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TITLE 42 OFFICE OF THE INSPECTOR GENERAL

Proposed Rule

LSA Document #05-124

DIGEST

Adds 42 IAC to establish the Indiana code of ethics for the conduct of state business. Effective 30 days after filing with the Secretary of State.

42 IAC

SECTION 1. 42 IAC IS ADDED TO READ AS FOLLOWS:

TITLE 42 OFFICE OF THE INSPECTOR GENERAL

ARTICLE 1. INDIANA CODE OF ETHICS

Rule 1. Purpose

42 IAC 1-1-1 Purpose Authority: IC 4-2-7-3; IC 4-2-7-5 Affected: IC 4-2-7

Sec. 1. (a) This section:

(1) is intended as a guide to those under the jurisdiction of the state ethics commission;

(2) is not a basis for sanctions by the state ethics commission;

(3) is aspirational in character; and

(4) represents the objective toward which every public servant should strive.

42 IAC 1-3 through 42 IAC 1-8 are mandatory in character and state minimum levels of conduct below which those under the jurisdiction of the state ethics commission may not fall without being subject to sanctions by the state ethics commission.

(b) The purpose of this article is to set ethical standards for:

(1) the official conduct of the current and former officers, employees, and special state appointees of the executive and administrative branches of state government; and

(2) persons who have or had a business relationship with an agency;

so that the general public will have confidence that the conduct of state business is always conducive to the public good. This article promotes the principle that public office is a public trust where government is based upon the consent of its citizens who are entitled to have complete confidence in the integrity of their government. Thus, the business of the state will be conducted in such a manner as to reassure the citizens of Indiana that the character and conduct of its officials, employees, and special state employees are above reproach.

(c) The following are goals toward which those under the jurisdiction of the state ethics commission should strive:

(1) Duties should be carried out impartially.

(2) Decisions and policy should not be made outside of proper channels of state government.

(3) Public office should not be used for private gain.

(4) Public confidence in the integrity of government is essential to the exercise of good government.

(5) Actions, transactions, or involvements should not be performed or engaged in which have the potential to become a conflict of interest.

(d) This article is not meant to unduly restrict or limit the behavior of the officers, employees, and special state appointees

of this state during the time when they are not on duty. Each state officer, employee, and special state appointee retains lawful rights and privileges as a private citizen to interests of a personal or private financial nature. These rights and privileges will be honored by the commission to the extent that they are compatible with an individual's public office or employment. (Office of the Inspector General; 42 IAC 1-1-1)

Rule 2. Definitions

42 IAC 1-2-1 Applicability Authority: IC 4-2-7-3; IC 4-2-7-5 Affected: IC 4-2-6-1; IC 4-2-6-2.5; IC 4-13-1-4

Sec. 1. The definitions in IC 4-2-6-1 and this rule apply throughout this article. (Office of the Inspector General; 42 IAC 1-2-1)

42 IAC 1-2-2 "Ethics" defined Authority: IC 4-2-7-3; IC 4-2-7-5 Affected: IC 4-2-6-2.5

Sec. 2. "Ethics" means the standards of official conduct for those persons listed in IC 4-2-6-2.5. (Office of the Inspector General; 42 IAC 1-2-2)

42 IAC 1-2-3 "Honorarium" defined Authority: IC 4-2-7-3; IC 4-2-7-5 Affected: IC 4-2-7

Sec. 3. "Honorarium" means a payment of money for:
(1) an appearance;
(2) a speech; or
(3) an article;
ut does not include payment or reimbursement of travel

but does not include payment or reimbursement of travel expenses for a state employee. (Office of the Inspector General; 42 IAC 1-2-3)

42 IAC 1-2-4 "Immediate family" defined Authority IC 4-2-7-3; IC 4-2-7-5 Affected: IC 4-2-6-9

Sec. 4. "Immediate family" means a person's: (1) spouse; (2) partner; (3) housemate; or (4) unemancipated dependent. (Office of the Inspector General; 42 IAC 1-2-4)

42 IAC 1-2-5 "Inspector general" defined Authority: IC 4-2-7-3; IC 4-2-7-5 Affected: IC 4-2-7-2

Sec. 5. "Inspector general" means the office of the inspector general as established by IC 4-2-7-2. (Office of the Inspector General; 42 IAC 1-2-5)

