

**42 IAC 1-5-6 Conflict of interest; decisions and voting (IC 4-2-6-9)**  
**42 IAC 1-5-10 Benefiting from confidential information**  
**42 IAC 1-5-11 Divulging confidential information**

The husband of a DNR District Forester decided to establish his own forest management company which would be doing business in her district. Although a screen had already been put in place as a result of Advisory Opinion 11-I-14, the Forester wanted additional advice to determine how she should proceed in light of the start-up of her husband's new business. SEC determined a conflict of interest would arise for the Forester and proposed a screen to ensure she did not violate the Code of Ethics.

October 2012  
No. 12-I-17

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**

A state employee is currently employed by the Indiana Department of Natural Resources ("DNR") as the District Forester for District 16. The District Forester's job duties include:

- 1) Administering the Classified Forest and Wildlands ("CFW") Program,
- 2) Providing scientific and technical forestry assistance to private landowners,
- 3) Administering federal cost shared programs through the Natural Resources Conservation Service ("NRCS") including the approval of work done by consultant foresters,
- 4) Maintaining all necessary files and databases associated with managing the District, and
- 5) Promoting scientific forest management to a variety of organizations and individuals.

The District Forester was promoted to her current position in 2011 after seeking a formal advisory opinion from this Commission to ensure compliance with the Code of Ethics. Specifically, at the time of her promotion, the District Forester's husband worked for a forestry consulting firm. In Formal Advisory Opinion No. 11-I-14, the Commission determined that the DNR should institute the agency's proposed screen procedure to ensure that a conflict of interest did not arise for the District Forester given her intended promotion to District Forester for District 16 and her husband's employment with the forestry consulting firm. The DNR implemented the screening procedure approved by the Commission and has ensured compliance with the Commission's directives.

Most recently, the District Forester's husband separated from the forestry consulting firm, established his own business, a forest management company, and became a consultant forester. He is the sole employee and the only principal in the company. Consultant foresters perform a variety of forestry practices for private landowners such as marking and selling standing timber, performing timber stand improvement, planting trees, and controlling invasive species. The District Forester's husband will be seeking clients in the District managed by his wife.

Given the change in circumstances, the DNR has again identified that a conflict of interest may arise for the District Forester in the same four areas previously identified in light of her position as District Forester and her husband's new consulting business, as enumerated below.

- 1) The CFW program files and related databases contain management plans and recommendations on how a landowner can best achieve his/her forest management objectives. A perception of impropriety could exist if other consultants or individuals thought the District Forester was making those files and databases available to her husband's company to prospect for new clients.
- 2) The District Forester is often questioned by landowners about the selection of a consultant forester. A perception of impropriety could exist if other consultants or individuals thought the District Forester was referring private landowners to her husband's forest management company.
- 3) The District Forester advises landowners on the procedures for enrolling land in NRCS programs. The District Forester also develops plans for performing a variety of forest management activities for private landowners. The District Forester inspects and approves projects prior to the payment of cost share money. A perception of impropriety could exist if other consultants or individuals thought the District Forester was referring private landowners to her husband's forest management company for the purpose of securing work or if the District Forester was perceived as approving substandard work performed by her husband's forest management company.
- 4) District Foresters are required to inspect land enrolled in the CFW program every five years. A perception of impropriety could exist if other consultants or individuals thought the District Forester was being lenient during inspections on lands managed by her husband's forest management company.

### ISSUE

Would a conflict of interest arise for the District Forester under I.C. 4-2-6-9 in the performance of her duties as the DNR's District 16 District Forester given that her husband has established his own business as a consultant forester? If so, would a screening procedure be appropriate in this case to prevent a conflict of interest from arising for the District Forester?

### RELEVANT LAW

#### **42 IAC 1-5-10 Benefiting from confidential information**

Sec. 10. A state officer, employee, or special state appointee shall not benefit from, or permit any other person to benefit from, information of a confidential nature except as permitted or required by law.

#### **42 IAC 1-5-11 Divulging confidential information**

Sec. 11. A state officer, employee, or special state appointee shall not divulge information of a confidential nature except as permitted by 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.

