

**42 IAC 1-5-14 Post-employment restrictions (IC 4-2-6-11)**  
**42 IAC 1-5-6 Conflict of interests; decisions and voting (IC 4-2-6-9)**  
**IC 4-2-6-6 Compensation resulting from confidential information**

An Ethics Officer requested advice on behalf of his agency's Executive Director. SEC determined that the employee's post-employment opportunity would not violate any ethics rules as long as the employee did not engage in executive branch lobbying for one year following his state employment; and the employee did not assist or represent any person with regard to the post-employment rule's particular matter restrictions. Further, the SEC determined that the post-employment rule's cooling off period did not apply to the employee, as the employee did not engage in the negotiation or administration of any contracts between the new employer and his state agency, nor did the employee make any regulatory or licensing decisions that directly affected the new employer, its parent, or its subsidiary.

January 10, 2019  
2019-FAO-001

The Indiana State Ethics Commission (Commission) issues the following advisory opinion concerning the State Code of Ethics (Code) pursuant to IC 4-2-6-4(b)(1). The following opinion is based exclusively on sworn testimony and documents presented by the requestor.

**BACKGROUND**

The Ethics Officer for the State Board of Education (SBOE), is requesting a Formal Advisory Opinion on behalf of an employee, the Executive Director for the SBOE. The employee recently received an employment offer from Project Lead the Way (PLTW).

The SBOE was established by the Indiana General Assembly and oversees K-12 education policymaking in the State. The bipartisan board is composed of eleven (11) members, one of whom is the Superintendent of Public Instruction, and ten (10) others who are appointed.

As the Executive Director for the SBOE, the employee's responsibilities include the following:

- Act as the liaison between the SBOE and the Indiana Department of Education (IDOE);
- Handle logistical, administrative and technical duties for the SBOE, including the SBOE website and SBOE meetings;
- Work with IDOE staff to create SBOE agendas and meeting materials in advance of each SBOE meeting;
- Compile and monitor the accuracy of the documents and other materials needed for SBOE agenda items;
- Act as an advisor to the SBOE on special education and other underserved populations;
- Respond to requests for technical support from SBOE members during and between SBOE meetings;
- Serve as the appointing authority for purposes of Indiana Code 4-2-6 and 42 IAC (ethics and conflicts of interest);
- Conduct educator outreach and engagement;

- Execute and deliver any documents on behalf of the SBOE related to matters that require SBOE action, including hearings and adjudications;
- Negotiate and execute contracts and contract amendments under \$75,000 subject to certain restrictions and approval;
- Direct work of General Counsel; and
- Perform any other duties as specifically requested by the SBOE.

Finally, the Executive Director has the authority to delegate any function, authority or task to any person as he may deem necessary or desirable to effectively perform his duties or tasks for the SBOE.

The Executive Director participates in the negotiation and administration of all SBOE contracts. Further, although the Executive Director does not make any final regulatory or licensing decisions on behalf of the SBOE, as the SBOE members are the final decision-makers for such matters, he may be involved in the discussions with SBOE members prior to final actions taken by the SBOE members. Additionally, to the extent that such matters arise during the course of the SBOE's regular administrative functions, the Executive Director may be involved in the review, processing, and decision making of any applications, business transactions, general claims, contracts, administrative determinations, enforcement proceedings, SBOE investigations, judicial proceedings, lawsuits, licensing issues, economic development projects, and/or public works projects.

PLTW is a non-profit organization headquartered in Indianapolis that provides science, technology, engineering, and math programs nationwide. PLTW creates programs that assist students to develop skills, such as problem solving, critical and creative thinking, collaboration, and communication. As part of developing the programs referenced above, PLTW provides teachers with professional development and the continual support and resources they need to implement the program with fidelity to the engaging activity, project, and problem-based (APB) instructional design model.

PLTW contracts with individual schools and school corporations to provide access to its learning programs, services and resources. Currently, Dr. Vince Bertram serves as President and Chief Executive Officer of PLTW. Dr. Bertram served as a member of the SBOE from May of 2015, until November of 2018.

