



Ethics for County Officials

Indiana Code 35-44.1-1 & Related Matters

Overview

- Criminal Statutes Generally
- The Ethics Crimes of Indiana Code 35-44.1-1
- Nepotism under Indiana Code 36-1-20.2
- Contracting Concerns under Indiana Code 36-1-21

Criminal Statutes Generally

- Crimes require two showings
 - Actus Reus (you did a bad thing)
 - Mens Rea (you had a bad intent while doing the bad thing)
- Mindsets in the Indiana Code
 - Intentionally: it is a person's conscious objective to engage in the conduct at issue
 - Knowingly: a person is aware of a high probability the person is engaged in the conduct at issue
 - Recklessly: a person engaged in the conduct at issue in plain conscious, and unjustifiable disregard of harm that might result, where such disregard involves a substantial deviation from acceptable standards of conduct.

Definitions

- Public Servant
 - A person who is:
 - Authorized to perform an official function on behalf of, and is paid by, a governmental entity
 - Elected or appointed to office to discharge a public duty for a governmental entity; OR
 - With or without compensation is appointed in writing by a public official to act in an advisory capacity to a governmental entity concerning a contract or purchase made by the entity.
- Dependent
 - A person who is:
 - The spouse of a Public Servant
 - A child, step-child, or adoptee of a Public Servant who is unemancipated or less than eighteen years of age: OR
 - An individual who receives more than one-half of their support during a year from a Public Servant
- Pecuniary Interest
 - An interest in a contract or purchase if the contract or purchase will result in or is intended to result in an ascertainable increase in the income or net worth of;
 - A Public Servant
 - A Dependent of the Public Servant who is under the direct or indirect administrative control of the Public Servant or who receives a contract or purchase order that is reviewed, approved, or directly or indirectly administered by the Public Servant.

OH THANK GOODNESS WE MADE IT THROUGH THE LATIN & VOCABULARY LESSON

Official Misconduct

- 1. Mindset
 - Knowingly or recklessly
- 2. Action (does any of the following)
 - Committing an offense in the performance of the public servant's official duties;
 - Solicits, accepts, or agrees to accept from an appointee or employee any property other than what the public servant is authorized by law to accept as a condition of continued employment;
 - Acquires or divests himself or herself of a pecuniary interest in any property, transaction, or enterprise or aids another person to do so based on information obtained by virtue of the public servant's office that official action not yet taken is contemplated; OR
 - Fails to deliver public records and property in the public servant's custody to the public servant's successor in office when that successor qualifies for office.

Bribery

- 1. Mindset
 - Intentionally
- 2. Action (does any of the following)
 - Solicits, accepts, or agrees to accept, either before or after the person becomes appointed, elected, or qualified, any property, except property the person is authorized by law to accept with intent to control the performance of an act related to the person's employment or function as a Public Servant.
 - It is irrelevant whether the Public Servant received the property before or after the official action being obtained by Bribery occurs.
 - It is also irrelevant if the duty undertaken by the Public Servant for which the Public Servant received property was a preexisting public duty for which the Public Servant had no discretion.

Bribery (a two sided crime)

- An individual who confers, offers, or agrees to confer on a Public Servant either before or after the Public Servant becomes appointed, elected, or qualified any property, except property the public servant is authorized by law to accept, with intent to control the performance of any act related to the employment of the Public Servant or because of any official act performed by the Public Servant.

Ghost Employment

- 1. Mindset
 - Knowingly or intentionally
- 2. Action (does any of the following)
 - Hires an employee for the government entity that the Public Servant serves and fails to assign the employee any duties;
 - Hires an employee for the government entity that the Public Servant serves and assigns any duties not related to the operation of the governmental entity;
 - Assigns an employee under the Public Servant's supervision any duties not related to the operation of the governmental entity.

Ghost Employment (a two sided crime)

- An employee of a governmental entity who
 - Accepts property from the governmental entity (gets paid) knowing that the person has not been assigned any duties to perform for the governmental entity; OR
 - Knowingly or intentionally accepts property for the performance of duties not related to the operation of the governmental entity.

