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An Indiana State Police Trooper sought advice regarding outside employment providing paid political consulting. SEC was unable to approve the Trooper's outside employment due to potential conflicts of interests.

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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). The following opinion is based exclusively on sworn testimony and documents presented by the requestor.

BACKGROUND

The Commander and Ethics Officer in the Office of Professional Standards for the Indiana State Police (ISP) is requesting a Formal Advisory Opinion on behalf of a State Trooper (Trooper) related to his non-department employment as a political consultant. The Trooper serves in the Enforcement Division at ISP's Lafayette District and patrols roads and performs other trooper responsibilities throughout this district. This district includes eight counties, and the Trooper works the north zone of the district, which includes Tippecanoe, Clinton, White and Carroll counties.

On February 5, 2020, the Trooper submitted a Non-Department Employment (NDE) request through his chain of command. In his request, the Trooper stated that he had created Fairway Consulting, LLC and requested permission to serve as a paid political consultant. The request was forwarded from an ISP Lieutenant Colonel to the Ethics Officer for review as ISP's Ethics Officer.

In his memo accompanying his NDE request, the Trooper provided that over the past couple of years, he has been increasingly active in his community. His activities have involved community service and volunteer efforts, relationship and goodwill cultivation and local politics. The Trooper recently was asked to provide community insight to local political candidates as it relates to producing social media content, navigating local nuances (knowing the ins and outs of the community and the needs of that community) and providing other community outreach initiatives designed to foster cohesive relationships between the public and political candidates. The Trooper provided he could help educate or connect candidates to experts when they have limited or no knowledge of a certain community or communities within the county in which they are running for office. The Trooper intends to engage in the political process during his off-duty

time by providing community insight through Fairway Consulting, LLC. He provided that he set up the LLC so that he could keep his ISP duties and his consulting services separate.

The Trooper intends to provide support to local candidates in their campaigns, specifically in helping them engage with the media and prepare for local speaking engagements. He would assist in setting up meetings with community members, making phone calls and organizing groups to come together for door to door campaigning for the candidate. He also expects to provide other support and assistance in the daily aspects of the campaign.

The Trooper noted that he would receive “modest” compensation for his consulting services to local politicians and community leaders.

The Ethics Officer requested a Formal Advisory Opinion on behalf of the Trooper regarding whether he can pursue the opportunity to engage in local politics as described above through his LLC while maintaining his position at ISP.

ISSUE

- 1) Would the Trooper’s outside employment as a political consultant through Fairway Consulting, LLC create any conflicts of interests for him under the Code?
- 2) What other ethics issues, if any, arise for the Trooper given his position at ISP and his simultaneous outside employment as a political consultant?

RELEVANT LAW

42 IAC 1-5-4 Political activity

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

Affected: IC 3-9-2; IC 4-2-6-1

Sec. 4. (a) A state employee or special state appointee shall not engage in political activity including solicitation of political contributions from:

- (1) another employee or special state appointee; 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 appointing authority of an agency 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.

42 IAC 1-5-5 Outside employment

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

Affected: IC 4-2-6-5.5; IC 4-2-7

Sec. 5. Outside employment restrictions are set forth in IC 4-2-6-5.5.

IC 4-2-6-5.5

Conflict of interest; advisory opinion by commission

Sec. 5.5. (a) A current state officer, employee, or special state appointee may not knowingly do any of the following:

(1) Accept other employment involving compensation of substantial value if the responsibilities of that employment are inherently incompatible with the responsibilities of public office or require the individual's recusal from matters so central or critical to the performance of the individual's official duties that the individual's ability to perform those duties would be materially impaired.

(2) Accept employment or engage in business or professional activity that would require the individual to disclose confidential information that was gained in the course of state employment.

(3) Use or attempt to use the individual's official position to secure unwarranted privileges or exemptions that are:

(A) of substantial value; and

(B) not properly available to similarly situated individuals outside state government.

(b) A written advisory opinion issued by the commission stating that an individual's outside employment does not violate subsection (a)(1) or (a)(2) is conclusive proof that the individual's outside employment does not violate subsection (a)(1) or (a)(2).

42 IAC 1-5-6 Conflicts of interest; decisions and voting

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

Affected: IC 4-2-6-9; IC 4-2-7

Sec. 6. Decision and voting restrictions are set forth in IC 4-2-6-9.

IC 4-2-6-9

Conflict of economic interests; commission advisory opinions; disclosure statement; written determinations

Sec. 9. (a) A state officer, an employee, or a special state appointee may not participate in any decision or vote, or matter relating to that decision or vote, if the state officer, employee, or special state appointee has knowledge that any of the following has a financial interest in the outcome of the matter:

(1) The state officer, employee, or special state appointee.

(2) A member of the immediate family of the state officer, employee, or special state appointee.

(3) A business organization in which the state officer, employee, or special state appointee is serving as an officer, a director, a member, a trustee, a partner, or an employee.