As the Vice President of Legal Affairs for PLTW, the employee's primary duties and responsibilities will be to support the Chief Legal and Assessment Officer with managing the design and execution of PLTW legal instruments and strategy. This position will work collaboratively across the organization and especially closely with team members from Legal, Finance, Operations, Engagement and Programs to support continued growth and development and mitigate risk. Specifically, the job description for the Vice President of Legal Affairs provides that he/she shall do the following:

- Participate and assist in the definition and development of policies, procedures, and programs;

- Provide general business and practical advice concerning business operations;
- Draft memorandums regarding potential outcomes and/or effects of business transactions;
- Review and update agreements associated with business activities within company standards and policies;
- Write contractual agreements;
- Review, draft, and negotiate contract agreements;
- Conduct necessary legal research;
- Ensure that PLTW conducts its business in compliance with all applicable laws and regulations;
- Proactively review internal legal documents and recommend updates in accordance with PLTW strategy;
- Perform such other duties as are incidental to the position of Senior Vice President/Chief Legal and Assessments Officer and as are reasonably assigned by the Chief Executive Officer; and
- Perform other duties as assigned.

The employee will not serve as a lobbyist or perform any actions as a lobbyist on behalf of PLTW.

Since learning of the position at PLTW, the employee has worked with the SBOE Ethics Officer and General Counsel, to develop a screening procedure to ensure he was removed from any issue involving or relating to PLTW. The Ethics Officer also requested an informal advisory opinion from the Office of Inspector General (OIG) for guidance regarding the application of the post-employment rule to the employee's opportunity with PLTW. The informal advisory opinion issued by the OIG advised that the post-employment restrictions in the Code would not apply to the employee's employment opportunity with PLTW, but that he would need to be mindful of potential conflicts of interests under IC 4-2-6-9. The Ethics Officer and the employee filed the Conflicts of Interests - Decisions and Voting Ethics Disclosure Form with the OIG to ensure full compliance with IC 4-2-6-9(b).

The Ethics Officer is now seeking a Formal Advisory Opinion on the employee's behalf to confirm there are no ethics issues regarding the employee's offer of employment with PLTW.

### ISSUE

What rules in the Code apply to the employee's post-employment opportunity with PLTW?

### RELEVANT LAW

#### **IC 4-2-6-6**

#### **Present or former state officers, employees, and special state appointees; compensation resulting from confidential information**

Sec. 6. No state officer or employee, former state officer or employee, special state appointee, or former special state appointee shall accept any compensation from any employment,

transaction, or investment which was entered into or made as a result of material information of a confidential nature.

#### **IC 4-2-6-9 (42 IAC 1-5-6)**

#### **Conflict of economic interests; commission advisory opinions; disclosure statement; written determinations**

Sec. 9. (a) A state officer, an employee, or a special state appointee may not participate in any decision or vote, or matter related to that decision or vote, if the state officer, employee, or special state appointee has knowledge that any of the following has a financial interest in the outcome of the matter:

(1) The state officer, employee, or special state appointee.

(2) A member of the immediate family of the state officer, employee, or special state appointee.

(3) A business organization in which the state officer, employee, or special state appointee is serving as an officer, a director, a member, a trustee, a partner, or an employee.

(4) Any person or organization with whom the state officer, employee, or special state appointee is negotiating or has an arrangement concerning prospective employment.

(b) A state officer, an employee, or a special state appointee who identifies a potential conflict of interest shall notify the person's appointing authority and ethics officer in writing and do either of the following:

(1) Seek an advisory opinion from the commission by filing a written description detailing the nature and circumstances of the particular matter and making full disclosure of any related financial interest in the matter. The commission shall:

(A) with the approval of the appointing authority, assign the particular matter to another person and implement all necessary procedures to screen the state officer, employee, or special state appointee seeking an advisory opinion from involvement in the matter; or

(B) make a written determination that the interest is not so substantial that the commission considers it likely to affect the integrity of the services that the state expects from the state officer, employee, or special state appointee.

