

CAUTION: The following advice may be based on a rule that has been revised since the opinion was first issued. Consequently, the analysis reflected in the opinion may be outdated.

IC 4-2-6-11 Post-employment restriction

A former Department of Commerce and Lt. Governor's Office employee wanted to offer planning and marketing services to businesses and local governments seeking state government incentives for development from the Department of Commerce. SEC found it was permissible for the former employee to proceed with his business and to represent a client provided that, for twelve months after leaving state service, he did not represent or assist a client that was a specific party in a particular matter that was under consideration by his agency and in which he personally and substantially participated while working for the State.

**91-I-21 Post-Employment Restriction
Indiana State Ethics Commission
Official Advisory Opinion
(Decision October 10, 1991)**

FACT SITUATION

A former employee had worked beginning January 1989 at the Indiana Department of Commerce as Deputy Director to the Lt. Governor (a few months later the title changed to Executive Director, but the duties remained the same) and managed the day-to-day activities of the Indiana Department of Commerce under the Lt. Governor's direction. In March 1990, the former employee transferred from the Department of Commerce to the Lt. Governor's office to take on a new assignment directing an informal blue ribbon commission of thirty citizens from around the state who had been asked to discuss and make recommendations to the Governor and the Lt. Governor on how the state's overall economic development operations could be improved. The former employee worked on that project out of the Lt. Governor's office until he resigned in February 1991.

The former employee had been an economic development professional from 1983 until taking state employment on a full-time basis. He had worked for a regional planning commission which served five counties, for a city economic development organization, and had directed economic development for an electrical utility which served forty-nine counties.

After leaving state government, the former employee formed a corporation in April as an Indiana company providing planning, research, and marketing services for businesses and local economic development organizations. The former employee said it was not his intention that the company would do any work related to the Department of Commerce or to the Lt. Governor's office. However, he had received a request from a company and, subsequently, from a county asking him to represent them. He had declined to represent either until he received clarification from the State Ethics Commission.

QUESTION

Is a former employee who left the Department of Commerce in March 1989 and the Lt. Governor's office in February 1991 permitted by the post-employment restriction to offer planning and marketing services to businesses and local governments seeking state government incentives for development from the Department of Commerce?

OPINION

The Commission found that it was permissible for the former executive director of the Department of Commerce who left the Department of Commerce in March 1990 and the Lt. Governor's office in February 1991 to proceed with his business and to represent a client provided that for twelve months after leaving state service he not represent or assist a client that was a specific party in a particular matter that was under consideration by his agency and in which he participated

personally and substantially.

The relevant statute is as follows:

IC 4-2-6-11, on Post-employment restriction provides,

"(a) This section applies only:

- (1) to a former state officer or former employee; and
- (2) during the period that is twelve (12) months after the date the former state officer or former employee left state service.

(b) As used in this section, "legislative matter" has the meaning set forth in IC 2-2.1-3-1.

(c) As used in this section, "particular matter" means:

- (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 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.

(d) A state officer or employee may not represent or assist a person regarding a particular matter involving a specific party or parties:

- (1) that was under consideration by the agency that was served by the state officer or employee; and
- (2) in which the officer or employee participated personally and substantially through:
 - (A) a decision;
 - (B) an approval;
 - (C) a disapproval;
 - (D) a recommendation;
 - (E) giving advice;
 - (F) an investigation; or
 - (G) the substantial exercise of administrative discretion.

(e) An appointing authority or state officer of the agency that was served by the former state officer or former employee may waive application of this section if the appointing authority or state officer determines that representation or assistance of a former state officer or former employee is not adverse to the public interest. A waiver under this subsection must be in writing and must be filed with the commission.

(f) This section does not prohibit an agency from contracting with a former state officer or employee to act on a matter on behalf of the agency."