

CAUTION: The following advice may be based on a rule that has been revised since the opinion was first issued. Consequently, the analysis reflected in the opinion may be outdated.

IC 4-2-6-9(a) Conflicts of interest

IC 4-2-6-1(9)

SEC found that the SPD Benefits Division Director receiving a defined and fixed benefit as the beneficiary of a former partner in a private partnership did not give rise to a financial interest in the proposed transaction between SPD and that partnership.

93-I-19, Conflict of Interest (Decision December 16, 1993)

Fact Situation

The Benefits Division Director of the Personnel Department wanted the State Ethics Commission to determine if it was a violation of the conflict of interest statute for her to participate in contract negotiations and oversee the implementation of a contract with a firm which she received a fixed determinable payment annually as the beneficiary of a partner in that firm. In the Director's role, she serves in an oversight capacity in regard to the Indiana short/long term disability plan. Two other employees are primarily responsible for interviewing, evaluating, and selecting an actuary firm.

The Director was the beneficiary of a partner of the firm under a partnership agreement. When the partner died, he was entitled to a fixed determinable certain payment to a beneficiary named. As his beneficiary, the Director will be receiving a benefit on an annual basis payable monthly on the 15th of each month for ten years. The amount of money is partially funded from an HR10 account balance, which is a vested plan. The vested plan does not have sufficient funds left and what was left will be paid out in January. From that point on the money will strictly be payable from the firm. The HR10 plan is controlled by the retirement committee of the partnership, which hires outside investment advisors to invest in various plans. The committee is not permitted to invest in the stock of any company, which the firm audits. There was no stock ownership plan due to the fact that the business was held in partnership. There was a tax deferred saving plan (401K plan) for which the Director was the beneficiary and which has been disbursed.

The decision to select the list of potential suppliers of actuary services for the disability plan was a collaborative effort in which the Director participated. The staff the Director supervises made contact with the providers, interviewed, evaluated, and selected a firm, which they recommended be awarded the contract. The Director of State Personnel Department makes final approval of the contract.

Question

Whether the Director of the Benefits Division of State Personnel Department who receives a fixed determinable payment annually for ten years as the beneficiary of a partner in a firm able to participate in contract negotiations with the firm and oversee the implementations of the contract?

Opinion

The Commission found that receipt by the Benefits Division Director in the Personnel Department of a defined and fixed benefit as beneficiary of a former partner in a private

partnership does not give her a financial interest in the proposed transaction between the State Personnel Department and that partnership.

The relevant statute is as follows:

IC 4-2-6-9(a) on conflict of interest. “A state officer or employee may not participate in any decision or vote of any kind in which the state officer or the employee or that individual’s spouse or unemancipated children has a financial interest.”

The definition of financial interest at IC 4-2-6-1(9) says, “‘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; in which a state officer or an employee or that individual’s spouse or unemancipated children may gain a benefit of two hundred fifty dollars (\$250) or more.

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 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.”