

**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 Consequently, the analysis reflected in the opinion may be outdated.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 restrictions**

An FSSA administrative supervisor sought to administer services under a contract for a private nonprofit service provider after having participated in the review and contract awarding processes with the nonprofit. SEC found that acting on behalf of the nonprofit in fulfilling the contract with the FSSA county office within twelve months following participation as a former state employee in the selection process would violate the post-employment restriction.

**94-I-6, Post-Employment Restriction  
(Decision May 19, 1994)**

**FACT SITUATION**

An administrative supervisor of child welfare in a county office of Family and Children, Family and Social Services Administration, wanted to administer services under a contract for a private nonprofit after having participated as a state employee in the review process of competitors which included this private nonprofit and ultimately led to the decision to award the contract to the nonprofit.

The administrative supervisor of child welfare had helped as part of her duties to develop an intensive home-based family preservation program. She had participated in 1989 in the committee that developed the program, drafted the program philosophy, description, criteria for participation in the program, and an initial job description for the intensive caseworker. She then administered and supervised the service provided. In 1990, the program was contracted to a private nonprofit. In 1993, the Juvenile Services Committee of Elkhart County had recommended to the director of the Elkhart County Office of Family and Children that the contract be put out for bid. Subsequently, the program was put up for bid for the first time.

At that time, the administrative supervisor of child welfare was appointed by the county director to participate on the committee which reviewed the proposals submitted by service providers who sought the contract. She reviewed the request for proposals (RFP), served on the review committee for the responses to the RFP, received and graded proposals made by two of the centers, and participated in the committee discussion. She did not review the proposal of the one for which she now wanted to work. Five proposals in all were submitted. The decision to award the one-year contract to two of the centers was made by the county director.

Subsequently, the administrative supervisor of child welfare was contacted by one of the successful bidders and offered the position of director of the program. The administrative supervisor resigned her position at the county office.

Prior to the awarding of the contract, the administrative supervisor of child welfare had no contact with any officer or employee of the nonprofit service provider in regard to their application or contract proposal. After the contract was awarded, the owner and chief executive officer of the nonprofit contacted the administrative supervisor of child welfare. The position offered was new and was that of the person who would administer services offered by the nonprofit under the contract.

**QUESTION**

Is the former administrative supervisor of child welfare permitted to administer services under a contract with a nonprofit service provider after having participated as a former state employee in the review process of competitors which included this nonprofit service provider when the process ultimately led to the decision to award the contract?

## OPINION

The Commission found that acting on behalf of the nonprofit service provider in fulfilling the contract with the county office of Family and Children within the twelve months following participation as a former state employee in the selection process violated the post-employment restriction.

The relevant statute is as follows:

IC 4-2-6-11 on post-employment restriction provides, "Sec. 11. (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 had responsibility for the particular matter.
- (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 former state officer or former 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."