

# ALLEN COUNTY CODE TITLE 18 ETHICS AND CONFLICTS OF INTEREST

## ARTICLE 1 ETHICS AND CONFLICTS OF INTEREST

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### 18-1-1 Chapter 1: Definitions

#### 18-1-1-1

As used in this chapter, and unless the context clearly denotes otherwise:

"**Agency**" means an Authority, a board, a commission, a committee, a department, a division, an office, a service, which is overseen or has its budget reviewed and approved by the Allen County Council.

"**Assist**" means to:

- (a) help;
- (b) aid;
- (c) advise; or
- (d) furnish information to;

a *Person*. The term includes an offer to do any of the actions in clauses (a) through (d).

"**Authority**" means the chief administrative officer of an Agency. This term does include an Elected Officer.

"**Business Relationship**" means dealings of a Person with an Agency seeking, obtaining, establishing, maintaining, or implementing:

- (a) a pecuniary interest in a contract or purchase with the Agency; or
- (b) a license or permit requiring the exercise of judgment or discretion by the Agency.

"**Commission**" refers to the County Ethics Commission created under section 7 of this chapter.

**"Compensation"** means any money, thing of value, or financial benefit conferred on, or received by, any Person in return for services rendered, or for services to be rendered, whether by that Person or another.

**"Conflict of Interest"** means a situation in which the private Financial Interest of an Employee or Special County Appointee, or the spouse or child of an Employee or Special County Appointee, may influence the Employee's or Special County Appointee's judgment in the performance of a public duty.

**"Elected Officer"** means any elected officer elected to office by the citizens of Allen County, wholly compensated through tax dollars or user fees originating in Allen County and whose budget is reviewed and approved by the Allen County Council.

**"Employee"** means an individual who is employed by an Agency on a full-time, a part-time, a temporary, an intermittent, or an hourly basis, including Elected Officers, and who are not otherwise subject to a code of ethics adopted by an Agency of the State of Indiana.

**"Employer"** means any Person from whom an Employee or the Employee's spouse received Compensation. For purposes of this chapter, a customer or client of a self-employed individual in a sole proprietorship or a professional practice is not considered to be an Employer.

**"Financial Interest"** means an interest:

- (a) in a purchase, sale, lease, contract, option, or other transaction between an Agency and any Person; or
- (b) involving property or services.

The term includes an interest arising from employment, either directly or indirectly or prospective employment for which negotiations have begun or from employment which occurred within one year prior to the decision. The term does not include an interest of Employee or Special County Appointee in the common stock of a corporation unless the combined holdings in the corporation of the Employee or Special County Appointee, that individual's spouse, and that individual's children are more than one percent (1%) of the outstanding shares of the common stock of the corporation. The term does not include an interest that is not greater than the interest of the general public or any Elected Officer or any Employee.

**"Gift"** means the transfer or promise of a transfer of something of value regardless of the form without adequate and lawful consideration or consideration less than that required of others who are not Employees, including the full or partial forgiveness of indebtedness, which is not extended to others who are not Employees on the same terms and conditions. However, "Gift" does not include Gifts from Relatives or campaign contributions subject to I.C. 3-9-2.

**"Honorarium"** means a payment of money for an appearance, a speech, or an article, but does not include payment or reimbursement of travel expenses for Employees.

**"Information of a Confidential Nature"** means information:

- (a) obtained by reason of the position or office held; and
- (b) which:
  - (i) a public Agency is prohibited from disclosing under IC 5-14-3-4(a);
  - (ii) a public Agency has the discretion not to disclose under IC 5-14-3-4(b) and that the Agency has not disclosed; or
  - (iii) the information is not in a public record, but if it were, would be confidential.

**"Person"** means any individual, proprietorship, partnership, unincorporated association, trust, business trust, group, limited liability company, or corporation, whether or not operated for profit, or a governmental agency or political subdivision.

**"Property"** has the meaning set forth in IC 35-41-1-23.

**"Relative"** means any Person related as father, mother, step-father, step-mother, grandmother, grandfather, brother, sister, step-brother, step-sister, uncle, aunt, husband, wife, son, daughter, step-child, father-in-law, mother-in-law, son-in-law, daughter-in-law, grandchild, step-grandchild, niece or nephew.

**"Represent"** means to do any of the following on behalf of a Person:

- (a) Attend an Agency proceeding.
- (b) Write a letter.
- (c) Communicate with an Employee of an Agency.

