

Deferred Compensation Plan BOARD REPORT 15-23

Date: April 2, 2015
To: Board of Deferred Compensation
From: Staff
Subject: NAGDCA Conference Site Location

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Recommendation:

That the Board of Deferred Compensation Administration receive and file the following information regarding the 2015 Annual Conference of the National Association of Government Defined Contribution Administrators (NAGDCA) as it relates to the conference location site of Indianapolis, Indiana.

Background:

The National Association of Government Defined Contribution Plan Administrators (NAGDCA) is an organization of state and local government agencies offering supplemental defined contribution retirement plans to their employees. The City's Plan is a long-standing member of NAGDCA and many Board members and staff participate in the organization, including attending NAGDCA's Annual Conference which is generally held in the fall of each year. Staff member Steven Montagna is also currently a member of NAGDCA's Executive Board, serving as its Secretary-Treasurer.

The Annual Conference is held at a different location each year. This year's conference is scheduled to be held in Indianapolis, Indiana.

In late March, the State of Indiana adopted a bill known as the Religious Freedom Restoration Act (Attachment A). The bill provided that "a state or local government action may not substantially burden a person's right to the exercise of religion unless it is demonstrated that applying the burden to the person's exercise of religion is: essential to further a compelling governmental interest; and the least restrictive means of furthering the compelling governmental interest." The bill further provided that, "A person whose exercise of religion has been substantially burdened, or is likely to be substantially burdened, by a violation of this chapter may assert the violation or impending violation as a claim or defense in a judicial or administrative proceeding, regardless of whether the state or any other governmental entity is a party to the proceeding."

The bill received criticism from those who believed that its intent and/or effect was to provide greater latitude to private businesses to discriminate on the basis of sexual orientation. For example if a private business elected to not serve a customer on the basis of sexual orientation, that business could assert religious freedom as a defense in a subsequent judicial or administrative proceeding.

Following passage of the bill, a number of state and local entities issued bans on travel to the State of Indiana. The State of Indiana subsequently passed language to clarify the Act by stating that the bill “does not authorize a provider to refuse to offer or provide services, facilities, use of public accommodations, goods, employment, or housing to any member or members of the general public on the basis of race, color, religion, ancestry, age, national origin, disability, sex, sexual orientation, gender identity, or United States military service.”

Following enactment of this clarifying language, most state and local entities which had issued travel bans to Indiana lifted them. Entities lifting their bans included the following:

- State of Connecticut
- State of Washington
- State of New York
- City of San Francisco
- Washington, DC
- Denver
- Seattle
- Portland
- Oakland
- San Diego

Entities which still have Indiana travel bans in effect include:

- State of Vermont
- City of Rochester
- City of Berkley

Please note that this list of entities either having lifted or maintaining travel bans may not be exhaustive, but represents the product of research conducted by NAGDCA and by staff. Staff found no indication of travel bans having been issued by either the State of California or Los Angeles City Council.

NAGDCA reached out to its membership to solicit their input regarding attending the event. After considering member feedback and a number of other considerations, the NAGDCA Board elected to maintain the Indianapolis conference site (see Attachment B). In reaching its decision, NAGDCA focused on the principal that its annual conference venues should be widely available to its membership and welcome attendees with hospitality, respect and dignity (objectives which it believed would be met at the Indianapolis conference site), but also acknowledged that some individuals, businesses or governmental agencies may still have concerns. This information is provided to the Board for its information and consideration as staff prepares to participate in the 2015 NAGDCA Annual Conference.

Submitted by:

Steven Montagna

SENATE ENROLLED ACT No. 101

AN ACT to amend the Indiana Code concerning civil procedure.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC34-13-9 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]:

Chapter 9. Religious Freedom Restoration

Sec. 1. This chapter applies to all governmental entity statutes, ordinances, resolutions, executive or administrative orders, regulations, customs, and usages, including the implementation or application thereof, regardless of whether they were enacted, adopted, or initiated before, on, or after July 1, 2015.

Sec. 2. A governmental entity statute, ordinance, resolution, executive or administrative order, regulation, custom, or usage may not be construed to be exempt from the application of this chapter unless a state statute expressly exempts the statute, ordinance, resolution, executive or administrative order, regulation, custom, or usage from the application of this chapter by citation to this chapter.

Sec. 3. (a) The following definitions apply throughout this section: (1) "Establishment Clause" refers to the part of the First Amendment of the Constitution of the United States or the Constitution of the State of Indiana prohibiting laws respecting the establishment of religion. (2) "Granting", used with respect to government funding, benefits, or exemptions, does not include the denial of government funding, benefits, or exemptions. (b) This chapter may not be construed to affect, interpret, or in any way address the Establishment Clause. (c) Granting government funding, benefits, or exemptions, to the extent permissible under the Establishment Clause, does not constitute a violation of this chapter.

Sec. 4. As used in this chapter, "demonstrates" means meets the burdens of going forward with the evidence and of persuasion.

Sec. 5. As used in this chapter, "exercise of religion" includes any exercise of religion, whether or not compelled by, or central to, a system of religious belief.

