

**IC 4-2-6-6 Compensation resulting from confidential information**  
**42 IAC 1-5-6 Conflicts of Interests (IC 4-2-6-9)**  
**42 IAC 1-5-14 Post-Employment (IC 4-2-6-11)**

The Ethics Officer for the Indiana Family Social Services Administration sought advice on behalf of the Chief Data Officer for FSSA regarding a post-employment opportunity with a group that contracts with FSSA. The Commission finds that the post-employment opportunity would not violate the post-employment restrictions.

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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 Indiana Family and Social Services Administration (FSSA) is requesting an advisory opinion on behalf of the Chief Data Officer (CDO) for FSSA regarding a post-employment opportunity.

In his role with FSSA, the CDO supports the enterprise data warehouses for the Supplemental Nutrition Assistance Program (SNAP)/Temporary Assistance for Needy Families (TANF) and Medicaid data analytics; designs, develops and implements an agency-wide data governance strategy to support data-driven culture; conducts research studies and program evaluation to answer agency and state priorities around health policy and health services delivery; collaborates with the Office of the Governor and other state agencies to harness the power of data to achieve state policy goals; and fosters intra-division relationships and direct integration of data/analytics programs across the agency.

The CDO plans to leave state employment within the next couple of months and open his own solo practice consulting firm (Firm) as a limited liability company. The Firm will provide consultation regarding data and analytics and assist customers in data management and their data practice. The CDO initially will be the only employee in the Firm. He has been working on creating a business implementation plan for the Firm as he wraps up his state employment.

As part of his business implementation plan, the CDO has been in communication with a potential client, EImagine. EImagine provides technology consulting. The CDO's discussions with EImagine have centered around data management and EImagine's data practice and how that might fit in with the CDO's Firm. The CDO and EImagine also discussed information regarding EImagine's infrastructure and the systems and benefits EImagine has in place that could be beneficial to the CDO in starting the Firm. These systems and benefits include human resources services and similar systems and services.

EImagine is a current contractor with FSSA. FSSA contracted with EImagine to support the Care Management for Social Services system (CaMSS) for FSSA's Division of Aging,

Division of Mental Health and Addiction and with an option to extend to the Bureau of Developmental Disability Services. This system is part of the larger integrated care and case management system initiative to modernize and consolidate various care management applications through FSSA. EImagine provides technology consulting, maintenance and operations support for CaMSS and system enhancement services to expand the CaMSS systems should other FSSA divisions desire to implement them. EImagine will work to plan, design, develop and implement solution enhancements with CaMSS. A recent contract amendment added cloud migration as a service under the contract, as well.

EImagine's current contract with FSSA is related to technology and does not have a data practice component. EImagine does not provide advance analytics or data science work/information for FSSA. Additionally, in his state employment, the CDO has not worked with EImagine and has not interacted with any of EImagine's employees working on the CaMSS contract. The CDO does not and has not overseen contract negotiation or administration regarding EImagine and does not make decisions or vote on matters directly related to EImagine in his role as CDO.

The CDO's Firm will perform work related to data management and practice. His discussions with EImagine have been to explore work he could contract with EImagine to perform on the data side of their practice. The CDO and EImagine have discussed resources that could be shared or referrals made regarding business infrastructure.

The Ethics Officer writes that the CDO will not be engaged in any lobbying for the Firm. Additionally, she provides that he was not involved in contract negotiation or administration involving EImagine and he did not make any regulatory or licensing decisions related to EImagine while with the State. Finally, the CDO has not worked on any particular matters as a state employee on which he will be working for EImagine while working for the Firm.

According to the Ethics Officer, the CDO understands that he would be prohibited from representing or assisting EImagine on any particular matter in which he personally and substantially participated as a state employee, and this restriction would apply to other contracts with the Firm as well. The CDO also understands the restrictions against divulging confidential information learned through state employment.

FSSA is seeking the Commission's opinion regarding the application of any of the rules in the Code to the CDO's post-employment opportunity and specifically his potential business relationship with EImagine.

