

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

An IDOL employee was interested in engaging in outside employment in which he would conduct OSHA 10-hour and 30-hour safety training classes outside the State. The employee sought approval for this employment from his agency ethics officer and received a memo denying the proposed employment based on an internal IDOL policy that prohibited employees from instructing on topics outside the scope of their public duties. SEC concluded that the employee's proposed employment would not violate the ethics rule on Outside employment; however, IDOL was permitted under the Code of Ethics to implement a more restrictive policy and require the employee to abide by those terms.

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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 and other employees of the Indiana Department of Labor ("IDOL") would like to engage in outside employment conducting OSHA 10-hour and 30-hour safety training classes. The state employee intends on establishing his own company and/or working as an independent contractor. The state employee is certified to deliver the training courses and to sign OSHA training cards. These OSHA safety training classes would be conducted on the state employee's own time and would not interfere with his official duties as an IDOL employee. Furthermore, the classes would be conducted outside the State of Indiana and would not involve the use of any State resources (e.g vehicles, equipment, supplies, etc.).

The state employee submitted a request for approval of his intended outside employment to his agency ethics officer. On August 8, 2011, the state employee received a memorandum from his agency ethics officer indicating that his request for approval of his intended outside employment was denied. Specifically, the memorandum explained that while the intended outside employment opportunity would not, on its face, violate the outside employment rule of the State's Code of Ethics, it would violate an internal policy adopted by the agency. Subsequently, the state employee submitted his request for a formal advisory opinion from the Commission.

ISSUE

Does the state employee's intended outside employment to teach OSHA safety training classes create a conflict of interest under 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).

42 IAC 1-6-1 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 or special state appointees. (Office of the Inspector General; 42 IAC 1-6-1; filed Dec 7, 2005, 2:45 p.m.: 29 IR 1211)

ANALYSIS

As an initial matter, it must be noted that the analysis in this advisory opinion is intended to apply only to the person making the request. In this case the state employee indicates that he and other co-workers would like engage in outside employment activity. This advisory opinion is only intended to analyze the state employee's specific situation.

In this case, the state employee's outside employment would create a conflict of interest according to IC 4-2-6-5.5 if his intended employment would trigger subsection (1), (2) and/or (3) of the statute. The restriction in subsection (1) prohibits a state employee from accepting 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. In this case, IDOL's ethics officer indicates that the state employee's intended outside employment would not be inherently incompatible with his public responsibilities.

In addition, subsection (2) prevents a state employee from engaging in business or professional activity that would require the individual to disclose confidential information that was gained in the course of state employment. Based on the information provided, it would not appear that the state employee's intended outside employment would require that he disclose confidential

information gained in the course of his state employment. Specifically, he would be teaching classes on publicly available regulations for entities that are outside of the State.

The restriction in subsection (3) above prohibits an employee from using or attempting to use the individual's official position to secure unwarranted privileges or exemptions that are both of substantial value and not properly available to similarly situated individuals outside state government. The facts presented in this case would not appear to trigger the application of this provision.

Despite the fact that the state employee's intended outside employment does not currently appear to create a conflict of interest according to IC 4-2-6-5.5, it would be contrary to an internal IDOL policy regarding outside employment. 42 IAC 1-6-1 allows the appointing authority of an agency to adopt policies, rules, or regulations concerning the subject matter of the Code of Ethics provided that such policies, rules, or regulations are at least as strict as the rule. In this case, the IDOL has adopted an internal agency policy that prohibits IDOL employees from engaging in safety and health inspection, training, or consultation services outside the scope of their public duties. Approval for the state employee's intended outside employment has been denied by the agency pursuant to this policy.

CONCLUSION

The Commission finds that the state employee's outside employment would not create a conflict of interest under the Code of Ethics. However, the Commission acknowledges that it is in the discretion of the IDOL to prohibit the state employee from engaging in his intended outside employment to teach OSHA safety training classes pursuant to the agency's internal policy.