

## **BP 1301 - Conflict of Interest**

Indiana Code 35 Article 44.1 addresses offenses against public administration. Official misconduct on behalf of a public servant that involves the commitment of an offense in the performance of the public servant's official duties violates Statutory Conflict of Interest [IC 35-44-1-3].

### **Purpose**

The purpose of the Board policy is to cultivate organizational efficiency with procedures that ensure effectiveness. For efficiency, the *Library* Board and the administration are responsible for developing guidelines that ensure ethical and professional standards of conduct.

#### **A. Definition of Conflict of Interest:**

Indiana Code 35 Article 44.1 states a public servant who knowingly or intentionally:

- 1) Has a pecuniary interest in; or
- 2) Derives a profit from a contract or purchase connected with an action by the government entity served by the public servant, commits conflict of interest, a Level 6 felony [IC 35-44.1-1-4(b)]

#### **B. Exception for Compensation and Expenses**

Indiana Code 35 Article 44.1 states a public servant is not prohibited from receiving compensation for services provided as a public servant or for expenses incurred by the public servant as provided by law [IC 35-44.1-1-4(c)]

#### **C. Other Exceptions**

Indiana Code 35-44-1-3 does not prohibit a public servant from having a pecuniary interest in or deriving a profit from a contract or purchase connected with the governmental entity served under any of the following conditions:

- 1) If the public servant:
  - a) Is not a member or on the staff of the governing body empowered to contract or purchase on behalf of the governmental entity;
  - b) Function and performs duties for the governmental entity that are unrelated to the contract or purchase; and
  - c) Makes a disclosure as provided in IC 35-44.1-1-4(d) [IC 35-44.1-14(c)(6)]
- 2) If the contract or purchase involves utility services from a utility whose rate structure is regulated by the state or federal government [IC 35-44-1-4(c)(3)]

#### **D. Definition of Pecuniary Interest**

Indiana Code 35 Article 44.1 states a public servant has a pecuniary interest in a contract or purchase if the contract or purchase will result or is intended to result in an ascertainable increase in the income or net worth of:

- 1) The public servant; or
- 2) A dependent of the public servant who:
  - a) Is under the direct or indirect administrative control of the public servant; or
  - b) Receives a contract or purchase order that is reviewed, approved, or directly or indirectly administered by the public servant [IC 35-44.1-1-4(a)(3)]

#### **E. Definition of Dependent**

Indiana Code 35 Article 44.1 states a dependent may be any of the following:

- 1) The spouse of a public servant;
- 2) A child, stepchild, or adoptee of a public servant who is:
  - a) Unemancipated; and
  - b) Less than 18 years of age
- 3) Any individual more than one-half of whose support is provided during a year by the public servant [IC 35-44.1-1-4(k)]

#### F. Disclosure Requirements for Public Servant with Pecuniary Interest

Indiana Code 35 Article 44.1 states the disclosure as required must:

- 1) Be in writing;
- 2) Describe the contract or purchase to be made by the governmental entity;
- 3) Describe the pecuniary interest that the public servant has in the contract or purchase;
- 4) Be affirmed under penalty of perjury;
- 5) Be submitted to the governmental entity and be accepted by the governmental entity in a public meeting of the governmental entity before final action on the contract or purchase;
- 6) Be filed within fifteen days after final action on the contract or purchase with; (a) the state board of accounts; and (b) with the clerk of the circuit court in the county where the governmental entity takes final action on the contract or purchase; and
- 7) Contain, if the public servant is appointed, the written approval of the elected public servant (if any) that appointed the public servant.

