

42 IAC 1-5-1 Gifts; travel expenses; waivers

The Indiana Department of Homeland Security (IDHS) sought advice on whether an IDHS employee could accept a college scholarship from a vendor with whom IDHS has a business relationship. The employee applied for the scholarship as an individual and not as an IDHS employee. SEC found that because the vendor has a business relationship with IDHS and there are no exceptions in the gifts rule that would apply to this situation, the employee is prohibited from accepting this scholarship unless IDHS waives the application of the gifts rule in accordance with 42 IAC 1-5-1(c).

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

BACKGROUND

The General Counsel and Ethics Officer for the Indiana Department of Homeland Security (IDHS) requested a formal advisory opinion on behalf of an IDHS employee. The employee currently serves IDHS as a District Manager for Emergency Medical Services. In this role, she does not have any contracting authority for IDHS.

The employee recently applied for a scholarship award being offered by a vendor, the National Association of Emergency Medical Technicians (NAEMT), with whom the IDHS has a business relationship. The NAEMT provides certification cards to IDHS. IDHS then passes the certification cards on to individuals who complete NAEMT courses and obtain certifications. The employee does not have any direct professional relationship with NAEMT as an IDHS employee.

The IDHS General Counsel and Ethics Officer provides that the employee applied for the NAEMT scholarship as an individual and not as an IDHS employee. The employee is an active member of the organization and has been for several years. She pays for membership dues from personal funds. The amount of the scholarship being offered is two-thousand dollars (\$2,000.00). The funds from the scholarship are to be used by the employee to pay tuition at Indiana State University as she pursues a Master's Degree in Public Administration. The funds will be directed to Indiana State University. If the cost of tuition is less than \$2,000.00, the remaining funds revert back to NAEMT. The employee will not receive any direct payments or funds from NAEMT.

The Service Center Manager at NAEMT provided IDHS with the following information on the procedures used to review scholarship applications:

The NAEMT scholarship program is a competitive application process. NAEMT receives many scholarship applications from NAEMT members. Applications are reviewed and

scored based on the following criteria without consideration of the member's demographic information or affiliation: dedication to the profession, financial need, dedication to the community, and service as a positive ambassador for NAEMT. The scores are then tabulated and the scholarship recipients are determined based on total scores.

IDHS seeks clarification to determine if the employee's acceptance of the scholarship award would be a violation of the gift rule, 42 IAC 1-5-1, if the employee would be accepting the gift as an individual and not as an IDHS employee. IDHS and the employee's supervisors are supportive of the employee's acceptance of the scholarship award as an individual subject to the approval of the State Ethics Commission.

ISSUE

Is the employee prohibited by the Code from accepting the scholarship award from NAEMT, a vendor who has a business relationship with her agency?

RELEVANT LAW

42 IAC 1-5-1 Gifts; travel expenses; waivers

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

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

Sec. 1. (a) A state employee or special state appointee, or the spouse or unemancipated child of a state employee or special state appointee, shall not knowingly solicit, accept, or receive any:

- (1) gift;
- (2) favor;
- (3) service;
- (4) entertainment;
- (5) food;
- (6) drink;
- (7) travel expenses; or
- (8) registration fees;

from a person who has a business relationship with the employee's or special state appointee's agency or is seeking to influence an action by the employee or special state appointee in his or her official capacity.

(b) The following shall not be subject to this rule:

(1) Gifts, favors, services, entertainment, food, drink, travel expenses, or registration fees from public agencies or public institutions.

(2) Food or drink consumed at a public meeting to which at least twenty-five (25) individuals are invited. A meeting will be considered public if:

- (A) the event is a reception or other gathering for public officials that is not arranged to solicit government procurement of goods or services;
 - (B) the employee is giving a speech or participating in a presentation in the employee's official capacity; or
 - (C) the meeting has a formal educational program that the employee is attending to assist him or her in performing official duties.
- (3) Mementos or souvenirs of nominal value.
 - (4) Food or drink consumed by an employee during negotiations or other activities related to an Indiana economic development corporation economic development project.
 - (5) Gifts, favors, services, entertainment, food, or drinks from relatives, or a person with whom the employee or special state appointee has an ongoing social relationship, so long as:
 - (A) the gifts or other items of value are not deducted as a business expense; and
 - (B) the gift giver is not seeking to influence an action by an employee or special state appointee in that person's official capacity.
 - (6) Political contributions subject to IC 3-9-2 that are reported in accordance with applicable law.
 - (7) Nominal refreshments offered to a state employee or a special state appointee conducting official state business while the employee or special state appointee is at a workplace of a person who:
 - (A) has a business relationship; or
 - (B) seeks to influence official action;with the employee's or special state appointee's agency.
 - (8) Discount and other promotional programs approved and made available to state employees and special state appointees through the state personnel department or the Indiana department of administration.
- (c) An employee's or special state appointee's state officer or appointing authority may waive application of subsection (a) of this rule in individual cases when consistent with the public interest. The waiver shall:
- (1) be in writing; and
 - (2) identify the following:
 - (A) The employee or special state appointee.
 - (B) The nature and value of the gift.
 - (C) The donor of the gift.
 - (D) Why acceptance of the gift is consistent with the public interest.
- (d) Written waivers must be filed with the commission within thirty (30) days of receipt of the gift. The commission may review the written waivers. An appointing authority or state officer may designate authority to the agency's ethics officer to waive application of this rule on behalf of the appointing authority or state officer. The designation shall be in writing and filed with the commission.
- (e) If a person wishes to reimburse the state for any part or all of the expenses incurred by the state for appearances of a state officer, employee, or special state appointee or their official representatives on behalf of the state, the person shall remit to the treasurer of state any such amounts. The treasurer of the state shall quietus the funds into the general fund.

ANALYSIS

The ethics rule pertaining to gifts, 42 IAC 1-5-1, prohibits a state employee or special state appointee from knowingly soliciting, accepting, or receiving any: 1) gift; 2) favor; 3) service; 4) entertainment; 5) food; 6) drink; 7) travel expenses; or 8) registration fees from a person who has a business relationship with the employee's or appointee's agency or is seeking to influence an action by the employee or appointee in his or her official capacity. The gift rule enumerates eight exceptions to this broad prohibition and also allows an agency's appointing authority to waive application of the rule, subject to certain requirements. The definition of "business relationship" in IC 4-2-6-1(a)(5) includes the dealings a person has with an agency seeking, obtaining, establishing, maintaining, or implementing a license or permit requiring the exercise of judgment or discretion by the agency.

The scholarship is a gift from NAEMT. While the scholarship will be paid directly to Indiana State University, the employee is the intended beneficiary. More specifically, the scholarship will be paid to ISU, but will be credited to the employee's tuition for her pursuit of a Master's Degree in Public Administration.

Because NAEMT has a business relationship with IDHS and there are no exceptions in 42 IAC 1-5-1(b) that would apply to this situation, the employee is prohibited from accepting this scholarship unless IDHS waives the application of the gift rule in accordance with 42 IAC 1-5-1(c).

CONCLUSION

The Commission finds that, absent the issuance of a waiver by IDHS, 42 IAC 1-5-1, the gift rule, prohibits the employee from accepting a scholarship from NAEMT because the entity has a business relationship with her employing agency.