

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

The Ethics Officer for the Indiana State Police (ISP) sought advice on behalf of a former ISP contractor regarding post-employment activities in providing the same services the contractor provided to ISP. The Commission finds that the post-employment opportunity would not violate the post-employment restrictions and would not be contrary to the Code of Ethics.

March 9, 2023  
2023-FAO-002

The Indiana State Ethics Commission (Commission) issues the following formal 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 Agency Ethics Officer and the former contractor for the Agency.

### **BACKGROUND**

The Ethics Officer for the Indiana State Police (ISP) requested a formal advisory opinion on behalf of an ISP Contractor (Contractor), who served as a contractor for ISP from February of 2013 through October of 2022. The Contractor had a one-year contract with ISP that ISP renewed each year until the Contractor resigned in October of 2022.

In his role as a contractor with ISP, he worked with ISP officers and developed early on threat assessments for schools and then developed a program for unarmed responses for active shooters. In her request for a formal advisory opinion, the Ethics Officer provided a copy of the Contractor's contract with ISP. The contract is entitled "Professional Services Contract."

With her request for a formal advisory opinion, the Ethics Officer also provided a copy of an informal advisory opinion that she obtained from the Office of Inspector General (OIG) on the Contractor's behalf. In her request for an informal advisory opinion, the Ethics Officer asked whether the Code would prohibit the Contractor from creating threat assessments for schools after his retirement. The OIG advised that the Code would not apply to the Contractor because he was not a state employee as defined by the Code.

In her request for a formal advisory opinion, the Ethics Officer again writes that the Contractor wants to create threat assessments for schools in his retirement. She asks for a formal advisory opinion on whether it would be a Code violation for him to do so and whether engaging in such activity would require a cooling off period.

### **ISSUE**

Does the Code prohibit the Contractor from creating threat assessments for schools after his retirement as an ISP contractor?

### **RELEVANT LAW**

#### **IC 4-2-6-1**

##### **Definitions**

Sec. 1. (a) As used in this chapter, and unless the context clearly denotes otherwise:

...

(9) "Employee" means an individual, other than a state officer, who is employed by an agency on a full-time, a part-time, a temporary, an intermittent, or an hourly basis. The term includes an individual who contracts with an agency for personal services.

**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 invokes consideration of the Code's definition of employee and the post-employment rule. The application of each provision to the Contractor is analyzed below.

### *A. Definition of Employee*

IC 4-2-6-1(a)(9) defines an employee as "an individual, other than a state officer, who is employed by an agency on a full-time, a part-time, a temporary, an intermittent, or an hourly basis." The definition of employee further specifies that it includes "an individual who contracts with an agency for personal services." The Code's definition of employee does not include an individual with whom an agency contracts for professional services or services other than personal services.

The Contractor's contract with ISP specifies that it is for professional services. Based on the information provided with the Ethics Officer's request for a formal advisory opinion, the Contractor's contract with ISP and the testimony provided to the Commission, the Contractor was party to a contract with ISP for professional services and is not a former

state employee. **As such, the Commission finds that the Contractor was not a state employee and is not a former state employee under the Code.**

*B. Post-Employment*

IC 4-2-6-11 primarily consists of two separate limitations: a “cooling off” period and a “particular matter” restriction. Both provisions apply to a “former state officer, employee, or special state appointee.”

Based on the information provided by the Ethics Officer and the Contractor, the Contractor did not serve as a state officer or special state appointee. Furthermore, he is not a former state employee as defined by the Code. **As the Contractor is not a former state officer, employee or special state appointee as defined by the Code, IC 4-2-6-11 does not apply to him. As such, the Commission finds that the Code’s post-employment rule does not apply to him; therefore, the Code does not prohibit or restrict the Contractor’s proposed activities.**

**CONCLUSION**

**Subject to the foregoing analysis, the Commission finds that the Code does not apply to the Contractor’s proposed post ISP contract activities of assisting schools in creating threat assessments.**

Respectfully Submitted,



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Ethics Director