALJ for the IURC who is not a precinct committeemen is subject to the general prohibitions set forth in Section 7 and 8 of EO 93-12.

CONCLUSION

- (1) EO 93-12 remains in effect and continues to govern the political conduct of ALJs for the IURC.
- (2) An ALJ for the IURC who is not a precinct committeeman is subject to the general prohibitions set forth in Sections 7 and 8 of EO 93-12.