- (4) Any person or organization with whom the state officer, employee, or special state appointee is negotiating or has an arrangement concerning prospective employment.
- (b) A state officer, an employee, or a special state appointee who identifies a potential conflict of interest shall notify the person's appointing authority and ethics officer in writing and do either of the following:
- (1) Seek an advisory opinion from the commission by filing a written description detailing the nature and circumstances of the particular matter and making full disclosure of any related financial interest in the matter. The commission shall:
 - (A) with the approval of the appointing authority, assign the particular matter to another person and implement all necessary procedures to screen the state officer, employee, or special state appointee seeking an advisory opinion from involvement in the matter; or
 - (B) make a written determination that the interest is not so substantial that the commission considers it likely to affect the integrity of the services that the state expects from the state officer, employee, or special state appointee.
 - (2) File a written disclosure statement with the commission that:
 - (A) details the conflict of interest;
 - (B) describes and affirms the implementation of a screen established by the ethics officer;
 - (C) is signed by both:
 - (i) the state officer, employee, or special state appointee who identifies the potential conflict of interest; and
 - (ii) the agency ethics officer;
 - (D) includes a copy of the disclosure provided to the appointing authority; and
 - (E) is filed not later than seven (7) days after the conduct that gives rise to the conflict.

A written disclosure filed under this subdivision shall be posted on the inspector general's Internet web site.

- (c) A written determination under subsection (b)(1)(B) constitutes conclusive proof that it is not a violation for the state officer, employee, or special state appointee who sought an advisory opinion under this section to participate in the particular matter. A written determination under subsection (b)(1)(B) shall be filed with the appointing authority.

IC 4-2-6-17

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

Sec. 17. (a) Subject to IC 4-2-7-5, a state officer, an employee, or a special state appointee may not use 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 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 section is subject to action under section 12 of this chapter.

42 IAC 1-5-13 Ghost employment

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

Affected: IC 4-2-7

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 1-5-10 Benefiting from confidential information

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

Affected: IC 4-2-7

Sec. 10. A state officer, employee, or special state appointee shall not benefit from, or permit any other person to benefit from, information of a confidential nature except as permitted or required by law.

42 IAC 1-5-11 Divulging confidential information

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

Affected: IC 4-2-7

Sec. 11. A state officer, employee, or special state appointee shall not divulge information of a confidential nature except as permitted by law.

IC 4-2-6-6

Present or former state officers, employees, and special state appointees; compensation resulting from confidential information

Sec. 6. No state officer or employee, former state officer or employee, special state appointee, or former special state appointee shall accept any compensation from any employment, transaction, or investment which was entered into or made as a result of material information of a confidential nature.

ANALYSIS

The Ethics Officer's request for a formal advisory opinion invokes consideration of the provisions of the Code pertaining to Political Activity, Conflicts of Interest, Use of State Property, Ghost Employment and Benefiting from and Divulging Confidential Information.

A. Outside Employment/Professional Activity

An outside employment or professional activity opportunity creates a conflict of interests under IC 4-2-6-5.5(a) if it results in the employee: 1) receiving compensation of substantial value when the responsibilities of the employment are inherently incompatible with the responsibilities of public office or require the employee's recusal from matters so central or critical to the performance of his or her official duties that his or her ability to perform them would be materially impaired; 2) disclosing confidential information that was gained in the course of state employment; or 3) using or attempting to use his or her official position to secure unwarranted privileges or exemptions of substantial value that are not properly available to similarly situated individuals outside state government.

The Commission generally defers to an agency's Ethics Officer regarding outside employment opportunities because it views the Ethics Officer as being in the best position to determine whether a conflict of interests might exist between an employee's state duties and an outside employment opportunity.

The Ethics Officer provided that ISP had some concerns about the Trooper being paid to be a political consultant. Specifically, there is concern about the possibility of the Trooper being paid to represent a prosecutor or judge in their political campaign and then possibly having to appear before the same prosecutor or judge as part of his official Trooper duties, such as for a traffic ticket or criminal case.

The Commission finds that because the Trooper would be receiving compensation for his work as a political consultant, it is possible that providing these services could create a situation in which he would need to recuse himself from critical ISP duties to avoid a conflict of interests. For instance, such a situation might occur if he were to pull over one of his clients at a traffic stop or if he had to appear before a judge who was paying him to provide political consulting on a moving violation or criminal case.

Accordingly, the Commission cannot approve the Trooper's outside employment as a paid political consultant under IC 4-2-6-5.5(a)(1). The Trooper may continue to engage in this type of activity outside of his duty hours if he is not compensated for it so long as he meets any requirements imposed by ISP and other rules under the Code.

B. Additional Rules

Based upon the Commission's conclusion that IC 4-2-6-5.5 prohibits the Trooper from engaging in this outside employment for compensation, the Commission did not fully analyze the request under the Political Activity, Conflicts of Interest Related to Decisions and Votes, Use of State Property, Ghost Employment and Benefitting from and Divulging Confidential Information rules that would normally apply to an outside employment/political opportunity.

CONCLUSION

Based on the foregoing analysis, the Commission is unable to approve the Trooper's outside employment as a paid political consultant.