#### G. Defense

Indiana Code 35 Article 44.1 states it is not an offense in a prosecution under the section that the public servant's interest in the contract or purchase, and:

- 1) All other contracts and purchases made by the governmental entity during the twelve (12) months before the date of the contract; or
- 2) Purchase was two hundred fifty dollars (\$250) or less [IC 35-44.1-1-4 (c) (2)]

#### H. Conflict of Interest Disclosure Statement Form

Indiana Code 35 Article 44.1 states the designated attorney for the governmental entity or a private attorney should be consulted to:

- 1) To determine if a conflict of interest disclosure statement form should be filed; and
- 2) To determine if the format of the *Library* conflict of interest disclosure statement form is sufficient

#### I. Consultants - Statutory Conflict of Interest [IC 5-16-11]

Pursuant to Indiana Code 5-16-11-5.5, a consultant has a conflict of interest if the following apply:

- 1) The entity has given a gift or gifts:
  - a) To the consultant, consultant's spouse or the unemancipated children;
  - b) That have a total fair market value of more than one hundred (\$100.00) dollars; and
  - c) Within the preceding year
- 2) The consultant, consultant's spouse or unemancipated children have an equitable or a legal interest in real property the value of which:

- a) Either is at least five thousand (\$5,000.00) dollars or comprises at least ten (10%) percent of the net worth of the consultant, the consultant's spouse, or the unemancipated children; and
  - b) Has been or would be increased or decreased if a contract were awarded to the entity
- 3) The consultant or the consultant's spouse is employed by the entity;
  - 4) The entity is the sole proprietorship or professional practice of the consultant or the consultant's spouse;
  - 5) The consultant or the consultant's spouse is a partner in the entity;
  - 6) The consultant or the consultant's spouse is an officer or a director of the entity; and
  - 7) The consultant, the consultant's spouse, or the unemancipated children own stock or options to purchase stock in the entity, and:
    - a) The stock or the options to purchase stock have a fair market value of more than ten thousand (\$10,000.00) dollars; and
    - b) The subdivision does not apply to the following:
      - i. Time deposits or demand deposits in a financial institution; and
      - ii. An insurance policy

#### J. Definition of Consultant

Indiana Code 35 Article 44.1 states a consultant means an individual who, under a contract with the state or a political subdivision, does either of the following for the state or the political subdivision:

- 1) Evaluates bids for contracts;
- 2) Awards contracts; and
- 3) The term consultant does not include a public employee (as defined in IC 34-6-2-38), and:
  - a) An individual is not required to be a party to the contract with the state or political subdivision to be a consultant [IC 5-16-11-2]

#### K. Definition of Entity

Indiana Code 35 Article 44.1 states as used and referred to in the policy, an entity means a person that:

- 1) Submitted a bid to be evaluated by a consultant; or
- 2) Was awarded a contract by a consultant (IC 5-16-11-3.5)

#### L. Disclosure Requirements for Consultants or Entity

Indiana Code 35 Article 44.1 states a conflict of interest must be disclosed as follows:

- 1) A consultant shall file a conflict of interest disclosure if the consultant has a conflict of interest under IC 5-16-11-5.5;
- 2) The disclosure must describe the conflict of interest;
- 3) The consultant shall file the disclosure within ten (10) days of the earlier of the following events:
  - a) The closing day for receipt of bids; and
  - b) The award of the contract
- 4) The consultant shall file the disclosure required by IC 5-16-11-6 with the governing board, if the consultant contracts with the political subdivision [IC 5-16-11-7]; and
- 5) The consultant shall make the disclosure required by IC 5-16-11-6 under affirmation [IC 5-16-11-6,7,8]

#### M. Disclosure Penalties

Indiana Code 35 Article 44.1 states the following:

- 1) A consultant who fails to file the required disclosure commits a Class A infraction [IC 5-15-11-11]; and
- 2) A consultant who files a false disclosure is subject to the penalties for perjury under IC 35-44-2-1 [IC 5-16-11-12]

N. Lucrative Office

Article 2, Section 9 of the Constitution of Indiana, states in part:

- 1) ". . . no person may hold more than one lucrative office at the same time, except as expressly permitted in this Constitution."; and
- 2) Any person holding two (2) offices which have been or may be deemed lucrative should obtain the written opinion of the attorney for the unit; or
- 3) Units served to determine compliance with Article 2, Section 9 of the Constitution of Indiana