(2) File a written disclosure statement with the commission that:

(A) details the conflict of interest;

(B) describes and affirms the implementation of a screen established by the ethics officer;

(C) is signed by both:

(i) the state officer, employee, or special state appointee who identifies the potential conflict of interest; and

(ii) the agency ethics officer;

(D) includes a copy of the disclosure provided to the appointing authority; and

(E) is filed no later than seven (7) days after the conduct that gives rise to the conflict.

A written disclosure filed under this subdivision shall be posted on the inspector general's Internet web site.

(c) A written determination under subsection (b)(1)(B) constitutes conclusive proof that it is not a violation for the state officer, employee, or special state appointee who sought an advisory opinion under this section to participate in the particular matter. A written determination under subsection (b)(1)(B) shall be filed with the appointing authority.

**IC 4-2-6-11 (42 IAC 1-5-14)**

**One year restriction on certain employment or representation; advisory opinion; exceptions; waivers; disclosure statements; restrictions on inspector general seeking state office**

Sec. 11. (a) As used in this section, "particular matter" means any of the following:

- (1) An application.
- (2) A business transaction.
- (3) A claim.
- (4) A contract.
- (5) A determination.
- (6) An enforcement proceeding.
- (7) An investigation.
- (8) A judicial proceeding.
- (9) A lawsuit.
- (10) A license.
- (11) An economic development project.
- (12) A public works project.

The term does not include the proposal or consideration of a legislative matter or the proposal, consideration, adoption, or implementation of a rule or an administrative policy or practice of general application.

(b) A former state officer, employee, or special state appointee may not accept employment or receive compensation:

- (1) as a lobbyist;
- (2) from an employer if the former state officer, employee, or special state appointee was:
  - (A) engaged in the negotiation or the administration of one (1) or more contracts with that employer on behalf of the state or an agency; and
  - (B) in a position to make a discretionary decision affecting the:
    - (i) outcome of the negotiation; or
    - (ii) nature of the administration; or

(3) from an employer if the former state officer, employee, or special state appointee made a regulatory or licensing decision that directly applied to the employer or to a parent or subsidiary of the employer;

before the elapse of at least three hundred sixty-five (365) days after the date on which the former state officer, employee, or special state appointee ceases to be a state officer, employee, or special state appointee.

(c) A former state officer, employee, or special state appointee may not represent or assist a person in a particular matter involving the state if the former state officer, employee, or special state appointee personally and substantially participated in the matter as a state officer, employee, or special state appointee, even if the former state officer, employee, or special state appointee receives no compensation for the representation or assistance.

(d) A former state officer, employee, or special state appointee may not accept employment or compensation from an employer if the circumstances surrounding the employment or compensation would lead a reasonable person to believe that:

- (1) employment; or
- (2) compensation;

is given or had been offered for the purpose of influencing the former state officer, employee, or special state appointee in the performance of the individual's duties or responsibilities while a state officer, an employee, or a special state appointee.

(e) A written advisory opinion issued by the commission certifying that:

- (1) employment of;
- (2) consultation by;
- (3) representation by; or
- (4) assistance from;

the former state officer, employee, or special state appointee does not violate this section is conclusive proof that a former state officer, employee, or special state appointee is not in violation of this section.

(f) Subsection (b) does not apply to the following:

- (1) A special state appointee who serves only as a member of an advisory body.
- (2) A former state officer, employee, or special state appointee who has:
  - (A) not negotiated or administered any contracts with that employer in the two (2) years before the beginning of employment or consulting negotiations with that employer; and
  - (B) any contract that:
    - (i) the former state officer, employee, or special state appointee may have negotiated or administered before the two (2) years preceding the beginning of employment or consulting negotiations; and
    - (ii) is no longer active.

