

**42 IAC 1-5-10 Benefiting from confidential information**  
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**IC 4-2-6-17 Use of state property**  
**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)**

A Local Program Director for the Indiana Department of Transportation sought advice regarding a post-employment opportunity and requested guidance on whether the proposed employment opportunity would be subject to any restrictions under the Code of Ethics. The Commission finds that the proposed employment would not be contrary to the Code of Ethics.

April 14, 2022  
2022-FAO-009

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)(A)(ii). The following opinion is based exclusively on sworn testimony and documents presented by the requestor and the Agency Ethics Officer.

**BACKGROUND**

A Local Program Director (LPD) for the Indiana Department of Transportation (INDOT), Crawfordsville District has recently entered into employment negotiations with Terre Haute Metropolitan Planning Organization (Terre Haute MPO).

The LPD performs certain ministerial functions related to the creation and administration of local projects funded by federal monies allocated to INDOT. Specifically, the LPD is responsible for receiving requests for projects from local entities, namely Metropolitan Planning Organizations (MPO), inputting those requests into INDOT software systems, generating project identification numbers (DES) and forwarding this information to the INDOT Contract Administration Division for the purposes of generating an INDOT contract. The LPD creates purchase orders for each contract based on the information provided by MPOs, assigns an INDOT project manager and schedules periodic status meetings led by the assigned INDOT project manager. LPDs do not have an ongoing project-level or project-specific role in the actual delivery of jobs; rather, a LPD fulfills the same formulaic function for each local project in performing administrative tasks and ensuring creation and documentation of basic project framework.

The LPD has been offered a position as Transportation Planner with Terre Haute MPO. Terre Haute MPO facilitates local projects in the Terre Haute Metropolitan Planning Area. Terre Haute MPO receives federal dollars through INDOT for local road projects. The Transportation Planner role performs the following duties: Evaluate data from current and proposed transportation projects; interpret and apply regulatory requirements in the project planning context; develop and perform planning studies related to transportation; conduct analysis/development of transportation improvement plans; create requests for proposals for planned projects; collaborate with local entities to develop project concepts; plan for asset maintenance and delivery of projects; and work with stakeholders to develop public communications.

The LPD will perform some of the duties listed above in her role as a Transportation Planner with Terre Haute MPO for projects she worked on as a LPD at INDOT. The INDOT Ethics Officer

identified the following projects in Vigo County that the LPD performed tasks on as LPD and which would likely be part of her work in a prospective role at Terre Haute MPO:

- Bridge 37
- Bridge 322
- Bridge 77
- Bridge 330 b

The LPD, in conjunction with the INDOT Ethics Officer, requested the Commission’s advisory opinion as to whether the LPD’s proposed employment with Terre Haute MPO is subject to any restrictions under the Code. INDOT’s Ethics Officer specifically requested advice, on behalf of INDOT, regarding whether the LPD’s duties are considered “personal and substantial” for the purposes of determining her eligibility to assist a MPO or any other person in matters on which she worked as a state employee.

**ISSUE**

What provisions of the Code would apply to the LPD regarding potential employment as a Transportation Planner with Terre Haute MPO?

**RELEVANT LAW**

**42 IAC 1-5-10**

**Benefiting from confidential information**

Sec. 10. A state officer, employee, or special state 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.

**42 IAC 1-5-11**

**Divulging confidential information**

Sec. 11. A state officer, employee, or special state appointee shall not divulge information of a confidential nature except as permitted by 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

### *A. Confidential Information*

IC 4-2-6-6 prohibits the LPD 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 LPD receives does not result from confidential information, the Commission finds that her potential post-employment opportunity with Terre Haute MPO would not violate IC 4-2-6-6.

### *B. Conflict of Interests*

IC 4-2-6-9(a)(1) prohibits the LPD from participating in any decision or vote, or matter related to that decision or vote, if she has a financial interest in the outcome of the matter. Similarly, IC 4-2-6-9(a)(4) prohibits her from participating in any decision or vote or matter related to a decision or vote, in which a business organization with whom she 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 LPD has already begun negotiations with Terre Haute MPO as a prospective employer because she has been offered a position as Transportation Planner with Terre Haute MPO. As such, the LPD would be prohibited from participating in any decision or vote, or matter related to a decision or vote in which Terre Haute MPO would have a financial interest in the outcome of the matter.

