

42 IAC 1-5-12 Use of state property

The IG sought advice regarding whether it was permissible for state agencies to use state funds to pay for CLE fees and/or fees for professional associations for their employees that are both attorneys and function in their attorney capacities for the agencies. SEC found that agencies would be permitted to pay for CLE fees for their attorneys since it would be considered official state business; however, since belonging to professional associations would not be considered official state business, agencies would be prohibited from paying the fees for their attorneys to maintain membership with such associations.

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

BACKGROUND

A state employee serves as Inspector General requested a formal advisory opinion to determine whether attorneys in the Executive Branch of state government may have certain fees paid for them with state funds. More specifically, the Inspector General would like to know whether state agencies may utilize state funds to pay for continuing legal education (“CLE”) fees and/or fees for professional associations, such as local or state bar associations, for employees of their agency that are both attorneys and function in an attorney capacity for their agency.

ISSUE

- (1) Does the State Code of Ethics prohibit a state agency from paying CLE fees for attorneys employed in that capacity?
- (2) Does the State Code of Ethics prohibit a state agency from paying professional association fees for attorneys employed in that capacity?

RELEVANT LAW

42 IAC 1-5-12 Use of state property

Sec. 12. A state officer, employee, or special state appointee shall not 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.

ANALYSIS

The Use of State Property rule set forth in 42 IAC 1-5-12 states that state property, including funds, may not be used for any purpose other than official state business.

A. Use of Agency Funds for CLE

In 2005, this Commission issued an opinion to a state agency regarding the appropriateness of the use of agency funds to pay for attorney licensing fees. *See* SEC Opinion No. 05-I-14. In that case, the Commission determined that it was appropriate for the agency to pay the annual attorney license fees for attorneys employed by the agency in that capacity.

With regard to CLE, an agency would be permitted to use agency funds to pay for CLE fees if attending CLE seminars constitutes official state business.

In addition to paying a licensing fee, attorneys are required to attend a pre-determined amount of approved CLE per year to practice law in this state. *See* [Admission and Discipline Rule 29](#). Attending CLE seminars also provides training that may be useful to an attorney in the performance of their duties within an agency. Because attending CLE seminars provides legal training for an attorney and obtaining CLE credit is one of the requirements for an attorney to maintain their license, attending CLE functions would be considered official state business.

B. Use of Agency Funds for Professional Association Fees

In the case of professional associations, an agency would be permitted to use agency funds to pay for association fees if such affiliation constitutes official state business.

Unlike attorney licensing fees which are mandatory, attorneys are not required to participate or be a member of professional associations. While the affiliation may be personally worthwhile, an attorney is nevertheless able to perform their job duties without having to retain membership in professional associations. Accordingly, affiliations to such professional associations would not be considered official state business.

CONCLUSION

- (1) With regard to CLE, the Commission finds that the State Code of Ethics does not prohibit a state agency from paying CLE fees for attorneys employed in that capacity.
- (2) With regard to professional associations, the Commission finds that use of state funds to pay for professional association fees would be contrary to the Use of State Property rule unless such use of funds is expressly permitted by a general written agency, departmental, or institutional policy or regulation that is consistent with the audit guidelines included in the State and Quasi Agencies Manual of the State Board of Accounts.