**"Special County Appointee"** means a Person who is:

- (a) not an Elected Officer or Employee; and
- (b) elected or appointed to an Authority, a board, a commission, a committee, a council, a task force, or other body designated by any name that:
  - (i) is authorized by statute or local ordinance; and

- (ii) functions in a policy or an advisory role in the executive (including the administrative) department of the Agency, including a separate body corporate and politic.
- (c) The masculine gender includes the masculine and feminine.
- (d) The singular form of any noun includes the plural wherever appropriate.

## **18-1-2 Chapter 2: Acceptable Gifts, Favors, Services, Entertainment and Honoraria**

### **18-1-2-1**

An Employee or Elected Officer, or the spouse or child of an Employee or Elected Officer shall not solicit, accept, or receive, nor shall a donor offer, directly or indirectly, any Gift, favor, service, or entertainment under circumstances in which it can reasonably be inferred that the thing of value would influence the Employee to give special consideration to an action by such Employee in his or her official capacity. This section does not prohibit normal Gift-giving from Relatives or political contributions subject to IC 3-9-2 which are reported in accordance with applicable law. In addition, this section does not prohibit contributions which are accepted by an Agency in accordance with applicable law.

### **18-1-2-2**

An Employee, with the exception of an Elected Official, shall file a written report with the Commission reporting any personal Gifts, favors, services, or entertainment valued at a total of more than twenty-five dollars (\$25) from a Person that has a Business Relationship with the Employee's Agency.

An Elected Official shall report all such Gifts, favors, services, or entertainment in accordance with the applicable provisions of the State election laws.

The following shall not be subject to this section:

- (a) Mementos or souvenirs of nominal value received at public ceremonies or commemorating official business.
- (b) Invitations or tickets to charitable or political fundraising events if the invitations or tickets are given by the charitable or political entity sponsoring the event. This

exception does not apply to a Gift of tickets from a Person with a Business Relationship with the Employee's Agency.

- (c) personal social relationships whereby entertainment expenses are incurred or nominal personal mementos are exchanged on a reciprocal basis.

### **18-1-2-3**

An Employee shall not accept an Honorarium for anything which may be considered part of the Employee's official duties. An Employee may accept an Honorarium or fee for activities not done in connection with the Employee's official duties which are prepared on the Employee's own time and without the use of county resources so long as the Employee is not participating by reason of county employment, provided the Employee shall not accept an Honorarium from any Person over whom the Employee has decision making Authority. An Employee may accept reimbursements for travel expenses incurred when the Employee is not being paid or reimbursed by the county and when an Honorarium is not permitted.

## **18-1-3 Chapter 3: Appearances, Activities and Expenses**

### **18-1-3-1**

An Employee or Special County Appointee shall not solicit or accept payment from any Person for expenses, including but not limited to any lodging, travel expenses, or registration fees for appearance at any meeting, convention, conference, seminar, or similar activity for any Person under circumstances in which it can reasonably be inferred that the thing of value would influence the Employee or Special County Appointee in his or her official capacity.

This section does not prohibit contributions which are accepted by an Agency in accordance with applicable law.

### **18-1-3-2**

If a Person wishes to reimburse the County for any part or all of the expenses incurred by the County for appearances of an Employee or their official representatives on behalf of the County, such Person is requested to remit to the treasurer of the County any such amounts. The treasurer of the County shall quietus such funds into the fund from which it was paid.

## **18-1-4 Chapter 4: Political Activity**

### **18-1-4-1**

Employees shall not engage in political activity during working hours that would violate IC 35-44.1-1-3.

## **18-1-5 Chapter 5: Moonlighting**

### **18-1-5-1**

An Employee shall not engage in outside employment or other outside activity not compatible with Agency rules or the full and proper discharge of public duties and responsibilities. This outside employment or other outside activity must not impair independence of judgment as to official responsibilities, pose a likelihood of Conflict of Interest, or require or create an incentive for the Employee to disclose confidential information acquired as a result of official duties.