42 IAC 1-2-6 "Public official" defined Authority: IC 4-2-7-3; IC 4-2-7-5 Affected: IC 4-2-7

Sec. 6. "Public official" means anyone who holds a public office, elected or appointed, at the federal, state, county, or local

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level. (Office of the Inspector General; 42 IAC 1-2-6)
42 IAC 1-2-7 "Relative" defined
  Authority: IC 4-2-7-3; IC 4-2-7-5
  Affected: IC 4-15-7-1
  Sec. 7. "Relative" means any person related as:
  (1) father;
  (2) mother;
  (3) stepfather;
  (4) stepmother;
  (5) brother;
  (6) sister;
  (7) stepbrother;
  (8) stepsister;
  (9) uncle;
  (10) aunt;
  (11) husband;
  (12) wife;
  (13) son;
  (14) daughter;
  (15) stepchild;
  (16) son-in-law;
  (17) daughter-in-law;
  (18) grandchild;
  (19) stepgrandchild;
  (20) niece; or
  (21) nephew.
(Office of the Inspector General; 42 IAC 1-2-7)
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42 IAC 1-2-8 "Travel expenses" defined Authority: IC 4-2-7-3; IC 4-2-7-5 Affected: IC 4-13-1-4

Sec. 8. "Travel expenses" means transportation, lodging, and meals. The term includes actual travel expenses or an amount approximating those expenses that would be allowed by state travel policies and procedures authorized under IC 4-13-1-4(7). (Office of the Inspector General; 42 IAC 1-2-8)

Rule 3. Ethics Education

42 IAC 1-3-1 Training requirements Authority: IC 4-2-7-3; IC 4-2-7-5 Affected: IC 4-2-7-1

Sec. 1. (a) All state officers, employees, special state appointees, and persons who have a business relationship with an agency shall be properly trained in the code of ethics as described in this article.

(b) 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 an employee's compliance with subdivisions (1) and (2). (Office of the Inspector General; 42 IAC 1-3-1)

Rule 4. Gifts; Travel Expenses; Waivers

42 IAC 1-4-1 State employees and special state appointees Authority: IC 4-2-7-3; IC 4-2-7-5 Affected: IC 3-9-2; IC 4-2-6

Sec. 1. 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; or

(6) drink;

from a person who has a business relationship with the employee's agency or is seeking to influence an action by the employee in his or her official capacity. (Office of the Inspector General; 42 IAC 1-4-1)

42 IAC 1-4-2 Exceptions Authority: IC 4-2-7-3; IC 4-2-7-5 Affected: IC 3-9-2; IC 4-2-6

Sec. 2. The following shall not be subject to this rule:

(1) Gifts, 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) 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, 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 in his or her official capacity.

(6) In cases involving ongoing social relationships, employees should seek a waiver under section 3 of this rule before accepting a gift.

(7) Political contributions subject to IC 3-9-2 that are reported in accordance with applicable law.

(8) Nominal refreshments offered to a state employee conducting official state business while he or she is at a workplace of a person who:

(A) has a business relationship; or

(B) seeks to influence official action;

with the employee's agency.

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

(Office of the Inspector General; 42 IAC 1-4-2)

42 IAC 1-4-3 Waivers Authority: IC 4-2-7-3; IC 4-2-7-5 Affected: IC 4-2-7

Sec. 3. (a) An employee's state officer or appointing authority may waive application of section 1 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.
- (B) The nature and value of the gift.
- (C) The donor of the gift.
- (D) Why acceptance of the gift is in the public interest.

(b) 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. (Office of the Inspector General; 42 IAC 1-4-3)

42 IAC 1-4-4 Persons with a business relationship with an agency Authority: IC 4-2-7-3; IC 4-2-7-5 Affected: IC 4-2-7-3

Sec. 4. (a) 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 this rule.

(b) 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 section 1 of this rule. (Office of the Inspector General; 42 IAC 1-4-4)

42 IAC 1-4-5 Honoraria Authority: IC 4-2-7-3; IC 4-2-7-5 Affected: IC 4-2-7

Sec. 5. (a) An employee shall not personally accept an honorarium for himself or herself for anything 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 and that are prepared on the employee's own time and without the use of state resources. However, in no case may a state employee accept an honorarium from a person who has a business relationship or seeks to influence an official action with the employee's agency.

