

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