## **18-1-6 Chapter 6: Conflict of Interest; Prohibitions**

### **18-1-6-1**

An Employee or Special County Appointee shall not engage in conduct that constitutes a Conflict of Interest. It is the Employee's or Special County Appointee's duty to determine if a Conflict of Interest exists, to avoid the conflict, if possible, or, where applicable, to disclose a conflict as follows:

- (a) An Employee or Special County Appointee may seek an advisory opinion to determine whether a Conflict of Interest exists using the procedure in ACC 18-1-9-1.
- (b) If an Employee or Special County Appointee determines that a Conflict of Interest exists, that individual shall, if possible, be screened from participating in the matter and the matter shall be assigned to another individual who does not have a Conflict of Interest.
- (c) The Employee or Special County Appointee may make a disclosure under IC 35-44.1-1-4, where applicable.

### **18-1-6-2**

An Employee or Special County Appointee shall not solicit or accept Compensation other than that provided for by law for such Elected Officer or Employee for the performance of official duties.

### **18-1-6-3**

An Employee or Special County Appointee, other than in performing duties in making payments to other Employees or Special County Appointees as provided by law, shall not pay or offer to pay any Employee or Special County Appointee any Compensation for the performance of official duties.

### **18-1-6-4**

An Employee or Special County Appointee shall not benefit from, or permit any other Person to benefit from, Information of a Confidential Nature except as permitted or required by law.

### **18-1-6-5**

An Employee or Special County Appointee, in personal dealings, with a Person who has a Business Relationship with the Employee's Agency, shall not receive any special terms or benefit not available to others not employed with the Agency.

### **18-1-6-6**

An Employee or Special County Appointee shall not make use of county materials, funds, property, Personnel, facilities, or equipment for any purpose other than for official county business unless the use is expressly permitted by general written Agency, departmental, or institutional policy or regulation, considering the cost and the benefit by such use.

### **18-1-6-7**

An Employee or Special County 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.

### **18-1-6-8**

An Employee or Special County Appointee shall not divulge Information of a Confidential Nature, except as permitted by law.

### **18-1-6-9**

An Employee or Special County Appointee may not participate in any decision or vote of any kind in which the Employee or Special County Appointee or that individual's spouse or children has a Financial Interest.

## **18-1-7 Chapter 7: Commission; Creation; Membership; Vacancies**

### **18-1-7-1**

There is created a County Ethics Commission.

### **18-1-7-2**

The Commission is composed of five (5) members appointed by the Board of Commissioners who will serve no more than two (2) consecutive, four (4) year staggered terms Members may serve for an additional four (4) year term upon consent of the Board of Commissioners.

### **18-1-7-3**

No more than three (3) Commission members shall be of the same political party.

### **18-1-7-4**

A chairperson shall be nominated from the members of the Commission and elected by a majority vote for a one (1) year term. The Board of Commissioners shall provide administrative services for the purpose of taking notes and transcribing minutes of meetings

## **18-1-8 Chapter 8: Commission; Jurisdiction**

### **18-1-8-1**

The Commission has jurisdiction over the following Persons:

- (a) A current Employee.
- (b) A Person who has or had a Business Relationship with an Agency.
- (c) A Special County Appointee.
- (d) An Elected Officer

## **18-1-9 Chapter 9: Commission; Powers and Duties**

### **18-1-9-1**

The Commission may do any of the following:



- a) Upon a vote of three (3) members, or upon the written request of the Board of Commissioners, initiate and conduct an investigation.
- b) May request the services of a county attorney to investigate a matter brought before the Ethics Commission and present relevant findings;
- c) Receive and hear any complaint which alleges a violation of this chapter, a rule adopted under this chapter, or any other statute or rule establishing standards of official conduct of Employees or Special County Appointees.
- d) Obtain information and, upon a vote of three (3) members, compel the attendance and testimony of witnesses and the production of pertinent books and papers by a subpoena enforceable by the circuit or superior court of the county
- e) Adopt rules to implement this chapter.
- f) Prescript and provide forms for statements required to be filed under this chapter.
- g) Accept and file information:
  - i. voluntarily supplied; and
  - ii. that exceeds the requirements of this chapter.
- h) Inspect financial disclosure forms.
- i) Notify Persons who fail to file forms required under this chapter.
- j) Conduct research.

## **18-1-9-2**

The Commission shall do the following:

- (a) Conduct a proceeding if a simple majority of appointed members is present.
- (b) Act as an advisory body by issuing advisory opinions to interpret this chapter, the Commission's rules, or any other statute or rule establishing standards of official conduct upon:
  - (i) Request of:

- (1) an Elected Officer
- (2) an Employee or former Employee
- (3) a Person who has a had a Business Relationship with an Agency; or
- (4) a Special County Appointee.

