

IC 4-2-6-17 Use of state property
42 IAC 1-5-13 Ghost employment
42 IAC 1-5-1 Gifts

The Chief of Staff/Ethics Officer for the Office of the Lieutenant Governor and Indiana Destination Development Corporation (IDDC) sought advice on behalf of the IDDC regarding a proposal for IDDC employees and resources to carry out functions of the Indiana Destination Development Foundation. The Commission finds that the IDDC employee activities performed on behalf of the Foundation would not be contrary to the Code of Ethics.

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The Indiana State Ethics Commission (Commission) issues the following formal advisory opinion concerning the State Code of Ethics (Code) pursuant to IC 4-2-6-4(b)(1)(A)(ii). The following opinion is based exclusively on sworn testimony and documents presented by the requestor, who is the Agency Ethics Officer.

BACKGROUND

The Chief of Staff and Ethics Officer (Chief of Staff) for the Office of the Lieutenant Governor, who also serves as Ethics Officer for the Indiana Destination Development Corporation (IDDC), requested a formal advisory opinion on behalf of IDDC.

The General Assembly established IDDC as a quasi-governmental entity under [IC 5-33-3](#). IDDC is tasked with carrying out destination development functions for the State and assisting in the development and promotion of Indiana’s tourist resources, facilities, attractions and activities. [IC 5-33-3-3](#) outlines IDDC duties and authorizes IDDC to “(r)eeive and expend funds, grants, gifts, and contributions of money, property, labor, and other things of value from public and private sources...”. Further, IDDC may “accept and expend such moneys as may be received from any source, including income from [IDDC’s] operations, for effectuating its corporate purposes”.

Pursuant to [IC 5-33-5-5](#), IDDC’s Board of Directors and IDDC employees are under the jurisdiction of the Commission and are subject to Code rules that apply to the executive branch of state government.

The Indiana Destination Development Foundation, Inc. (Foundation) is an Indiana nonprofit corporation exempt from federal taxation pursuant to Section 501(c)(3) of the Internal Revenue Code of 1986, as amended. The Foundation is further classified as a Code Section 509(a)(3) supporting organization that is organized and operated exclusively for the benefit of IDDC. The Lieutenant Governor, on behalf of IDDC, appoints the entire Foundation Board of Directors. The Foundation primarily supports IDDC through fundraising from the corporate and philanthropic community and making grants to IDDC.

Because the Foundation does not have its own staff, IDDC would like to leverage its employees to help support the Foundation in a manner that complies with Code rules and requirements. As supporting documentation for the IDDC’s formal advisory opinion request, which the Commission first considered at its June 9, 2022 meeting, IDDC provided a “Voluntary Services Policy” (Policy) that outlines the terms under which IDDC employees may perform services for

the Foundation as part of their official IDDC duties. Following the Commission's discussion of the Policy, the Commission tabled consideration of the formal advisory opinion request to a future meeting to permit IDDC to address the Commission's questions regarding the Policy.

Following the Commission's June 9, 2022 meeting and in support of the Commission's continued consideration of IDDC's formal advisory opinion request, IDDC submitted a revised draft policy titled "Standards for Indiana Destination Development Corporation Employees Who Perform Work on Behalf of the Foundation" (Revised Policy).

IDDC has also provided a letter of support and explanation from Indiana legislators who authored and sponsored the 2019 legislation creating IDDC. In this letter, the legislators explain that creation of the Foundation for fundraising is critical in assisting IDDC to accomplish its intended mission, and the legislators intended to allow IDDC to create a Foundation in their 2019 legislation. The letter further indicates that the legislators plan to introduce legislation in 2023 to specifically allow IDDC to create the Foundation.

Finally, IDDC provided the Commission with a Conflict of Interest form that the agency intends to implement as referenced in the Revised Policy outlining IDDC employees' work on behalf of the Foundation.

ISSUES

1. Is it permissible under the Code for IDDC to use state resources, including IDDC employees and equipment, to provide support in carrying out Foundation functions? Are there any limitations on such activities by IDDC employees under the Code?
2. Does the IDDC Revised Policy adequately address any necessary ethical considerations for the IDDC employees performing work on behalf of the Foundation?