Sec. 6. As used in this chapter, "governmental entity" includes the whole or any part of a branch, department, agency, instrumentality, official, or other individual or entity acting under color of law of any of the following: (1) State government. (2) A political subdivision (as defined in IC 36-1-2-13). (3) An instrumentality of a governmental entity described in subdivision(1) or (2), including a state educational institution, a body politic, a body corporate and politic, or any other similar entity established by law.

Sec. 7. As used in this chapter, "person" includes the following: (1) An individual. (2) An organization, a religious society, a church, a body of communicants, or a group organized and operated primarily for religious purposes. (3) A partnership, a limited liability company, a corporation, a company, a firm, a

society, a joint-stock company, an unincorporated association, or another entity that: (A) may sue and be sued; and (B) exercises practices that are compelled or limited by a system of religious belief held by: (i) an individual; or (ii) the individuals; who have control and substantial ownership of the entity, regardless of whether the entity is organized and operated for profit or nonprofit purposes.

Sec. 8. (a) Except as provided in subsection (b), a governmental entity may not substantially burden a person's exercise of religion, even if the burden results from a rule of general applicability. (b) A governmental entity may substantially burden a person's exercise of religion only if the governmental entity demonstrates that application of the burden to the person: (1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest.

Sec. 9. A person whose exercise of religion has been substantially burdened, or is likely to be substantially burdened, by a violation of this chapter may assert the violation or impending violation as a claim or defense in a judicial or administrative proceeding, regardless of whether the state or any other governmental entity is a party to the proceeding. If the relevant governmental entity is not a party to the proceeding, the governmental entity has an unconditional right to intervene in order to respond to the person's invocation of this chapter.

Sec. 10. (a) If a court or other tribunal in which a violation of this chapter is asserted in conformity with section 9 of this chapter determines that: (1) the person's exercise of religion has been substantially burdened, or is likely to be substantially burdened; and (2) the governmental entity imposing the burden has not demonstrated that application of the burden to the person: (A) is in furtherance of a compelling governmental interest; and (B) is the least restrictive means of furthering that compelling governmental interest; the court or other tribunal shall allow a defense against any party and shall grant appropriate relief against the governmental entity. (b) Relief against the governmental entity may include any of the following: (1) Declaratory relief or an injunction or mandate that prevents, restrains, corrects, or abates the violation of this chapter. (2) Compensatory damages. (c) In the appropriate case, the court or other tribunal also may award all or part of the costs of litigation, including reasonable attorney's fees, to a person that prevails against the governmental entity under this chapter.

Sec. 11. This chapter is not intended to, and shall not be construed or interpreted to, create a claim or private cause of action against any private employer by any applicant, employee, or former employee.



201 East Main Street, Suite 1405, Lexington, KY 40507
(859) 514-9161 • Fax: (859) 514-9188 • <http://www.nagdca.org>

4/9/15

Dear NAGDCA Members,

The NAGDCA Board met again this week to discuss the location of the 2015 annual conference. We appreciate your patience as we took the necessary time to carefully evaluate our alternatives and determine the best way to proceed. There were a number of factors we considered as part of our decision making process.

First and foremost, we considered the feedback from our members. We heard from 14% of our membership, government and industry, through the survey we sent last week, with some members supporting a change in the location while others supported staying in Indianapolis.

Second, we explored options for relocating the conference and found a few cities that could potentially work with us, noting that this would require a change in the timing of the conference to either August or November. It should be further noted that NAGDCA's cost to cancel the contract with the JW Marriott in Indianapolis would be in excess of \$150,000.

Third, we have closely monitored the legislative process in Indiana and noted the amendment that was made to the Religious Freedom Restoration Act which specifically prohibits it from being used to "refuse to offer or provide services, facilities, use of public accommodations, goods, employment, or housing to any member or members of the general public on the basis of race, color, religion, ancestry, age, national origin, disability, sex, sexual orientation, gender identity, or United States military service."

Finally, we noted that, following the enactment of the amendment, almost all of the travel bans to Indiana that had been put into place immediately after the original legislation was passed were subsequently lifted. These include travel bans lifted for the States of New York, Connecticut, and Washington, as well as the cities of San Francisco, Denver, Seattle, and Portland. Of the few remaining, there are indications that those bans may be lifted as well.

Having considered all of this information, the Board has voted to retain the current conference site in Indianapolis. NAGDCA is an inclusive organization which recognizes and values the diversity of its membership, and certainly does not support discrimination of any kind. In determining the location of any annual conference, we want to choose venues that are widely available to our membership and welcome our attendees with hospitality, respect and dignity. We have been in communication with Indiana government officials, Visit Indy, and the business community including the JW Marriott, and they have assured us that they are committed to meeting these objectives.



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Although we understand and respect the views of those individuals, businesses or governmental agencies that may still have concerns regarding this issue, we believe that the weight of recent developments lies in favor of retaining the current conference site in Indianapolis. In closing, we want to express gratitude to our members who shared their comments and perspectives on this issue. NAGDCA is a vibrant, engaged, and passionate community. Your frank but respectful feedback demonstrated that. Thank you so much for participating in this process, helping us address a challenging issue, and doing so in a spirit of mutual respect.

We look forward to our continued work together at the upcoming Annual Conference and beyond. We have an incredible program lined up and will be opening registration soon.

Sincerely,

NAGDCA Board of Directors