### **ISSUE**

What rules in the Code apply to the CDO's post-employment opportunity with the Firm and his potential relationship with EImagine?

## 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 Ethics Officer's request for a formal advisory opinion on behalf of the CDO invokes consideration of the provisions of the Code pertaining to Confidential Information, Conflicts of Interests and Post-employment. The application of each provision to the CDO is analyzed below.

### *A. Confidential Information*

IC 4-2-6-6 prohibits the CDO 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. So long as any compensation the CDO receives does not result from confidential information, his potential employment with the Firm and business relationship with EImagine would not violate IC 4-2-6-6.

## *B. Conflict of Interests*

IC 4-2-6-9(a)(1) prohibits the CDO from participating in any decision or vote, or matter related to that decision or vote, if he has a financial interest in the outcome of the matter. Similarly, IC 4-2-6-9(a)(3) and (4) prohibit him from participating in any decision or vote or matter related to a decision or vote, in which a business organization in which he is serving as a member, partner or employee or with whom he is negotiating employment 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, the CDO has already begun negotiations with EImagine as a potential client of the Firm. As such, the CDO would be prohibited from participating in any decision or vote, or matter related to a decision or vote, in which he, by virtue of his prospective business relationship with EImagine, would have a financial interest in the outcome of the matter.

The Ethics Officer writes that the CDO has not worked with EImagine and has not interacted with any of EImagine’s employees working on the CaMSS contract; therefore, FSSA has not yet identified a potential conflict of interests. If a potential conflict of interests is identified during the CDO’s remaining employment with the State, IC 4-2-6-9(b) requires the CDO to notify his agency’s appointing authority and ethics officer in writing and either (1) seek a formal advisory opinion from the Commission; or (2) file a written disclosure form with the OIG.

Furthermore, the CDO must ensure he continues to refrain from participating in any decisions or votes, or matters relating to any such decisions or votes, in which he, the Firm or EImagine has a financial interest in the outcome of the matter for the remainder of his state employment.

## *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 CDO from accepting employment from an employer for 365 days from the date that he leaves state employment under various circumstances.

First, the CDO 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.

Based on the information provided, the CDO would not be engaging in any lobbying activities in his prospective employment with the Firm. To the extent that the CDO does not engage in executive branch lobbying for one year after leaving state employment, his

intended employment with the Firm and business relationship with EImagine would not violate this provision of the post-employment rule.

Second, the CDO 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.

EImagine has an active contract with FSSA; however, the CDO does not and has not overseen contract negotiation or administration with EImagine, and he does not make decisions or votes directly related to EImagine in his role as CDO. Accordingly, this restriction would not prohibit the CDO from working for the Firm or pursuing a business relationship with EImagine upon leaving state employment.

Third, the CDO 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 CDO has not made any regulatory or licensing decisions related to EImagine in his role with the State. Accordingly, this provision of the cooling off restriction would not prohibit the CDO from working for the Firm or pursuing a business relationship with EImagine.

Fourth, the CDO 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 EImagine has discussed working with the CDO in an attempt to influence him in his capacity as a state employee. Accordingly, the Commission finds that this restriction would not apply to the CDO's intended employment opportunity with the Firm or his potential business with EImagine.

Finally, the CDO 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.

In this instance, the CDO would be prohibited from representing or assisting the Firm, EImagine or any other person, in a particular matter in which he personally and substantially participated as a state employee.



The Ethics Officer provides that the CDO understands that he would be prohibited from representing or assisting EImagine on any particular matter in which he personally and substantially participated as a state employee, and this would apply to other contracts for the Firm as well.

The CDO should keep in mind that he is prohibited from assisting the Firm, EImagine or any other person on any of the other particular matters listed above on which he may have personally and substantially worked during his state employment.

### **CONCLUSION**

Subject to the foregoing analysis, the Commission finds that the CDO's post-employment opportunity with the Firm and potential business relationship with EImagine would not violate the post-employment restrictions found in IC 4-2-6-11.

Respectfully Submitted,



David Cook

Inspector General

for the State Ethics Director (position currently vacant)