(g) An employee's or a special state appointee's state officer or appointing authority may waive application of subsection (b) or (c) in individual cases when consistent with the public interest. A waiver must satisfy all of the following:

- (1) The waiver must be signed by an employee's or a special state appointee's:
  - (A) state officer or appointing authority authorizing the waiver; and
  - (B) agency ethics officer attesting to form.
- (2) The waiver must include the following information:
  - (A) Whether the employee's prior job duties involved substantial decision making authority over policies, rules, or contracts.
  - (B) The nature of the duties to be performed by the employee for the prospective employer.
  - (C) Whether the prospective employment is likely to involve substantial contact with the employee's former agency and the extent to which any such contact is likely to involve matters where the agency has the discretion to make decisions based on the work product of the employee.
  - (D) Whether the prospective employment may be beneficial to the state or the public, specifically stating how the intended employment is consistent with the public interest.
  - (E) The extent of economic hardship to the employee if the request for a waiver is denied.
- (3) The waiver must be filed with and presented to the commission by the state officer or appointing authority authorizing the waiver.
- (4) The waiver must be limited to an employee or a special state appointee who obtains the waiver before engaging in the conduct that would give rise to a violation of subsection (b) or (c).

The commission may conduct an administrative review of a waiver and approve a waiver only if the commission is satisfied that the information provided under subdivision (2) is specifically and satisfactorily articulated. The inspector general may adopt rules under IC 4-22-2 to establish criteria for post employment waivers.

(h) Subsection (b) applies, subject to waiver under subsection (g), to a former state officer, employee, or special state appointee who:

- (1) made decisions as an administrative law judge; or
- (2) presided over information gathering or order drafting proceedings;

that directly applied to the employer or to a parent or subsidiary of the employer in a material manner.

(i) A former state officer, employee, or special state appointee who forms a sole proprietorship or a professional practice and engages in a business relationship with an entity that would otherwise violate this section must file a disclosure statement with the commission not later than one hundred eighty (180) days after separation from state service. The disclosure must:

- (1) be signed by the former state officer, employee, or special state appointee;
- (2) certify that the former state officer, employee, or special state appointee is not an employee of the entity; and
- (3) state in detail the treatment of taxes, insurance, and any other benefits between the entity and the former state officer, employee, or state appointee.

(j) The inspector general may not seek a state elected office before the elapse of at least three hundred sixty-five (365) days after leaving the inspector general position.

## ANALYSIS

The employee's post-employment opportunity with PLTW implicates the provisions of the Code pertaining to confidential information, conflicts of interests, and post-employment. The application of each provision to the employee's prospective post-employment opportunity with PLTW is analyzed below.

### *A. Confidential Information*

IC 4-2-6-6 prohibits the employee from accepting any compensation from any employment, transaction, or investment that was entered into or made as a result of material information of a confidential nature. Based on the information provided, it does not appear that the employee would utilize confidential information in his potential employment with PLTW. So long as any compensation the employee receives does not result from confidential information, his potential employment with PLTW would not appear to violate IC 4-2-6-6.

### *B. Conflicts of Interests*

IC 4-2-6-9(a)(1) prohibits the employee from participating in any decision or vote, or matter related to any such decision or vote, if he has a financial interest in the outcome of the matter. Similarly, IC 4-2-6-9(a)(4) prohibits the employee from participating in any decision or vote, or matter related to any such decision or vote, in which a person or organization with whom he is negotiating or has an arrangement concerning prospective employment has a financial interest in the outcome of the matter. The definition of

financial interest in IC 4-2-6-1(a)(11) includes, “an interest arising from employment or prospective employment for which negotiations have begun.”

In this case employment negotiations have already begun, as PLTW offered the employee the position of Vice President of Legal Affairs. Accordingly, a conflict of interests would arise for the employee if he participates in a decision or vote, or matter related to such decision or vote, in which PLTW would have a financial interest in the outcome.

IC 4-2-6-9(b) requires a state employee who recognizes a potential conflict of interests to notify his agency’s appointing authority and ethics officer and either (1) seek a formal advisory opinion from the Commission; or (2) file a written disclosure form with the OIG.

The employee notified the Ethic Officer and his appointing authority, Governor Holcomb, through his Chief of Staff Earl Goode, and the employee filed the Conflicts of Interests - Decisions and Voting Ethics Disclosure Form with the OIG on December 12, 2018.

