

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

The Chief Operating Officer and Chief of Staff for the Indiana Destination Development Corporation (IDDC) sought advice regarding a proposed outside employment opportunity while employed by IDDC. The Commission finds that the Code prohibits the requesting party from engaging in his proposed outside employment opportunity.

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2024-FAO-006

The Indiana State Ethics Commission (Commission) issues the following advisory opinion (FAO) 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 Chief Operating Officer and Chief of Staff (COO) for the Indiana Destination Development Corporation (IDDC) is requesting the Commission's FAO regarding his proposed outside employment opportunity.

IDDC is the marketing arm of the State and helps promote destination assets around the State (sports facilities/teams, music venues, museums, casinos, resorts, amusement parks, zoos, breweries/distilleries/wineries, etc.). IDDC promotes these venues to drive people to visit Indiana. In the COO's role, he meets with these venues and discusses how IDDC can help them promote themselves to attract out-of-state visitors. IDDC often offers two methods of assistance to these venues: (1) IDDC's calendar of events and (2) IDDC's ticket giveaways. The COO states that his interaction with these vendors is limited. He first reaches out to them to schedule a meeting. He then goes to their facility for a meeting and later follows up via email connecting them with IDDC's VP of Tourism, Marketing and Communications. This VP helps guide the vendors in their use of IDDC's services. The COO hands over all interaction to the marketing team and has no further contact with the vendors unless they reach out to him to find out who to talk to at IDDC.

In meetings with distilleries, they often tell the COO about their operations, how many people visit their destinations each year, how many products they produce and distribute, the state legislative issues that affect them, how they do their own marketing, challenges to their company, how many brands they have, how many employees they have and other general information on the business. During these meetings, the COO learned that they are having trouble getting whiskey barrels at a good price as many larger distilleries in Tennessee and Kentucky buy them up. This is not an issue on which IDDC would ever work. In an out-of-work conversation with a family friend, the COO mentioned the problem that distilleries are facing. His friend informed him that the hardwood company for which he serves as Chief Financial Officer has a relationship with cooperage companies that make barrels in Kentucky. The COO's friend told the cooperage company about their conversation, and the cooperage company felt that they could assist Indiana distillers by providing barrels on a regular basis at a market rate. The cooperage company proposed that the COO could work on his own time to help the distilleries with this problem.

In this potential role, the COO would get the distilleries or the distillery guild a locked-in price for each barrel if they have enough volume for the barrels. The COO would act as a “middleman” between the distillery (or guild) and his friend’s hardwood company. His friend’s company is already picking up goods from the cooperage company in Kentucky, so they would bring the barrels to Indiana and deliver them to the distilleries. This is a project that the COO would do for compensation. The COO’s friend’s hardwood company would pay him, and the distilleries would pay the hardwood company. The COO would not discuss this project with any new distilleries that he visits as part of his IDDC role. The COO has not yet discussed this project idea with any distilleries.

The COO is seeking the Commission’s FAO regarding the application of any of the rules in the Code to his proposed outside employment opportunity.

ISSUES

What ethics issues, if any, arise for the COO if he engages in this outside employment opportunity?

This inquiry primarily invokes consideration of the following Code rules: IC 4-2-6-5.5, the outside employment/professional activity rule; IC 4-2-6-9, the conflicts of interests related to decisions and votes rule; IC 4-2-6-17, the use of state property rule; 42 IAC 1-5-13, the ghost employment rule; and 42 IAC 1-5-10 and 42 IAC 1-5-11, the confidentiality rules.

RELEVANT LAW

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).

ANALYSIS

The COO's request for a FAO invokes consideration of several Code rules, including IC 4-2-6-5.5. The application of this section to the COO's situation is analyzed below.

A. Outside Employment/Professional Activity

The COO's proposed outside employment opportunity would constitute a conflict of interests under IC 4-2-6-5.5 if it results in any of the following: (1) the COO receiving compensation of substantial value if the responsibilities of the employment are 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 that his ability to perform them would be materially impaired; (2) the COO disclosing confidential information that was gained in the course of his state employment; or (3) the COO using or attempting to use his official position to secure unwarranted privileges or exemptions of substantial value that are not properly available to similarly situated individuals outside state government.

The Commission finds that IC 4-2-6-5.5(a)(3) prohibits the COO from engaging in his proposed outside employment opportunity. If he were allowed to proceed with his proposed project, the COO would be using information that he learned through his state duties to make a profit. Doing so would be a violation of IC 4-2-6-5.5(a)(3) as the COO would be using his official position to secure unwarranted privileges or exemptions of substantial value that are not properly available to similarly situated individuals outside state government.

CONCLUSION

The Commission finds that the Code prohibits the COO from engaging in his proposed outside employment opportunity. As the Commission found that the COO's proposed outside employment opportunity would violate IC 4-2-6-5.5(a)(3), the Commission did not analyze other provisions of the Code.

Respectfully Submitted,



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