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An ISD employee sought advice regarding whether seeking election to and holding office as County Council Member in Hamilton County would create conflicts of interest with his current position at ISD as Budget Director and Chief Financial Officer. SEC determined that the employee's intended candidacy and prospective service as a County Council Member would not create conflicts of interest under the Code of Ethics so long as the employee did not seek political contributions for his campaign from his direct reports or those of who have a business relationship with ISD; the employee did not disclose confidential information gained through his state employment to secure unwarranted privileges or exemptions of substantial value not available to individuals outside of state government; the employee did not participate in decisions or votes wherein he or ISD would have a financial interest in the outcome; the employee did not use state property for any political purpose; and the employee did not work on his campaign or any Council related matter while on duty at ISD.

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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 employee serves as the Budget Director/Chief Financial Officer at the Indiana School for the Deaf (ISD). The employee's job duties include creating and managing the budgets as well as supervising the day to day finances of this state agency. The employee does not have final purchasing authority for the ISD, but he is involved in strategic sourcing activities and decisions for purchases made on behalf of the State. He does not sign agency contracts, but he is involved in their negotiation, preparation, and execution, and he directly supervises the employee who creates the documents. The employee provides that the Executive Director of the ISD, holds all final purchasing authority and is the final decision maker and signatory on all contracts along with the State Budget Agency (SBA). SBA's Central Accounting Division is the Procurement Agent for ISD and is responsible for verifying compliance with state purchasing guidelines for all ISD purchases and contracts. Additionally, SBA has statutory oversight and signatory authority for all agency requisitions for purchase orders and contracts.

The employee is considering seeking election to and holding office as a County Council Member in Hamilton County. County Council Members are paid approximately \$30,000 per year. The Council meets monthly for formal meetings. These meetings occur outside of the employee's normal business hours, and he would attend the meetings on his own personal time. A County Council Member is elected to the position, and the employee will have to run a campaign and collect and spend money for this purpose.

The employee provides that the Council holds the financial power of the county and serves as a check on the Board of County Commissioners. The Council is tasked with the following duties: adopt annual budgets; fix salaries; fix the county tax rate; furnish financial assistance to any community center for the mentally handicapped located in the county; incur county indebtedness; levy taxes to provide funds for constructing; make appropriations, re-appropriations and fund transfers; and repair and remodel jails.

The employee requested a Formal Advisory Opinion from the Commission for a determination as to whether, under the Code, he can hold his current state position and run for the County Council position in Hamilton County.

ISSUE

Is the employee prohibited under the Code of Ethics from serving as both the CFO at the ISD and running for the County Council position in Hamilton County?

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 employee's request for a formal advisory opinion invokes consideration of the provisions of the Code pertaining to Political Activity, Conflicts of Interests, Use of State Property, Ghost Employment, and Benefitting from and Divulging Confidential Information. The application of each provision to the employee is analyzed below.

The Commission does not have jurisdiction to interpret or address concerns regarding the dual office holding prohibition in the Indiana State Constitution or the federal Hatch Act. The employee notes that he has already reviewed the Hatch Act. However, he should also consult the Indiana Office of the Attorney General's [Dual Office Holding Guide](#) and their recent [opinion](#) regarding state employees holding political office.

A. Political Activity

The political activity rule prohibits the employee from engaging in political activity, including the solicitation of political contributions from anyone, when he is on duty or while acting in an official capacity for the State. This rule also prohibits the employee from soliciting political contributions at any time, whether on duty or not, from persons with whom ISD has a business relationship or from state employees or special state appointees he directly supervises. Because the employee would be seeking political contributions for his own campaign as a candidate, he is permitted to seek political contributions from anyone other than his direct reports and those with a business relationship with ISD when he is not on duty or acting in his official capacity. Because he appears to have some purchasing and procurement authority (although he does not have final purchasing authority or signatory authority on contracts for the agency), the employee would be prohibited from seeking political contributions on behalf of any other candidate.

The Commission finds that as long as the employee adheres to the above restrictions, his political campaign and subsequent service as a Hamilton County Council Member would not violate the political activity rule.