The Commission finds that the employee has complied with this rule and so long as he continues to not participate in any decision or vote, or mater related to any such decision or vote, in which PLTW has a financial interest in the outcome of the matter for the remainder of his state employment, he will not be in violation of this rule.

### *C. Post-Employment*

IC 4-2-6-11 consists of two separate limitations: a “cooling off” period and a “particular matter” restriction. The first prohibition, commonly referred to as the cooling off or revolving door period, prevents the employee from accepting employment from an employer for 365 days from the date that he leaves state employment under various circumstances.

First, the employee is prohibited from accepting employment as a lobbyist for the entirety of the cooling off period. A lobbyist is defined as an individual who seeks to influence decision making of an agency and who is registered as an executive branch lobbyist under the rules adopted by the Indiana Department of Administration (IDOA).

The employee has represented that he will not engage in any lobbying activities in his prospective employment with PLTW. To the extent that the employee does not engage in executive branch lobbying for one year after leaving state employment, his intended employment with PLTW would not violate this provision of the post-employment rule.

Second, the employee is prohibited from accepting employment for 365 days from the last day of his state employment from an employer with whom 1) he engaged in the negotiation or administration of a contract on behalf of a state agency and 2) was in a position to make a discretionary decision affecting the outcome of the negotiation or nature of the administration of the contract. Based on the information provided by the



Ethics Officer, the SBOE has not had any active contracts or contract negotiations with PLTW during the course of the employee's employment with the SBOE.

The Commission finds that the employee neither engaged in the negotiation or administration of any contract between the State and PLTW, nor was he in a position to make a discretionary decision affecting the outcome of the negotiation or administration of any contract with PLTW.

Accordingly, the Commission further finds that the employee is not prohibited under this provision from accepting employment with PLTW immediately upon leaving state employment.

Third, the employee is prohibited from accepting employment for 365 days from the last day of his state employment from an employer for whom he made a regulatory or licensing decision that directly applied to the employer or its parent or subsidiary.

The Ethics Officer provides that the board members of the SBOE make all final regulatory or licensing decisions, but the Executive Director may participate in discussions leading up to these decisions. Regardless, to the best of his knowledge, the employee has not participated in any such decisions and the SBOE has not made any regulatory or licensing decisions that directly applied to PLTW, its parent company, or any of its subsidiaries during the employee's tenure with the Board. As such, the restriction in subsection 3) does not appear apply to his prospective position with PLTW.

Based on the information provided, the employee has never made a regulatory or licensing decision that directly applied to PLTW during the course of his state employment. Accordingly, the Commission finds that he is not prohibited under this provision from accepting employment with PLTW immediately upon leaving state employment.

Fourth, the employee is prohibited from accepting employment from an employer if the circumstances surrounding the hire suggest the employer's purpose is to influence him in his official capacity as a state employee. The information presented to the Commission does not suggest that the offer of employment from PLTW was extended to the employee in an attempt to influence him in his capacity as a state employee.

Finally, the employee is subject to the post-employment rule's "particular matter" prohibition in his prospective post-employment. This restriction prevents him from representing or assisting a person on any of the following twelve matters if he personally and substantially participated in the matter as a state employee: 1) an application, 2) a business transaction, 3) a claim, 4) a contract, 5) a determination, 6) an enforcement proceeding, 7) an investigation, 8) a judicial proceeding, 9) a lawsuit, 10) a license, 11) an economic development project, or 12) a public works project. The particular matter restriction is not limited to 365 days but instead extends for the entire life of the matter at issue, which may be indefinite.

The employee has not identified any particular matters. The Commission finds that the employee must ensure compliance with the particular matter restriction and refrain from assisting PLTW or any other person on any of the particular matters listed above in which he may have participated personally and substantially during his state employment regardless of whether it involves PLTW.

### **CONCLUSION**

Subject to the foregoing analysis and the application of the one-year restriction regarding executive branch lobbying, the Commission finds that the employee's post-employment opportunity with PLTW would not violate the post-employment restrictions found in IC 4-2-6-11.

Respectfully Submitted,

Jennifer Cooper  
Ethics Director