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## TITLE 40 STATE ETHICS COMMISSION

### **Proposed Rule** LSA Document #04-198

#### DIGEST

Adds 40 IAC 2-1-5.5 concerning ethics education. Amends 40 IAC 2-1-6 concerning acceptable gifts, favors, services, entertainment, food, drink, and honoraria. Amends 40 IAC 2-1-7 concerning appearances, activities, and expenses. *NOTE: LSA Document #04-198, printed at 28 IR 987, was resubmitted for publication. Effective 30 days after filing with the secretary of state.*

#### **40 IAC 2-1-5.5**

#### **40 IAC 2-1-6**

#### **40 IAC 2-1-7**

SECTION 1. 40 IAC 2-1-5.5 IS ADDED TO READ AS FOLLOWS:

#### **40 IAC 2-1-5.5 Ethics education**

**Authority:** IC 4-2-6-3

**Affected:** IC 4-2-6

**Sec. 5.5. Each agency's appointing authority shall do the following:**

**(1) Require all new employees to participate in ethics training within six (6) weeks of the employee's starting employment date with the agency.**

**(2) Require all employees to participate in ethics training at least every two (2) years during an employee's tenure with the agency.**

**(3) Maintain documentation to demonstrate employee compliance with subdivisions (1) and (2).**

*(State Ethics Commission; 40 IAC 2-1-5.5)*

SECTION 2. 40 IAC 2-1-6 IS AMENDED TO READ AS FOLLOWS:

#### **40 IAC 2-1-6 Acceptable gifts, favors, services, entertainment, food, drink, and honoraria**

**Authority:** IC 4-2-6-3

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

**Sec. 6. (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 nor shall a donor offer, directly or indirectly, any gift, favor, service, entertainment, food, or drink under circumstances in which it can reasonably be inferred that the thing of value would from a person who has a business relationship with the employee's agency or is seeking to influence the employee to give special consideration to an action by such the employee in his or her official capacity. This section does not prohibit normal gift-giving from relatives of gifts with an aggregate value of less than two hundred fifty dollars (\$250) or political contributions subject to IC 3-9-2 which are reported in accordance with applicable law. In addition, this section does not prohibit contributions which are accepted by an agency in accordance with applicable law. This section may be waived by the state ethics commission for a legitimate public purpose.**

**(b) Without the written approval of the employee's appointing authority or the state officer, an employee shall not accept for personal use any gifts, favors, services, entertainment, food, or drink valued at a total of more than twenty-five dollars (\$25) in a calendar year from a person or business that has a business relationship with the employee's agency. An appointing authority or state officer may designate no more than one (1) person to exercise approval on behalf of the appointing authority or state officer. Such designation shall be in writing and filed with the commission. The following shall not be subject to this section:**

**(1) Gifts, from charitable, benevolent, or religious organizations and favors, services, entertainment, food, or drink from public**

agencies or **public** institutions.

(2) Food or drink consumed at a public meeting to which **at least** twenty-five (25) ~~or more~~ 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. ~~received at public ceremonies or commemorating official business.~~

(4) ~~Invitations or tickets to charitable or political fundraising events if the invitations or tickets are given by the charitable or political entity sponsoring the event. This exception does not apply to a gift of tickets from a person with a business relationship with the employee's agency.~~

(5) ~~(4) Food or drink consumed by an employee or other reasonable courtesies extended to an employee during negotiations or other activities related to an Indiana economic development corporation economic development project.~~

(6) ~~Personal social relationships whereby nominal entertainment expenses are incurred or nominal personal mementos are exchanged on a reciprocal basis;~~ (5) **Gifts, favors, services, entertainment, food, or drinks from relatives**, so long as: such expenses or mementos

(A) the gifts or other items of value are not deducted as a business expense; If a state officer or an appointing authority approves in writing the receipt of a gift subject to this rule, the written approval shall be filed with the commission within thirty (30) days of receipt of the gift, and shall identify the employee, the nature and value of the gift, and the donor of the gift. The commission may review such written approvals and require of the state officer or appointing authority an explanation of the reason for the approval.

(B) the gift giver is not seeking to influence an action by an employee in his or her official capacity.

In cases involving ongoing social relationships, employees should seek a waiver under subsection (b) before accepting a gift.

(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 conducting official state business while he or she is at a workplace of a person who has a business relationship or seeks to influence official action with the employee's agency.

(8) Discount and other promotional programs approved and made available to state employees through the state personnel department or the Indiana department of administration.

(b) An employee's state officer or appointing authority may waive application of subsection (a) in individual cases when consistent with the public interest. The waiver shall be in writing and shall identify the following:

(1) The employee.

(2) The nature and value of the gift.

(3) The donor of the gift.

(4) Why acceptance of the gift is in the public interest.

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.