On April 5, 2022, INDOT’s Ethics Officer filed the LPD’s Ethics Disclosure Statement with the Commission, describing the potential conflict of interests in the LPD’s role as a LPD at INDOT. The filed Ethics Disclosure Statement provides that INDOT’s Ethics Officer executed a formal screen preventing the LPD from working with Terre Haute MPO or otherwise participating in any decision or vote, or matter related to such decision or vote, as an INDOT employee involving Terre Haute MPO or in which Terre Haute MPO has an interest. The screen applies until the LPD leaves her position at INDOT or ceases negotiations with Terre Haute MPO, whichever occurs first.

The LPD must ensure she continues to refrain from participating in any decisions or votes, or matters relating to any such decisions or votes, in which Terre Haute MPO has a financial interest in the outcome of the matter for the remainder of her state employment, or until the cessation of employment negotiations with Terre Haute MPO, whichever occurs first.

### *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 LPD from accepting employment from an employer for 365 days from the date that she left state employment under various circumstances.

First, the LPD 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, it does not appear that the LPD would be engaging in lobbying activities in her prospective role as Transportation Planner at Terre Haute MPO. To the extent that the LPD does not engage in executive branch lobbying for one year after the date she leaves state employment, the Commission finds that a post-employment position at Terre Haute MPO would not violate this provision of the post-employment rule.

Second, the LPD is prohibited from accepting employment for 365 days from the last day of her state employment from an employer with whom 1) she 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 the nature of the administration of the contract.

Terre Haute MPO maintains contracts with the State; however, based on the information provided, the LPD’s involvement with Terre Haute MPO as a LPD at INDOT was limited to administrative functions in the formulaic creation of contract elements, and she was not in position to make discretionary decisions affecting contracts. According, the Commission finds that this restriction would not prohibit the LPD from immediately accepting employment with Terre Haute MPO.

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

Based on the information before the Commission, the LPD did not make any regulatory or licensing decisions related to Terre Haute MPO in her role as a LPD at INDOT. This provision of the cooling off restrictions would not prohibit the LPD from immediately accepting employment with Terre Haute MPO.

Finally, the LPD is subject to the post-employment rule’s “particular matter” prohibition in her prospective post-employment. This restriction prevents her from representing or assisting a person on any of the following twelve matters if she 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.

If the LPD leaves her position at INDOT, she would be prohibited from representing or assisting Terre Haute MPO, as well as any other person, in a particular matter in which she personally and substantially participated as a state employee.

The Commission finds that, based on the information provided, the LPD has no discretion as to selection, procurement, delivery or management of projects she processes for MPO implementation. Further, the LPD's professional contact with MPOs is limited to the exchange of information and generation of project framework as prescribed by INDOT's standardized format. Based on the ministerial nature of the LPD's role in INDOT contracts with Terre Haute MPO, her lack of discretion in applying INDOT's processes for preparing standardized documentation and her limited involvement in contracts with MPOs after the creation of the contract, the Commission finds that her LPD activities at INDOT do not rise to the level of personal and substantial participation in INDOT projects involving the Terre Haute MPO. As such, the Commission finds that the particular matter restriction would not prohibit the LPD from working on the projects she has identified working on while with INDOT if she accepts employment as a Transportation Planner with Terre Haute MPO.

### **CONCLUSION**

Subject to the foregoing analysis, the Commission finds that the LPD's proposed employment with Terre Haute MPO would not violate the post-employment restrictions found in IC 4-2-6-11. Based on the information provided, the Code does not prohibit the LPD from accepting employment with Terre Haute MPO and working on transportation projects she worked on as an LPD with INDOT.

Respectfully Submitted,

Sean Gorman  
Ethics Director