

42 IAC 1-5-5 Outside employment (IC 4-2-6-5.5)

An Excise Police Officer sought advice on whether his intended outside employment as a private investigator would create a conflict of interest under the Code of Ethics. SEC reviewed each of the provisions of the Outside employment rule and found the Officer's intended outside employment did not pose an impermissible conflict of interest with his state employment.

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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 is presently employed by the Indiana State Excise Police ("Excise Police") as an Excise Police Officer. The Officer would like to accept an outside employment opportunity to perform private investigation-type work for an attorney. To this end, the Officer requested authorization from his superior and agency ethics officer identifying the following as potential tasks he would perform in his outside employment: (i) finding out when a stop sign was replaced; (ii) finding missing people or potential witnesses; (iii) finding out insurance policy information; and, (iv) finding current addresses and phone numbers.

The Ethics Officer for the Excise Police provided the Officer with a written memorandum and recommended that he seek a formal opinion from this Commission.

ISSUE

Does the Officer's intended outside employment as a private investigator create a conflict of interest according to the Code of Ethics?

RELEVANT LAW

IC 4-2-6-5.5

Conflict of interest; advisory opinion by inspector general

Sec. 5.5. (a) A current state officer, employee, or special state appointee shall not knowingly:

(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; or

(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 or the individual's appointing authority or agency ethics officer granting approval of outside employment is conclusive proof that an individual is not in violation of subsection (a)(1) or (a)(2).

ANALYSIS

In this case, it does not appear that the Officer's intended outside employment would create a conflict of interest according to IC 4-2-6-5.5. Specifically, the facts presented do not suggest that the Officer's private investigator work would involve compensation of substantial value. In addition, the moonlighting duties described by the Officer do not suggest that his outside employment would be inherently incompatible with the responsibilities of public office or require his recusal from matters so central or critical to the performance of his official duties with the Excise Police that his ability to perform those duties would be materially impaired. Specifically, the Officer assures that no Excise Police information, files, records, services, or other state property would be utilized in the performance of his duties as a private investigator. He further asserts that he will ensure that cases he accepts in his outside employment would not involve the Excise Police in any way.

With regard to IC 4-2-6-5.5(a)(2), the facts provided by the Officer do not suggest that his moonlighting activity would require him to disclose confidential information that was gained in the course of state employment. Similarly, with regard to IC 4-2-6-5.5(a)(3) nothing suggests that the Officer would use or attempt to use his official position with the State to secure unwarranted privileges or exemptions that are both of substantial value and not properly available to similarly situated individuals outside state government.

CONCLUSION

Subject to the foregoing analysis, the Commission finds that the Officer's intended outside employment as a private investigator does not create a conflict of interest according to the Code of Ethics.