

42 IAC 1-5-1 Gifts; travel expenses; waivers
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An IURC Commissioner served as the President of MARC and sought advice from the SEC to ensure fundraising efforts for the annual conference complied with the Code of Ethics. SEC found the Commissioner would not violate the Gifts rule by raising funds from trade associations that did not have a business relationship with the IURC and were not seeking to influence her in her official capacity. In addition, since the IURC adopted a policy permitting limited use of agency resources to fundraise for the conference, the Commissioner would not violate the Use of state property or Ghost employment rules when engaging in such efforts.

September 2013
No. 13-I-34

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

A state employee is the Ethics Officer for the Indiana Utility and Regulatory Commission (“IURC”). He seeks an advisory opinion on behalf of a Commissioner of the IURC, concerning her role in obtaining sponsorship funding for the Mid-America Regulatory Conference (“MARC”) Annual Meeting, which will be held in Indianapolis in June 2014.

MARC is an affiliate of the National Association of Regulatory Utility Commissioners (“NARUC”). NARUC is comprised of energy and utility regulators, commissioners, and staff from 14 Midwest states including Arkansas, Kansas, Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Oklahoma, South Dakota, Texas, and Wisconsin. MARC’s mission is to share ideas and discuss energy regulatory policy issues affecting the MARC states, the region, and the nation. Since 1956, MARC has used the Annual Meeting as the forum for this discussion. The participants at this meeting include not only public utility commissioners and their staff, but also various stakeholders such as energy industry representatives, energy attorneys, product vendors, and members of the public.

The Commissioner was elected President of MARC at its 2013 Annual Meeting in Little Rock, Arkansas on June 10, 2013. One of the primary functions of the MARC President is to host the Annual Meeting in his or her home city. Traditionally, a large part of the funding mechanism for the Annual Meeting as well as MARC’s operating budget has consisted of sponsorships provided by the utility industry, energy attorneys, and energy product vendors who value this opportunity to learn the perspectives of regulators from around the nation. Given the absence of any support staff, the MARC President is integral to the fundraising process.

Although MARC has a policy prohibiting solicitation of contributions from any regulated business entities, the Commissioner, in her role as MARC President, is expected to engage in soliciting sponsorships from trade associations whose members likely include utilities subject to IURC jurisdiction. National trade associations have been the major sponsors of Annual

Meetings in other states for many years. Some of the national and international trade associations the Commissioner may solicit contributions from include the following:

- Edison Electric Institute – based in Washington, D.C., membership includes 175 investor-owned utilities, including 5 investor-owned utilities subject to IURC jurisdiction
- Nuclear Energy Institute – based in Washington, D. C., membership includes more than 350 members in 15 countries, including 2 IURC jurisdictional members
- CTIA The Wireless Association – based in Washington, D.C., membership includes approximately 230 members, including 6 IURC jurisdictional members
- American Gas Association – based in Washington, D.C., membership includes more than 250 full members throughout the nation, including 8 IURC jurisdictional members
- National Association of Water Companies – based in Washington, D.C., membership includes chapters in 10 states/regions: California, Delaware, Illinois, Indiana, New England, New Jersey, New York, Ohio, Pennsylvania, Southeast, including 4 IURC jurisdictional members
- National Cable and Telecommunications Association – based in Washington, D.C., membership includes approximately 175 members, including 3 IURC jurisdictional members
- American Wind Energy Association – based in Washington, D.C., has approximately 1,300 members, including 6 IURC jurisdictional members
- American Coalition for Clean Coal Electricity – based in Washington, D.C., has approximately 30 members, including 2 members with an Indiana presence

ISSUE

Whether the Commissioner is prohibited from soliciting contributions to support MARC's operating budget and Annual Meeting from national and international trade associations whose members include utilities subject to IURC jurisdiction?

RELEVANT LAW

42 IAC 1-5-1 Gifts; travel expenses; waivers

Authority: IC 4-2-7-3; IC 4-2-7-5

Affected: IC 3-9-2; IC 4-2-6

Sec. 1. (a) A state employee or special state appointee, or the spouse or unemancipated child of a state employee or special state appointee, shall not knowingly solicit, accept, or receive any:

- (1) gift;
- (2) favor;
- (3) service;
- (4) entertainment;
- (5) food;
- (6) drink;
- (7) travel expenses; or
- (8) registration fees;

from a person who has a business relationship with the employee's or special state appointee's agency or is seeking to influence an action by the employee or special state appointee in his or her official capacity.

(b) The following shall not be subject to this rule:

(1) Gifts, favors, services, entertainment, food, drink, travel expenses, or registration fees from public agencies or public institutions.

(2) Food or drink consumed at a public meeting to which at least twenty-five (25) individuals are invited. A meeting will be considered public if:

(A) the event is a reception or other gathering for public officials that is not arranged to solicit government

procurement of goods or services;

(B) the employee is giving a speech or participating in a presentation in the employee's official capacity; or

(C) the meeting has a formal educational program that the employee is attending to assist him or her in performing official duties.