RELEVANT LAW

IC 4-2-6-17 (42 IAC 1-5-12)

Use of state property for other than official business; exceptions; violations

Sec. 17. (a) Subject to IC 4-2-7-5, a state officer, employee or special state appointee may not use state materials, funds, property, personnel, facilities or equipment for purposes other than for official state business unless the use is expressly permitted by a general written agency, departmental or institutional policy or regulation that has been approved by the commission. The commission may withhold approval of a policy or rule that violates the intent of Indiana law or the code of ethics, even if Indiana law or the code of ethics does not explicitly prohibit that policy or rule.

(b) An individual who violates this rule is subject to action under IC 4-2-6-12.

42 IAC 1-5-13

Ghost employment

Sec. 13. A state officer, employee, or special state appointee shall not 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.

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 Chief of Staff's request for a formal advisory opinion invokes consideration of the provisions of the Code pertaining to Use of State Property, Ghost Employment and Gifts. The application of each provision to IDDC employees is analyzed below.

A. Use of State Property and Ghost Employment

IC 4-2-6-17 (42 IAC 1-5-12), the use of state property rule, prohibits a state officer, employee or special state appointee from using state materials, funds, property, personnel, facilities or equipment for purposes other than official state business unless the use is expressly permitted by a general written agency, departmental or institutional policy or regulation that the Commission has approved.

Likewise, 42 IAC 1-5-13, the ghost employment rule, prohibits a state officer, employee or special state appointee from engaging in, or directing 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.

If performing certain work for the Foundation is part of an employee's official duties, then the work would not implicate either the use of state property or ghost employment rules. If

performing certain work for the Foundation is not part of an employee's official duties, then it would implicate these rules.

Based on the information provided, the Foundation was organized and operated exclusively for the benefit of IDDC, primarily through fundraising from private sector sources and using those funds to provide grant funding to IDDC. Further, IDDC's Revised Policy identifies the terms under which IDDC employees can provide services to the Foundation as part of the IDDC employees' official duties.

IDDC's Revised Policy designates specific IDDC staff as authorized employees and outlines their respective responsibilities with respect to work performed as part of their official state duties on behalf of the Foundation. Because IDDC has defined the work authorized employees are to perform on behalf of the Foundation as part of their official state duties, these activities do not violate the Code's use of state property and ghost employment rules.

B. Gifts Rule

The Gifts rule prohibits state employees from knowingly soliciting or accepting any gift, favor, service, entertainment, food, drink, travel expenses or registration fees from:

- 1) a person who has a business relationship with the employee's agency; or
- 2) a person who is seeking to influence an action by the employee in his or her official capacity.

Based on the information provided, the Foundation's primary function involves fundraising from private sector sources and using those funds to provide grant funding to IDDC. Pursuant to prior Formal Advisory Opinions issued by the Commission, the Gifts rule does not prohibit an agency from accepting gifts. As a result, so long as gifts are made for the benefit of the Foundation or IDDC as an agency and not for any individual employees or appointees, IDDC employees could accept donations to the Foundation without violating the Gifts rule; however, the Gifts rule would prohibit IDDC employees from soliciting donations from persons with a business relationship with IDDC or persons who are seeking to influence an action by an IDDC employee in his or her official capacity.

The IDDC Revised Policy identifies several positions as Authorized Employees who can engage in fundraising activities on behalf of the Foundation. As such, the work would implicate the Gifts rule, and IDDC employees are prohibited from soliciting donations from persons with a business relationship with IDDC or persons who are seeking to influence an action by an IDDC employee in his or her official capacity. The Revised Policy specifically prohibits Authorized Employees from soliciting donations from anyone who has a business relationship with IDDC.

CONCLUSION

The Commission finds that IDDC filed the agency's Revised Policy with the Commission pursuant to the requirements of 42 IAC 1-6-1. The Commission further finds that, to the extent that IDDC employees' work on behalf of the Foundation is performed as part of the employees'

official state duties as documented in the IDDC Revised Policy, IDDC employee activities performed on behalf of the Foundation do not violate the use of state property or ghost employment provisions in the Code. Finally, the Commission finds that the Revised Policy is at least as strict as the Code, and that IDDC employees continue to be subject to the Code's provisions, such as the requirements under the Gifts rule.

Respectfully Submitted,

Sean Gorman
Ethics Director