(b) Nothing in this section prohibits contributions to agencies that are made in accordance with applicable law. (Office of the Inspector General; 42 IAC 1-4-5)

42 IAC 1-4-6 Travel expenses; waivers Authority: IC 4-2-7-3; IC 4-2-7-5 Affected: IC 4-2-7

Sec. 6. (a) A state officer or employee shall not solicit, accept, or receive payment for travel expenses, including, but not limited to, any lodging, transportation, or registration fees, for attending events concerning state business from a person who:

(1) has a business relationship with the employee's agency; or

(2) is seeking to influence an action by an employee in his or her official capacity.

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

(1) be in writing; and

(2) identify the following:

(A) The employee.

(B) The setting of the event.

(C) The amount and payer of the expenses.

(D) Why payment of the expenses is in the public interest.

(c) The written waiver shall be filed with the commission the earlier of:

(1) within thirty (30) days of the event; or

(2) receipt of the expenses.

The commission may review the written waivers. A state officer or appointing authority 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.

(d) 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, the person is requested to remit to the treasurer of state any such amounts. The treasurer of the state shall quietus the funds into the general fund.

(e) Nothing in this section prohibits contributions to agencies that are made in accordance with applicable law. (Office of the Inspector General; 42 IAC 1-4-6)

Rule 5. Political Activity

42 IAC 1-5-1 Political activity Authority: IC 4-2-7-3; IC 4-2-7-5 Affected: IC 3-9-2; IC 4-2-6-1

Sec. 1. (a) A state employee or special state appointee shall not engage in political activity including solicitation of political contributions from:

(1) another employee; 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 heads of all agencies 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. (Office of the Inspector General; 42 IAC 1-5-1)

Rule 6. Conflict of Interest

42 IAC 1-6-1 Conflict of interest; prohibitions Authority: IC 4-2-7-3; IC 4-2-7-5 Affected: IC 4-2-7-3

Sec. 1. A state officer, employee, or special state appointee shall not engage in the following conduct:

(1) Solicit or accept compensation for the performance of official duties other than provided for by law.

(2) Pay or offer to pay any compensation for the performance of official duties, other than in performing duties in making payments to other state officers, employees, or special state appointees as provided for by law.

(3) Benefit from, or permit any other person to benefit from, information of a confidential nature except as permitted or required by law.

(4) Divulge information of a confidential nature, except as permitted by law.

(5) Make use of state materials, funds, property, personnel, facilities, or equipment for any purpose other than for official state business unless the use is expressly permitted by a general written agency, departmental, or institutional policy or regulation.

(6) Engage in, or direct others to engage in, work other than the performance of official duties during working hours, except as permitted by general written agency, departmental, or institutional policy or regulation. (Office of the Inspector General; 42 IAC 1-6-1)

Rule 7. Financial Disclosure to the State Ethics Commission

42 IAC 1-7-1 Persons required to file Authority: IC 4-2-7-3; IC 4-2-7-5

Affected: IC 4-2-6-8

Sec. 1. (a) Under IC 4-2-6-8(a)(6), the following persons are required to file a written financial disclosure statement: (1) Members of the alcohol and tobacco commission.

(2) Members of the worker's compensation board of Indiana.

(3) Members of the Indiana utility regulatory commission.

(4) Any person with final purchasing authority within the commission for higher education for the state of Indiana and the Indiana department of transportation.

(b) By December 31 of each year, the agency's appointing authority shall submit to the commission the name, mailing address, and business e-mail address of the following persons for the reporting year:

(1) The agency's appointing authority and any former appointing authority.

(2) The agency's ethics officer.

(3) The director or former director of each division of the Indiana department of administration.

(4) Any purchasing agent or purchasing agent within the procurement division of the Indiana department of administration.

(5) Any agency employee or former employee within the commission for higher education for the state of Indiana or the Indiana department of transportation with final purchasing authority.

