

**42 IAC 1-5-5 Outside employment (IC 4-2-6-5.5)
42 IAC 1-5-7 Conflict of interest; contracts (IC 4-2-6-10.5)**

No conflict of interest arose for an ISBH employee to accept a grant from OED for the purpose of installing wind generators on her farm due to her relationship with ISBH and the bidding process ISBH employed in awarding the grant to her farm.

December 14, 2006
No. 06-I-27

The Indiana State Ethics Commission (Commission) issues the following advisory opinion concerning Indiana Code 4-2-6. Any opinion rendered by the Commission, until amended or revoked, is binding on the Commission in any subsequent allegations concerning the person who requested the opinion and who acted in good faith in accordance with the advice rendered, unless material facts were omitted or misstated by the person in the request for the opinion or testimony before the Commission.

BACKGROUND

A state employee with the Indiana State Board of Health (ISBH) requests an advisory opinion to learn whether she may enter into a Grant Agreement (Agreement) with the Indiana Office of Energy and Defense Development (OED), accepting a grant award in the amount of thirty-five thousand four hundred thirty-four dollars (\$35,434) for the purpose of installing five wind generators on the employee's farm.

The employee has submitted to the Commission a copy of the proposed Agreement, which contains a 'Conflict of Interest' provision in paragraph twelve. The Conflict of Interest provision permits the Indiana Department of Administration (IDOA) to cancel the Agreement without recourse by the Grantee if any "interested party" to the Agreement is an employee of the State. The Agreement further provides that IDOA will not exercise its right of cancellation if the Grantee gives IDOA an opinion from the Commission indicating that the existence of the Agreement and the employment by the State of the interested party does not violate any statute or rule relating to ethical conduct of State employees.

ISSUE

Whether the proposed Agreement and the grantee's employment with the State violate any state ethics law or rule?

RELEVANT LAW

IC 4-2-6-5.5
Conflict of interest; advisory opinion by inspector general
Sec. 5.5.

IC 4-2-6-10.5
Prohibition against financial interest in contract; exceptions
Sec. 10.5.

ANALYSIS

As a threshold matter, the Commission finds that it has jurisdiction over the inquirer in this case in her capacity as a state employee. The Commission renders this advisory opinion by virtue of its authority under IC 4-2-6-4(b)(1)(A). The analysis in this opinion is limited to the employee's factual representations and testimony before the Commission.

The analysis in this case primarily invokes consideration of the following two ethics statutes: (1) IC 4-2-6-5.5, Conflict of interest; advisory opinion by inspector general, and (2) IC 4-2-6-10.5, Prohibition against financial interest in contract; exceptions.

In relevant part, IC 4-2-6-5.5 provides that a current state employee shall not knowingly use or attempt to use the individual's official position to secure unwarranted privileges or exemptions that are of substantial value and not properly available to similarly situated individuals outside of state government. In this case, the amount of the grant would appear to be "substantial" for purposes of the statute. However, based on the employee's representation that she learned about the grant from reading an article on the internet, it would appear that the grant was properly available to similarly situated individuals outside of state government. Accordingly, the employee's acceptance of the grant would not appear to be in violation of IC 4-2-6-5.5.

In addition to the conflict of interest law set forth in IC 4-2-6-5.5, the employee's inquiry invites consideration of IC 4-2-6-10.5. The latter statute generally prohibits a state officer, employee, or special state appointee from knowingly having a financial interest in a contract made by an agency. The general prohibition set forth in IC 4-2-6-10.5 does not apply to a state officer, employee, or special state appointee who does not participate in or have official responsibility for any of the activities of the contracting agency, so long as the following statutory criteria are met:

- A. the contract is made after public notice or, where applicable, through competitive bidding;
- B. the state officer, employee, or special state appointee files with the commission a statement making full disclosure of all related financial interests in the contract;
- C. the contract can be performed without compromising the performance of the official duties and responsibilities of the state officer, employee, or special state appointee; and
- D. in the case of a contract for professional services, the appointing authority of the contracting agency makes and files a written certification with the commission that no other state officer, employee, or special state appointee of that agency is available to perform those services as part of the regular duties of the state officer, employee, or special state appointee.

In this case, the general prohibition set forth in IC 4-2-6-10.5 would not appear to apply to the employee.

Specifically, the employee represents the following facts: (1) she does not participate in or have official responsibility for any activities of the contracting agency-either OED or IDOA; (2) the Agreement, in particular, the grant award, has been made after public notice or, where applicable, through competitive bidding; (3) the Agreement has been filed with the Commission, which fully discloses all of the employee's related financial interests; and (4) the Agreement can be performed without compromising the performance of the employee's official duties and responsibilities. Given that the grant award is to be used for the purpose of installing wind generators on the employee's, such activity would not be characterized as a "contract for professional services" as contemplated by IC 4-2-6-10.5(b)(1)(D), and therefore does not require analysis of this element of the statute.

CONCLUSION

In view of the foregoing analysis, the proposed Agreement between the employee and OED does not appear to violate any state ethics law or rule. The employee remains subject to all state ethics laws and rules.