Exceptions to Ghost Employment

- A person employed by a governmental entity is considered to be performing duties related to the operations of the governmental entity if the duties are:
 - Undertaken with the approval of the employee’s supervisor;
 - In compliance with a written policy or regulation issued by the executive officer of the entity containing a limitation on the amount of time during the calendar year that the employee may spend performing services during normal hours of employment; AND
 - The services are being performed on a voluntary basis for the benefit of another governmental entity or a 501(c)(3) non-profit organization that do not:
 - Promote religion
 - Attempt to influence legislation or governmental policy
 - Attempt to influence elections public office

Conflict of Interest

- 1. Mindset:
 - Knowingly or intentionally
- 2. Action (does any of the following)
 - Has a pecuniary interest in or derives profit from a contract or purchase connected to an action by the governmental entity served by the Public Servant.

Things that are NOT Conflict of Interest

- When a Public Servant or their Dependent receive compensation through salary or an employment contract for services provided or for expenses incurred as provided by law.
- When a Public Servant's interest in the contract or purchase and all other contract's or purchases made by the governmental entity in a 12 month period preceding the contract date have a total value of less than \$250.00.
- When the contract or purchase is for utility services from a utility with a rate structure regulated by the State or Federal government.

Effective Disclosure of Conflicts

- Certain Public Servants (including elected officials) may make a disclosure of a potential Conflict of Interest that meets ALL of the below criteria, if such a disclosure is made the Public Servant has not committed Conflict of Interest:
 - 1. The disclosure must be in writing and affirmed under penalty of perjury;
 - 2. The disclosure must contain a description of the contract or purchase to be made by the governmental entity and the Public Servant (or Dependent's) Pecuniary Interest in the Contract or Purchase;
 - 3. The disclosure must be submitted to the governmental entity and accepted by its governing body in a public meeting before final action is taken on the contract or purchase; AND
 - 4. The disclosure must be filed within fifteen days after final action on the contract or purchase with:
 - The Indiana State Board of Accounts
 - The Clerk of the Circuit Court in the County where the governmental entity takes final action on the contract or purchase.

Profiteering from Public Service

- 1. Mindset:
 - Knowingly or intentionally
- 2. Action (does any of the following)
 - Obtains a pecuniary interest in a contract or purchase with a governmental entity within one year of separation from employment or service for with the governmental entity.
 - Must no longer be a Public Servant for the governmental entity BUT
 - During time as a Public Servant approved, negotiated, or prepared on behalf of the governmental entity the terms or specifications of the contract or purchase.

Things that are NOT Profiteering

- If the following is true of the contract, purchase, or matter involved in the supposed profiteering from public service, the person has not committed the crime of profiteering:
 - The matter is a negotiation or other activity related to an economic development grant, loan, or loan guarantee
 - The total amount of benefit to the person was less than \$250.00 of profit from the contract or purchase.

Defenses against Profiteering

- A person can defend themselves from a charge of profiteering by showing:
 - 1. the person was screened from participating in the contract or purchase;
 - 2. the person has not received a part of the profits of the contract or purchase; AND
 - 3. a notice was given promptly to the governmental entity of the persons interest in the contract or purchase.

Penalties

- Official Misconduct:
 - Level 6 Felony (imprisonment of 6 to 30 months and fines up to \$10,000)
- Bribery:
 - Level 5 Felony (imprisonment of 12 to 72 months and fines of up to \$10,000)
- Ghost Employment:
 - Level 6 Felony (imprisonment of 6 to 30 months and fines up to \$10,000)
 - May be reduced to a Class A Misdemeanor by sentencing court
 - Comes with joint and several liability of Public Servant and employee to repay the governmental entity
- Conflict of Interest:
 - Level 6 Felony (imprisonment of 6 to 30 months and fines up to \$10,000)
 - May be reduced to a Class A Misdemeanor by sentencing court
- Profiteering from Public Service:
 - Level 6 Felony (imprisonment of 6 to 30 months and fines up to \$10,000)
 - May be reduced to a Class A Misdemeanor by sentencing court

NOW LETS PLAY “JAIL OR NO JAIL!”

Question 1

- A County Commissioner in Blueberry County doesn't like a business rival who lives in neighboring Penguin County, the Commissioner finds out his business rival has a suspended driver's license but is still driving while listening to gossip at the Blueberryville Diner.
- The Commissioner calls the Penguin County Sherriff's Office and offers a Deputy \$500 in Penguin City Ice Cream Company gift cards to catch the business rival and impound the rival's vehicle.