(ii) motion of the Commission.

(c) conduct its proceedings in the following manner:

(i) When a complaint is filed with the Commission, the Commission must meet within a period of fourteen (14) days; and may within a period of thirty (30) days do one of the following:

- (1) reject, without further proceedings, a complaint that the Commission considers frivolous or inconsequential;
- (2) reject, without further proceedings, a complaint that the Commission is satisfied had been dealt with appropriately by an Agency;
- (3) upon the vote of the majority of members present, determine that the complaint does not allege facts sufficient to constitute a violation of this ordinance and dismiss the complaint;
- (4) forward a copy of the complaint to the prosecuting attorney, the state board of accounts, the Authority, or other appropriate Person for action, and stay the Commission's proceedings pending the other action.

(ii) If a complaint is not disposed of under 18-1-9-2, a copy of the complaint shall be sent to the Person alleged to have committed the violation

(iii) If the complaint is not disposed of under 18-1-9-2, or when the Commission initiates an investigation on its own motion or upon request of the Board of Commissioners, the Commission shall promptly investigate the alleged violation. If, after the preliminary investigation, the Commission finds by a majority vote that probable cause exists to support an alleged violation, it shall convene a public hearing on the matter within sixty (60) days after making the determination. The respondent shall be notified within fifteen (15) days of the Commission's determination. The Commission's evidence relating to an investigation is confidential until the earlier of:

- (1) the time the respondent is notified of the hearing; or

- (2) the time the respondent elects to have the records divulged.

However, the Commission may acknowledge the existence and scope of an investigation or that the Commission did not find probable cause to support an alleged violation.

- (iv) If a hearing is to be held, the respondent may examine and make copies of all evidence in the Commission's possession relating to the charges. At the hearing, the charged party shall be afforded appropriate due process protection, including the right to be represented by counsel, the right to call and examine witnesses, the right to introduce exhibits, and the right to cross-examine opposing witnesses.
- (v) After the hearing, the Commission shall state its findings of fact. If the Commission based on competent and substantial evidence, finds by a majority vote that the respondent has violated this ordinance, it shall state its findings in writing in a report, which shall be supported and signed by a majority of the Commission members and shall be made public. The report may make a recommendation for the sanctions to be imposed by the Authority for the violation, including:
  - (1) a letter of counseling;
  - (2) a reprimand;
  - (3) a suspension with or without pay; or
  - (4) the dismissal of an Employee; or
  - (5) censure by the Commission of an Authority, Special County Appointee, Employee, Former Employee.
- (vi) The report required under clause (v) shall be presented to:
  - (1) the respondent;
  - (2) the Authority, Employee, former Employee, or Special County Appointee; and
  - (3) the Board of Commissioners.
- (vii) The Commission may also forward the report to any of the following:
  - (1) the prosecuting attorney;

- (2) the State Board of Accounts;
- (3) the human resources director;
- (4) any other appropriate Person.

(viii) If the Commission finds the respondent has not violated a code or statutory provision, it shall dismiss the charges.

## **18-1-10 Chapter 10: Violations Reported; Report to Commission of Action Taken**

### **18-1-10-1**

Whenever an Authority receives a report under 18-1-9-2(c)(vii), the Authority shall report to the Commission the action taken in response to the report. The Commission may require in the report that the Authority submit the response required by this chapter in a reasonable, specified amount of time.

## **18-1-11 Chapter 11: Retaliation Prohibited**

### **18-1-11-1**

Subject to section 18-1-10-1, an Elected Officer or Employee shall not retaliate or threaten to retaliate against an Employee or a former Employee because the Employee or former Employee did any of the following:

- (a) filed a complaint with the Commission;
- (b) Provided information to the Commission;
- (c) Testified at a Commission proceeding.

### **18-1-11-2**

Notwithstanding section 18-1-10-1, an Authority of an Employee may take appropriate action against an Employee who took any of the actions listed in section 18-1-10-1 if the Employee:

- (a) did not act in good faith; or
- (b) knowingly or recklessly provided false information or testimony to the Commission.

## **18-1-12 Chapter 12: Severability of Title**

### **18-1-12-1**

If any provision of this title or the application thereof to any Person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this title which can be given effect without the invalid provision or application, and to this end the provisions of this title are severable.

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