### **ANALYSIS**

The District Forester is prohibited, under 42 IAC 1-5-10, from benefitting from or permitting any other person to benefit from information of a confidential nature except as permitted or required by law. Similarly, 42 IAC 1-5-11 prohibits the District Forester from divulging information of a confidential nature except as permitted by law. The term "person" is defined in I.C. 4-2-6-1(a)(13) to encompass both an individual, such as the District Forester's husband, and a corporation, such as his forest management company. In addition, the definition of "information of a confidential nature" is set forth in I.C. 4-2-6-1(a)(12).

In this case, the District Forester has access to CFW program files and related databases containing confidential information. Furthermore, some of the information contained in these files and databases could be used to benefit her husband's consulting business in attracting new clients. While it would be a violation of 42 IAC 1-5-10 for the District Forester to permit her spouse or any other person to benefit from information of a confidential nature contained in those files and databases, it would also be a violation under 42 IAC 1-5-11 for her to even divulge any such information, regardless of whether it is used to that person's benefit.

Regarding conflicts of interest, it appears that the District Forester would be required to participate in decisions or votes as a District Forester in which her husband's company may have a financial interest. I.C. 4-2-6-9(a) prohibits the District Forester from participating in any such 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)(11) includes an interest involving property or services. Because he is the sole owner of the company, the District Forester's husband would have a financial interest in the resulting services his company provides to his clients. As such, the District Forester's husband would have a financial interest in the outcome of the matter pursuant to I.C. 4-2-6-9(a), and the District Forester would be required to observe the provisions of I.C. 4-2-6-9(b).

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 District Forester requested an advisory opinion from the Commission as provided in the rule. To the extent that the District Forester's disclosure to her Ethics Officer was also disclosed to her appointing authority she would appear to be in compliance with this provision.

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 matter to another person and implement all necessary procedures to screen the employee from involvement in the matter. In this case, the District Forester is currently performing the duties of the Assistant District Forester and the Assistant District Forester is performing the District Forester's duties. However, as a permanent solution, the DNR proposes and the Commission recommends modifying the screening procedures previously approved for the District Forester. Specifically, the Commission recommends that the DNR impose the following screening procedures:

The District Forester and the State Forester will sign an updated document acknowledging that:

- 1) All files and databases associated with the CFW Program are confidential and may not be shared with her husband, forest management company, or any other person.
- 2) The District Forester shall have no role in the selection of consultant foresters by private landowners. The Indiana Forestry and Woodland Owners Association maintains a database and printed Directory of Professional Foresters. The District Forester will provide a copy of the Directory of Professional Foresters and/or a web link to the data base. The District Forester will encourage landowners to engage the services of a private forester and to perform their own due diligence in the selection process.
- 3) The District Forester cannot approve work on lands situated within District 16 that are eligible for NRCS cost share money if the forestry practice or project was performed by the forest management company, and/or the District Forester's husband. All NRCS cost share projects situated within District 16 with which the forest management company and/or the District Forester's husband are involved will be inspected by the Assistant

District Forester for District 16 and review and approval shall be conducted by the Assistant State Forester, the District Forester's immediate supervisor.

- 4) The CFW five year inspections performed on lands situated within District 16 and owned by clients of the forest management company or the District Forester's husband shall be performed by Assistant District Forester for District 16. The review and approval of the inspections conducted by Assistant District Forester for District 16 of land on which the forest management company is the consulting firm shall be made by the Assistant State Forester.

The Assistant State Forester, the District Forester's immediate supervisor, will monitor compliance by reviewing this document on a regular basis including, during the performance appraisal process.

### **CONCLUSION**

The Commission finds that a conflict of interest would arise for the District Forester under I.C. 4-2-6-9 in the performance of her duties as the DNR's District 16 District Forester if she participates in any decision or vote involving the forest management company, her husband's recently established private forestry business. The Commission further finds that the screening procedure described herein is appropriate and should be strictly adhered to by the District Forester to prevent a conflict of interest from arising.