

**42 IAC 1-5-4, Political activity  
IC 4-2-6-8, Financial disclosure**

Although members of the Governor's Residence Commission have the authority to spend money and contract for upkeep of the Governor's residence, they do not individually possess authority to commit funds. SEC determined, consequently, that the individual members are not bound by those provisions in the rule on Political activity pertaining to purchasing and procurement authority or the financial disclosure filing requirements for those with final purchasing authority.

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

**BACKGROUND**

The Governor's Residence Commission ("Residence Commission") is created by I.C. 4-23-15-1. It is tasked with providing the Governor with a suitable residential site and with maintaining, remodeling, expanding, finishing, furnishing, and constructing such residential site. Its powers include the authority to enter into contracts to further its purpose and the authority to accept gifts, contributions, and bequest of funds. The Residence Commission is made up of seven members, who are appointed by the Governor and "serve at the pleasure and discretion of the Governor." They do not receive payment but may be reimbursed for reasonable and necessary expenses actually incurred in carrying out their duties.

The Residence Commission's authorizing statute does not specifically define how it will conduct business; however, the Residence Commission is considering a proposed charter, which provides details on how it will operate. This charter includes the requirement that a quorum be present to conduct a meeting and that a majority vote of the quorum is needed to take action. The charter also prohibits any one individual board member from expending money, authorizing the expenditure of money, or signing a contract on behalf of the Residence Commission without the specific authorization of the Residence Commission. It is anticipated that the Residence Commission will vote on the proposed charter at its first meeting which is scheduled for April 5, 2013.

**ISSUE**

Do members of the Residence Commission have "final purchasing authority" under the provision of the financial disclosure statute found in I.C. 4-2-6-8 (a)(6) or "purchasing or procurement authority" under the provision of the political activity rule found in 42 I.A.C. 1-5-4(d)?

**RELEVANT LAW**

**42 I.A.C. 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.

#### **IC 4-2-6-8**

##### **Financial disclosure; filing false statement; penalty**

Sec. 8. (a) The following persons shall file a written financial disclosure statement:

(1) The governor, lieutenant governor, secretary of state, auditor of state, treasurer of state, attorney general, and state superintendent of public instruction.

(2) Any candidate for one (1) of the offices in subdivision (1) who is not the holder of one (1) of those offices.

(3) Any person who is the appointing authority of an agency.

(4) The director of each division of the department of administration.

(5) Any purchasing agent within the procurement division of the department of administration.

(6) Any agency employee, special state appointee, former agency employee, or former special state appointee with final purchasing authority.

(7) The chief investment officer employed by the Indiana public retirement system.

(8) Any employee of the Indiana public retirement system whose duties include the recommendation, selection, and management of:

(A) the investments of the funds administered by the Indiana public retirement system;

(B) the investment options offered in the annuity savings accounts in the public employees' retirement fund and the Indiana state teachers' retirement fund;

(C) the investment options offered in the legislators' defined contribution plan; or

(D) investment managers, investment advisors, and other investment service providers of the Indiana public retirement system.

(9) An employee required to do so by rule adopted by the inspector general.

(b) The statement shall be filed with the inspector general as follows:

(1) Not later than February 1 of every year, in the case of the state officers and employees enumerated in subsection (a).

(2) If the individual has not previously filed under subdivision (1) during the present calendar year and is filing as a candidate for a state office listed in subsection (a)(1), before filing

a declaration of candidacy under IC 3-8-2 or IC 3-8-4-11, petition of nomination under IC 3-8-6, or declaration of intent to be a write-in candidate under IC 3-8-2-2.5, or before a certificate of nomination is filed under IC 3-8-7-8, in the case of a candidate for one (1) of the state offices (unless the statement has already been filed when required under IC 3-8-4-11).

(3) Not later than sixty (60) days after employment or taking office, unless the previous employment or office required the filing of a statement under this section.

(4) Not later than thirty (30) days after leaving employment or office, unless the subsequent employment or office requires the filing of a statement under this section.

The statement must be made under affirmation.

(c) The statement shall set forth the following information for the preceding calendar year or, in the case of a state officer or employee who leaves office or employment, the period since a previous statement was filed:

(1) The name and address of any person known:

(A) to have a business relationship with the agency of the state officer or employee or the office sought by the candidate; and

(B) from whom the state officer, candidate, or the employee, or that individual's spouse or unemancipated children received a gift or gifts having a total fair market value in excess of one hundred dollars (\$100).

(2) The location of all real property in which the state officer, candidate, or the employee or that individual's spouse or unemancipated children has an equitable or legal interest either amounting to five thousand dollars (\$5,000) or more or comprising ten percent (10%) of the state officer's, candidate's, or the employee's net worth or the net worth of that individual's spouse or unemancipated children. An individual's primary personal residence need not be listed, unless it also serves as income property.