(c) A person who has a business relationship with an employee's agency shall not provide any:

(1) gifts;

(2) favors;

(3) services;

(4) entertainment;

(5) food; or

(6) drink;

to such employee if the employee would not be permitted to accept the gift, favor, service, entertainment, food, or drink under subsection (a).

(e) ~~If~~ (d) An employee shall not **personally** accept an honorarium for **himself or herself** for anything ~~which~~ **that** may be considered part of the state employee's official duties. **However, a state employee may accept an honorarium in this situation on behalf of the state. The state employee accepting the honorarium shall remit to the treasurer of state any amount received.**

**The treasurer of state shall quietus such funds into the general fund.** A state employee may **personally** accept an honorarium or fee for activities not done in connection with the employee's official duties ~~which and that~~ are prepared on the employee's own time and without the use of state resources. ~~so long as the employee is not participating by reason of~~ **However, in no case can a state employee, provided the employee shall not accept an honorarium from any a person over whom the employee has decision making authority. A state employee may accept reimbursements for travel expenses incurred when the employee is not being paid or reimbursed by the state and when an honorarium is not permitted: who has a business relationship or seeks to influence an official action with the employee's agency.**

**(e) Nothing in this section prohibits contributions to agencies that are made in accordance with applicable law.** (*State Ethics Commission; 40 IAC 2-1-6; filed Mar 10, 1988, 2:00 p.m.: 11 IR 2327; filed Oct 22, 1991, 11:10 a.m.: 15 IR 201; readopted filed Aug 2, 2001, 3:15 p.m.: 24 IR 4227*)

SECTION 3. 40 IAC 2-1-7 IS AMENDED TO READ AS FOLLOWS:

#### **40 IAC 2-1-7 Appearances; activities; expenses**

**Authority: IC 4-2-6-3**

**Affected: IC 4-2-6**

Sec. 7. (a) A state officer or employee shall not solicit, ~~or accept, or receive payment from any person~~ for travel expenses, including, but not limited to, any lodging, ~~travel expenses;~~ **transportation,** or registration fees, food; ~~or drink for appearance at any meeting, convention, conference, seminar, or similar activity for himself or herself or the individual's spouse or unemancipated child under circumstances in which it can reasonably be inferred that the thing of value would influence the attending events concerning state officer business from a person who has a business relationship with the employee's agency or is seeking to influence an action by an employee in his or her official capacity.~~ **This section does not prohibit contributions which are accepted by an agency in accordance with applicable law.**

(b) ~~Without the written approval of the~~ **An employee's appointing authority or the state officer** ~~an employee shall not accept payment of expenses, including but not limited to lodging, travel expense, registration fees, food, or drink for attending events concerning state business from a person who has a business relationship with the employee's agency. An appointing authority or state officer may designate no more than one (1) person to exercise approval on behalf of the appointing authority or state officer. Such designation may waive application of subsection (a) in individual cases when consistent with the public interest. The waiver shall be in writing and filed with the commission.~~

(c) ~~If a state officer or an appointing authority approves in writing the payment of expenses subject to this rule, the written approval shall identify the following:~~

- (1) The employee.**
- (2) The setting of the event.**
- (3) The amount and payer of the expenses.**
- (4) Why payment of the expenses is in the public interest.**

**The written waiver shall be filed with the commission the earlier of within thirty (30) days of the event or receipt of the expenses, whichever comes first, and shall identify the employee, the amount of the expenses, and the setting of the event.** The commission may review ~~such the written approvals and require of the waivers.~~ A state officer or appointing authority ~~an explanation of the reason for the approval:~~ **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.**

(c) **A person who has a business relationship with an employee's agency shall not pay the employee's travel expenses, including, but not limited to, any lodging, transportation, or registration fees, if the employee would not be permitted to accept the payment under subsection (a) or (b).**

**(d) Nothing in this section prohibits contributions to agencies that are made in accordance with applicable law.**

~~(d)~~ (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 or employee or their official representatives on behalf of the state, such the person is requested to remit to the treasurer of the state any such amounts. The treasurer of the state shall quietus such the funds into the general fund.** (*State Ethics Commission; 40 IAC 2-1-7; filed Mar 10, 1988, 2:00 p.m.: 11 IR 2328; filed Oct 22, 1991, 11:10 a.m.: 15 IR 202; readopted filed Aug 2, 2001,*

3:15 p.m.: 24 IR 4227)

***Notice of Public Hearing***

*Under IC 4-22-2-24, notice is hereby given that on April 26, 2005 at 10:00 a.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room 6, Indianapolis, Indiana the State Ethics Commission will hold a public hearing on a proposed new rule and amendments concerning the Indiana code of ethics for the conduct of state business. Copies of these rules are now on file at the Indiana Government Center-South, 402 West Washington Street, W189 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.*

David O. Thomas  
Acting Director  
State Ethics Commission