(3) Mementos or souvenirs of nominal value.

(4) Food or drink consumed by an employee during negotiations or other activities related to an Indiana economic development corporation economic development project.

(5) Gifts, favors, services, entertainment, food, or drinks from relatives, or a person with whom the employee or special state appointee has an ongoing social relationship, so long as:

(A) the gifts or other items of value are not deducted as a business expense; and

(B) the gift giver is not seeking to influence an action by an employee or special state appointee in that person's official capacity.

(6) Political contributions subject to IC 3-9-2 that are reported in accordance with applicable law.

(7) Nominal refreshments offered to a state employee or a special state appointee conducting official state business while the employee or special state appointee is at a workplace of a person who:

(A) has a business relationship; or

(B) seeks to influence official action;

with the employee's or special state appointee's agency.

(8) Discount and other promotional programs approved and made available to state employees and special state appointees through the state personnel department or the Indiana department of administration.

(c) An employee's or special state appointee's state officer or appointing authority may waive application of subsection (a) of this rule in individual cases when consistent with the public interest. The waiver shall:

(1) be in writing; and

(2) identify the following:

(A) The employee or special state appointee.

(B) The nature and value of the gift.

(C) The donor of the gift.

(D) Why acceptance of the gift is consistent with the public interest.

(d) Written waivers must be filed with the commission within thirty (30) days of receipt of the gift. The commission may review the written waivers. An appointing authority or state officer may designate authority to the agency's ethics officer to waive application of this rule on behalf

of the appointing authority or state officer. The designation shall be in writing and filed with the commission.

(e) If a person wishes to reimburse the state for any part or all of the expenses incurred by the state for appearances of a state officer, employee, or special state appointee or their official representatives on behalf of the state, the person shall remit to the treasurer of state any such amounts. The treasurer of the state shall quietus the funds into the general fund.

42 IAC 1-5-12 Use of state property

Authority: IC 4-2-7-3; IC 4-2-7-5

Affected: IC 4-2-7

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.

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.

ANALYSIS

A. Gifts

The gifts rule states in part that a state employee shall not knowingly solicit, accept, or receive any gift, favor, service, entertainment, food, drink, travel expenses, or registration fees from:

1. a person who has a business relationship with the employee's agency; or
2. a person who is seeking to influence an action by the employee in his or her official capacity.

For the gifts rule to apply, the "person," defined in IC 4-2-6-1(a)(13), from whom the donations are being solicited must either have a "business relationship" with the employee's agency or must be seeking to influence an action by the employee in her official capacity. "Business relationship" is defined in IC 4-2-6-1(a)(5) as "dealings of a person with an agency seeking, obtaining, establishing, maintaining, or implementing: (i) a pecuniary interest in a contract or purchase with the agency; or (ii) a license or permit requiring the exercise of judgment or discretion by the agency." The term also includes the relationship a lobbyist, even if unregistered, has with an agency.

In this case, the Commissioner would be prohibited from soliciting donations from any person who has a business relationship with the IURC or any person who is seeking to influence an action by her in her official capacity even if the donations are going directly to MARC and not to

the Commissioner herself. However, the gifts rule would not prohibit the Commissioner from soliciting, accepting, or receiving donations from a person who does not have a business relationship with the IURC so long as the person is not seeking to influence an action by the Commissioner in her official capacity.

Based on the information provided about the trade associations, they would be considered “persons” for purposes of the gifts rule; however, it does not appear as though they have a business relationship with the IURC. More specifically, while the trade associations identified have members who are subject to the jurisdiction of the IURC, the trade associations themselves do not have a “business relationship” with the IURC as the term is defined in the Code. Therefore, the Commissioner would not be prohibited from seeking sponsorships from these trade associations for MARC so long as these entities would not be seeking to influence an action by the Commissioner in her official capacity.

B. Use of State Property

The use of state property rule provides that a state employee shall not make use of state materials, funds, property, personnel, facilities, or equipment for any purpose other than official state business unless the use is expressly permitted by a general written agency, departmental, or institutional policy or regulation. Since the IURC has adopted a policy permitting the limited use of state property for purposes associated with MARC, the Commissioner’s use of state property in her efforts to fundraise for MARC would not be in violation of this rule.

C. Ghost Employment

The ghost employment rule provides that a state employee shall not 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. Since the IURC has adopted a policy permitting the limited use of time for purposes associated with MARC, the Commissioner’s engagement in fundraising efforts for the MARC during working hours would not be in violation of this rule.

CONCLUSION

Subject to the foregoing analysis, the Commissioner would not be prohibited by the Code from soliciting contributions to support MARC’s operating budget and Annual Meeting from national and international trade associations whose members include utilities subject to IURC jurisdiction.