(3) The names and the nature of the business of the employers of the state officer, candidate, or the employee and that individual's spouse.

(4) The following information about any sole proprietorship owned or professional practice operated by the state officer, candidate, or the employee or that individual's spouse:

(A) The name of the sole proprietorship or professional practice.

(B) The nature of the business.

(C) Whether any clients are known to have had a business relationship with the agency of the state officer or employee or the office sought by the candidate.

(D) The name of any client or customer from whom the state officer, candidate, employee, or that individual's spouse received more than thirty-three percent (33%) of the state officer's, candidate's, employee's, or that individual's spouse's nonstate income in a year.

(5) The name of any partnership of which the state officer, candidate, or the employee or that individual's spouse is a member and the nature of the partnership's business.

(6) The name of any corporation (other than a church) of which the state officer, candidate, or the employee or that individual's spouse is an officer or a director and the nature of the corporation's business.

(7) The name of any corporation in which the state officer, candidate, or the employee or that individual's spouse or unemancipated children own stock or stock options having a fair market value in excess of ten thousand dollars (\$10,000). However, if the stock is held in a blind trust, the name of the administrator of the trust must be disclosed on the statement instead of the name of the corporation. A time or demand deposit in a financial institution or insurance policy need not be listed.

(8) The name and address of the most recent former employer.

(9) Additional information that the person making the disclosure chooses to include.

Any such state officer, candidate, or employee may file an amended statement upon discovery of additional information required to be reported.

(d) A person who:

(1) fails to file a statement required by rule or this section in a timely manner; or

(2) files a deficient statement;

upon a majority vote of the commission, is subject to a civil penalty at a rate of not more than ten dollars (\$10) for each day the statement remains delinquent or deficient. The maximum penalty under this subsection is one thousand dollars (\$1,000).

(e) A person who intentionally or knowingly files a false statement commits a Class A infraction.

### ANALYSIS

As a threshold matter, the Commission finds that the seven (7) members who comprise the Residence Commission are special state appointees and therefore are subject to the Commission's jurisdiction. Specifically, I.C. 4-2-6-1(a)(18) defines "special state appointee" as a person who is "not a state officer or employee" and is "elected or appointed to ... a commission... that is authorized by statute or executive order; and functions in a policy or advisory role in the executive (including the administrative) department of state government..." The Residence Commission is authorized by statute, and it functions in a policy or advisory role in the executive branch of state government in that it is responsible for providing the Governor with a suitable residence. Moreover, the Governor appoints members in accordance with the Residence Commission's authorizing statute.

It is unlikely that the individual members of the Residence Commission have "final purchasing authority" under the financial disclosure statement requirement found in I.C. 4-2-6-8. The Commission, in advisory opinion 06-I-24 found that individual members of the State Teachers' Retirement Fund ("TRF") did not have final purchasing authority for purposes of the financial disclosure requirement because a quorum vote was required for transacting business and no individual board member was able to transact business on behalf of the fund. Likewise, in opinions 06-I-25 and 06-I-26, the Commission used the same reasoning to find that individual members of the Public Employees' Retirement Fund ("PERF") and members of the Indiana Finance Authority ("IFA") respectively did not have final purchasing authority for purposes of the financial disclosure statement. Similar to TRF, PERF, and IFA members, members of the Residence Commission do not have the ability to act independently on behalf of the Residence Commission. Specifically, the Residence Commission's proposed charter provides that the Commission must have a quorum of four members present at the meeting to conduct business and must have a majority vote of three or more members to adopt a motion.

It is also unlikely that the individual Residence Commission members have "purchasing or procurement authority on behalf of the state" under the provisions of the political activity rule found in 42 I.A.C. 1-5-4(d). This rule prohibits special state appointees with purchasing or procurement authority on behalf of the state from soliciting political contributions on behalf of any candidate for public office, unless that individual is a candidate for public office himself or

herself. The language in this subsection is similar to the language found in the financial disclosure statement filing requirement set forth in I.C. 4-2-6-8. Because individual members of the Residence Commission are not able to conduct business absent a quorum and must have a majority vote to adopt a motion, it does not appear that the Residence Commission members would have “purchasing or procurement authority on behalf of the state.” Accordingly, members of the Residence Commission would not be prohibited from soliciting political contributions for candidates so long as the solicitation is consistent with the other restrictions in 42 I.A.C. 1-5-4.

### **CONCLUSION**

Members of the Residence Commission do not have “final purchasing authority” under the provision of the financial disclosure statute found in I.C. 4-2-6-8(a)(6) and are therefore not required to file financial disclosure statements pursuant to that provision. Moreover, the Commission finds that the members of the Residence Commission do not have “purchasing or procurement authority” under the provision of the political activity rule found in 42 I.A.C. 1-5-4(d). Accordingly, the members of the Residence Commission are not prohibited from soliciting political contributions for candidates so long as the solicitation is consistent with the other restrictions in the rule.