(Office of the Inspector General; 42 IAC 1-7-1)

Rule 8. Advisory Opinions Before the State Ethics Commission

42 IAC 1-8-1 Procedures Authority: IC 4-2-7-3; IC 4-2-7-5 Affected: IC 4-2-6; IC 4-2-6-2.5

Sec. 1. (a) The commission may render advisory opinions with respect to the interpretation and applicability of IC 4-2-6, this title, or any other statute or rule establishing standards of official conduct of all persons over whom the commission has jurisdiction under IC 4-2-6-2.5.

(b) An advisory opinion may be requested by a current or former state officer, employee, special state appointee, or a person who has or had a business relationship with an agency.

(c) Requests for advisory opinions shall:

(1) be in writing and signed by the person making the request;

(2) state the official employment position or status of the person making the request;

(3) state all relevant and material facts necessary for the commission to render an informed decision; and

(4) be based upon actual facts and circumstances as they exist and may not be based on hypothetical situations.

Failure to follow this section may render a request or an advisory opinion void.

(d) A request for an advisory opinion shall be considered by the commission at the next available monthly meeting of the

commission. Notice shall be sent to the person requesting the advisory opinion including the date, time, and location of the meeting.

(e) A request for an advisory opinion shall be submitted to the director not later than seven (7) business days before the monthly meeting at which the request is to be considered.

(f) The commission shall decide the matter in a public meeting.

(g) A final decision on the request for an advisory opinion shall be rendered upon a vote of a majority of commission members present.

(h) Following the commission's decision, the director shall prepare the advisory opinion in writing, and a copy shall be forwarded to the person requesting the advisory opinion. A copy may also be forwarded to the ethics officer for an agency involved or affected by the advisory opinion.

(i) Any advisory opinion rendered by the commission, until amended or revoked, is binding on the commission in any subsequent allegations concerning the person who requested the advisory opinion and who acted on it in good faith unless material facts were omitted or misstated to the commission. The advisory opinion is not binding upon the commission concerning any other person or fact situation. (Office of the Inspector General; 42 IAC 1-8-1)

42 IAC 1-8-2 Appeal from advisory opinions Authority: IC 4-2-7-3; IC 4-2-7-5 Affected: IC 4-2-6-4

Sec. 2. (a) The person who made an inquiry and any person directly affected by the commission's advisory opinion may appeal to the commission for reconsideration or clarification of the advisory opinion.

(b) Any such appeal shall be made, in writing, to the commission within fifteen (15) days of receipt of the advisory opinion letter. (Office of the Inspector General; 42 IAC 1-8-2)

42 IAC 1-8-3 Signed by director Authority: IC 4-2-7-3; IC 4-2-7-5 Affected: IC 4-2-6-4

Sec. 3. All advisory opinions rendered by the commission shall be signed by the director or a designee of the director or the commission. (Office of the Inspector General; 42 IAC 1-8-3)

42 IAC 1-8-4 Others may provide information Authority: IC 4-2-7-3; IC 4-2-7-5 Affected: IC 4-2-6-4

Sec. 4. The commission may permit or request any person to submit memoranda, briefs, or other relevant material or to provide oral information relevant to its determination. (Office of the Inspector General; 42 IAC 1-8-4)

Rule 9. Informal Advisory Opinions

42 IAC 1-9-1 Procedures Authority: IC 4-2-7-3; IC 4-2-7-5 Affected: IC 5-14-3-4

Sec. 1. (a) The inspector general or the inspector general's designee shall have the authority to render informal advisory opinions. Informal advisory opinions are not binding on the commission. Nevertheless, the commission shall consider that a state officer, employee, or special state appointee, a former state officer, employee, or special state appointee, a former state officer, employee, or special state appointee, a general advisory acted in good faith if it is determined that the person committed a violation after receiving advice and the alleged violation is directly related to the advice rendered.

(b) Informal advisory opinions are expressions of opinion that are communicated for the purpose of deliberation and decision making. The information and advice contained in an informal advisory opinion:

(1) are specific to the person who requests the opinion and the facts presented; and

(2) shall be considered to be confidential under IC 5-14-3-4(b)(6).