B. Outside Employment/Professional Activity

IC 4-2-6-5.5 prohibits the employee from 1) accepting other employment involving compensation of substantial value if those responsibilities are inherently incompatible with his responsibilities in his state employment or would require his recusal from matters so central or critical to the performance of his duties with the State that his ability to perform them would be materially impaired; 2) accepting employment or engaging in business or professional activity that would require him to disclose confidential information that was gained in the course of his employment with the State; and 3) using or attempting to use his position with the State to secure unwarranted privileges or exemptions that are of substantial value and not properly available to similarly situated individuals outside state government.

Based on the information provided by the employee and the ISD Ethics Officer the Commission finds that the employee's activities as a candidate for and/or service as a County Council Member would not create a conflict of interests for him under IC 4-2-6-5.5. Specifically, the employee's responsibilities as a County Council Member would not be inherently incompatible with his ISD responsibilities nor would they require his recusal from matters that are central or critical to the performance of his state duties.

As CFO for the ISD, the employee oversees the ISD's business office. His work for the county would primarily involve approving appropriations. The employee does not anticipate that he would have to participate in any financial transactions between the county and the ISD. To the best of his knowledge, there have never been any such transactions, and he does not foresee any future transactions between the two entities. Further, ISD's Ethics Officer will be ensuring that the employee will be taking all necessary precautions to ensure the two roles remain separate.

In addition, the employee's service as a Hamilton County Council Member would not require him to disclose confidential information he gained through his state employment. The employee must also ensure that he does not use his official position, during his campaign or during his service in this public office, to secure unwarranted privileges or exemptions that are of substantial value and not properly available to similarly situated individuals outside state government.

C. Conflicts of Interests

IC 4-2-6-9(a) prohibits a state employee from participating in any decision or vote, or matter relating to that decision or vote, if he has knowledge that various persons may have a "financial interest" in the outcome of the matter, including himself or a business organization in which he is serving as an officer, a director, a member, a trustee, a partner, or an employee. The term financial interest, as defined in IC 4-2-6-1(a)(11), includes an interest involving property or services. However, the term does not include an interest that is not greater than the interest of the general public or any state officer or any state employee.

Based on the information provided, the Commission finds that the employee would not be required to participate in decisions or votes, or related matters, as the ISD CFO in which

he or Hamilton County would have a financial interest in the outcome. So long as no such decisions or votes, or matters related to such decisions or votes, come before the employee in his position at the ISD, he would not be in violation of this rule. In the event he would otherwise participate in any such matters during the course of his state employment, he should follow the procedure set forth in IC 4-2-6-9 (b) to disclose the conflict.

D. Use of State Property

The use of state property rule prohibits a state employee from using state property for purposes other than official state business absent a written policy allowing for such use that has been approved by the Commission. The employee understands that he cannot use state property for any political purpose. To the extent that the employee refrains from using state property for duties related to his candidacy for or service as a Hamilton County Council Member, he would not be in violation of this rule.

E. Ghost Employment

The ghost employment rule prohibits a state employee from engaging in or directing others to engage in work other than the performance of official duties during working hours absent a written policy allowing it. In this case, the employee indicates that the monthly Council meetings would be held after business hours and that he would attend these meetings on his own personal time. He must ensure that he refrains from working on any campaign or Council-related matters during his state working hours and when he is on duty as the ISD CFO.

To the extent that the employee refrains from engaging in or directing others to engage in work other than official state duties during his working hours, he would not be in violation of this rule.

F. Confidential Information

42 IAC 1-5-10 and 42 IAC 1-5-11 prohibit a state employee from benefitting from or divulging confidential information.

To the extent that the employee complies with these restrictions, he would not be in violation of these rules.

CONCLUSION

Subject to the foregoing analysis, the Commission finds that the employee's intended candidacy and prospective service as a County Council Member would not create a conflict of interests under the Code of Ethics.

Respectfully Submitted,

Jennifer Cooper
Ethics Director