Question 2

- A County Commissioner in Marshmallow County owns Fluffyburg Equipment Company, a company that rents various pieces of equipment including snow plow attachments for light trucks.
- The Marshmallow County highway department needs to rent light truck snow plow equipment because snow is expected later this month and the highway department doesn't have enough CDL qualified drivers to use its fleet of snow plow trucks.
- The owner of Fluffyburg Equipment Company offers to enter into a contract with the County for the rentals, and states verbally at a public meeting that she has a pecuniary interest in this contract, the other Commissioners accept her verbal disclosure and take final action approving the Contract.

Question 3

- A County Commissioner in Cappuccino County decides he wants to pursue a job opportunity as a civil engineer and retires from public service, after a month long vacation, he joins Latte & Sons Engineering as a partner in the firm.
- While he was a County Commissioner, the Commissioner assisted in drafting specifications for a Request for Proposals advertised by Cappuccino County for engineering services needed for a major sewer project outside the County seat, Mochaville.
- Latte & Sons screens the former Commissioner from any involvement in its response to the County's RFP, sets aside all profits from the Cappuccino County project to ensure the former Commissioner does not share in them, and makes a prompt notice to Cappuccino County that they have hired the former Commissioner upon receiving the RFP.

Nepotism under Indiana Code 36-1-10.2

- County Commissioners are required to maintain a Nepotism policy in line with Indiana Code 36-1-10.2 at risk of DLGF withholding approval of the County's budget and additional appropriations.
- The policy must identify that an individual may not be employed by a governmental unit in a position that results in a Relative being in the Direct Line of Supervision of another Relative.

Nepotism Definitions

- Relative:
 - Any of a spouse, parent, step-parent, child, step-child, sibling (including half or step siblings), niece, nephew, aunt, uncle, daughter or son-in-law.
- Employed:
 - Employment on a full-time, part-time, temporary, intermittent, or hourly basis whether at-will or pursuant to an employment contract.
 - The term does not include an individual who holds an elected office.
- Direct Line of Supervision:
 - A person is in the direct line of supervision of an elected officer or an employee if such person is in a position to affect the terms and conditions of the person's employment including;
 - Making decisions about work assignments, compensation, grievances, advancement or performance evaluation BUT NOT INCLUDING;
 - The responsibility of the executive, legislative, or fiscal body of the unit provided by law to make decisions regarding salary ordinances, budgets, or personnel policies of the unit.

Nepotism Exceptions

- If a person is employed by a unit on the date when a Relative begins serving a term in an elected office, such person may retain their employment unless the policy of the unit states otherwise. Such a person may not be promoted unless the unit's policy state's otherwise.
 - There are exceptions for merit promotions in police and fire departments
- A person serving pursuant to an employment contract will not have their employment contract abrogated by the election of a relative to an elected office of the unit.

Contracting under Indiana Code 36-1-21

- County Commissioners are required to maintain a Nepotism policy in line with Indiana Code 36-1-21.
- The policy will disallow any contract for goods or services with an individual who is a Relative of an Elected Official or a business entity that is wholly or partially owned by a Relative of an Elected Official unless the following criteria are met:
 - There is no Conflict of Interest under Indiana Code 35-44.1-1-4;
 - The Elected Official files a full disclosure in writing under penalty of perjury describing the contract or purchase and a the relationship between the Elected Official and the person or business entity;
 - The legislative body of the unit accepts the disclosure prior to final action on the purchase or contract at a public meeting; AND
 - Filing of the disclosure with each of SBOA and the Clerk of the Circuit Court
- In addition, the appropriate agency will be required to certify that the purchase price was the lowest bid price or explain the reasons for selecting the particular vendor.
- Further, the County must show it met the criteria for public purchasing and public construction as applicable.

Contracting Definitions

- Elected Official:
 - The executive or a member of the executive body of a unit
 - A member of the legislative body of a unit
 - A member of the fiscal body of a unit
- Relative
 - Any of a spouse, parent, step-parent, child, step-child, sibling (including half or step siblings), niece, nephew, aunt, uncle, daughter or son-in-law.

Contracting Exceptions

- If the initial term of a contract is underway at the time the term of an Elected Official begins, the contract is not subject to the requirements of Indiana Code 36-1-21