(Office of the Inspector General; 42 IAC 1-9-1)

Rule 10. Adjudication Proceedings Before the State Ethics Commission

42 IAC 1-10-1 Applicable statutes and rules Authority: IC 4-2-7-3; IC 4-2-7-5 Affected: IC 4-21.5; IC 4-2-6; IC 5-14-1.5

Sec. l. All proceedings before the commission shall be governed by: (1) IC 4-2-6; (2) IC 4-21.5; (3) IC 5-14-1.5; and

(4) any applicable rule adopted by the commission. On any procedural matter not dealt with by the statutes and rules in subdivisions (1) through (4), the commission shall be guided to the extent practicable by the Indiana Rules of Trial Procedure. (Office of the Inspector General; 42 IAC 1-10-1)

Rule 11. General Procedural Provisions of the State Ethics Commission

42 IAC 1-11-1 Notice of meetings and agendas Authority: IC 4-2-5-7 Affected: IC 5-14-1.5

Sec. 1. (a) The commission shall give notice of meetings and emergency meetings in conformance with IC 5-14-1.5.

(b) The director shall prepare an agenda listing specific items to be considered. The commission:

(1) shall adopt an agenda at the beginning of its meeting; and

(2) may make changes in the agenda for good cause.

(c) The director or the director's designee shall sign on behalf of the commission notices of meetings. (Office of the Inspector General; 42 IAC 1-11-1)

42 IAC 1-11-2 Rulemaking Authority: IC 4-2-7-3; IC 4-2-7-5 Affected: IC 4-22

Sec. 2. Proceedings held for the adoption, amendment, or repeal of a commission rule shall be conducted according to the provisions of IC 4-22. (Office of the Inspector General; 42 IAC 1-11-2)

42 IAC 1-11-3 Meeting by telephone and other communications media technology Authority: IC 4-2-7-3; IC 4-2-7-5 Affected: IC 5-14-1.5-4

Sec. 3. (a) The commission may utilize telephone conference calls, speaker phone, and other communications media technology as it becomes available to conduct commission business when necessary. However, the commission's view is that the public interest is best served by having public hearings held in person, rather than by the use of communication media technology.

(b) A member of the commission may participate in a meeting of the commission by using a means of communication that permits all members:

(1) participating in the meeting; and

(2) of the public physically present at the place where the meeting is conducted;

to simultaneously communicate with each other during the meeting.

(c) A member who participates in the meeting under subsection (b) is considered to be present at the meeting.

(d) The memoranda of the meeting prepared under IC 5-14-1.5-4 must also state the name of each member who:

(1) was physically present at the place where the meeting was conducted;

(2) participated in the meeting by using a means of communication described in subsection (b); and

(3) was absent.

(e) A meeting conducted under this section does not violate IC 5-14-1.5. (Office of the Inspector General; 42 IAC 1-11-3)

42 IAC 1-11-4 Certification of documents and records Authority: IC 4-2-7-3; IC 4-2-7-5 Affected: IC 4-14-3

Sec. 4. The director is authorized to copy and certify all documents and records of the commission that may be released in accordance with public records laws. (Office of the Inspector General; 42 IAC 1-11-4)

Rule 12. Other Sources

42 IAC 1-12-1 Other sources Authority: IC 4-2-7-3; IC 4-2-7-5 Affected: IC 4-2-6-4

Sec. 1. An appointing authority of an agency or a state officer may adopt policies, rules, or regulations concerning the subject matter of this rule provided that the policies, rules, or regulations are at least as strict as this rule. All such policies, rules, or regulations shall be filed with the commission, but failure to file does not affect the validity of such policies, rules, or regulations as applied to the agency's or state officer's employees. (Office of the Inspector General; 42 IAC 1-12-1)

Rule 13. Severability

42 IAC 1-13-1 Severability Authority: IC 4-2-7-3; IC 4-2-7-5 Affected: IC 4-2-7

Sec. 1. If any provision of this article or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application. (Office of the Inspector General; 42 IAC 1-13-1)

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on September 22, 2005 at 9:00 a.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room A, Indianapolis, Indiana the Office of the Inspector General will hold a public hearing on proposed new rules relating to the code of ethics for the conduct of state business.

The Office of the Inspector General is required to adopt these rules by Indiana Code 4-2-7-5. There is no economic impact on persons subject to these rules.

Copies of these rules are now on file at the Office of the Inspector General, 150 West Market Street, Suite 414 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

David O. Thomas Inspector General Office of the Inspector General