

**42 IAC 1-5-14 Postemployment restrictions (IC 4-2-6-11)**  
**IC 4-2-6-6 Compensation resulting from confidential information**

An employee who served as the special counsel and policy director for public safety with the Governor's Office was subject to particular matter and confidential information restrictions in his post-employment as an associate attorney with a law firm.

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**ISSUE**

Since January 10, 2005, a state employee with the Office of the Governor has served as special counsel and policy director for public safety. The state employee has accepted an offer of employment to join the law firm of Barnes & Thornburg as an associate attorney and has requested an advisory opinion to address any post-employment ethical considerations that would apply to his future employment.

**RELEVANT LAW**

Indiana Code 4-2-6-11

Indiana Code 4-2-6-6

**ANALYSIS**

**A. Post-Employment Ethical Considerations under IC 4-2-6-11: restrictions related to Lobbying, Negotiating and Administering Contracts, and Making Regulatory or Licensing Decisions**

The state employee's intended post-employment is subject to IC 4-2-6-11. The latter statute would generally prohibit the state employee from engaging in the following types of post-employment:

1. Working as a lobbyist until the elapse of at least three hundred sixty-five (365) days after the date on which he ceases to be a state employee;
2. Working for any employer with whom he negotiated or administered a contract on behalf of the state until the elapse of at least three hundred sixty-five (365) days after the date on which he ceases to be a state employee;
3. Working for any employer for whom he made a regulatory or licensing decision that directly applied to the employer or to a parent or subsidiary of the employer until the elapse of at least three hundred sixty-five (365) days after the date on which he ceases to be a state employee; and
4. Working for any employer on a "particular matter" on which he worked while employed by the state. The "particular matter" prohibition under the statute has been interpreted to apply for the life of a "particular matter," and is otherwise not limited to a three hundred sixty-five (365) day term.
- 5.

In this case, the state employee represents to the State Ethics Commission (hereinafter the "SEC") that the terms of his employment offer specifically provide that he shall not register as a lobbyist (as defined in I.C. 4-2-7-1) for a period of at least three hundred sixty-five (365) days from the date of his separation from the state. The state employee also represents that he has never engaged in the negotiation or administration of any contract with Barnes & Thornburg on behalf of the state or the Governor's Office, and that he has never been in a position to make a discretionary decision affecting the outcome of the negotiation or the nature of the administration of any contract with Barnes & Thornburg. The state employee further represents that he has

never made a regulatory or licensing decision that directly applied to Barnes & Thornburg or to a parent or subsidiary of Barnes & Thornburg. To the extent the foregoing representations are correct, the state employee would not be subject to the three hundred sixty-five day post-employment restrictions related to these matters as defined in IC 4-2-6-11.

**B. Post-Employment Ethical Considerations under IC 4-2-6-11(c): restrictions related to the Particular Matter Prohibition**

The issue remains as to whether the state employee's post-employment situation would implicate the "particular matter" prohibition set forth in IC 4-2-6-11. The state employee represents to the SEC that he has personally and substantially participated in the following "particular matters" as defined by IC 4-2-6-11(a):

**East Chicago Second Century, Inc. v. Indiana Gaming Commission, et al., Cause No. 49D12-0606-CC-025440, Marion County Superior Court**  
**Baude v. Heath, et al., Cause No. 1:05-cv-735, U.S. District Court for the Southern District of Indiana**  
**S.L. Thomas Winery, et al. v. Heath, Cause No. 49D06-0511-pl-45032, Marion County Superior Court**  
**M&M Beverages d/b/a Olinger v. Heath, Cause No. 49D12-0512-pl-49102, Marion County Superior Court**  
**Wine & Spirits Wholesalers v. Heath, Cause No. 49c01-0601-pl-1395, Marion County Circuit Court**  
**Kumar v. Daniels, et al., Cause No. 49D04-0602-CT-007503, Marion County Superior Court**  
**City of East Chicago v. Indiana Gaming Commission, et. Al., Cause No. 46C01-0511-MI-000347, LaPorte County Circuit Court**  
**City of East Chicago v. Indiana Gaming Commission, et. Al., Cause No. 49-D06-0510-MI-039983, Marion County Superior Court**  
**East Chicago Second Century, Inc. v. RIH Acquisitions IN, LLC d/b/a Resorts East Chicago, Cause No. 49D01-0504-PL-014394, Marion County Superior Court**  
**United States v. State of Indiana, et. al., Cause No. 1:06-cv-0201-RLY-TAB, U.S. District Court, Southern District of Indiana**  
**Any investigation or enforcement proceeding of the IG's office initiated prior to date of separation**  
**Any investigation or enforcement proceeding of the Gaming Commission initiated prior to date of separation**  
**Any investigation or enforcement proceeding of the Horse Racing Commission initiated prior to date of separation**  
**Any investigation or enforcement proceeding of the ATC or Excise Police initiated prior to date of separation**  
**Department of Correction food service contract, Aramark Correctional Services, Inc., EDS # D12-6-02**  
**Department of Correction, medical services contract, Correctional Medical Services, Inc., EDS # D12-6-014**  
**Department of Correction, New Castle Correctional Facility operations contract, The GEO Group, Inc., EDS #D120-6-008**  
**Indiana State Police, vehicle crash records contract, RFP, TBD**  
**Indiana State Police, DNA collection/analysis contract, EDS # A2-6-0021**

The SEC finds that the state employee's post-employment with Barnes & Thornburg would be subject to certain restrictions in light of his involvement in the foregoing particular matters. In accordance with IC 4-2-6-11(c), the SEC finds that the state employee would be prohibited from representing or assisting his prospective employer, its clients, or any other "person," as defined by IC 4-2-6-1(11), with the identified particular matters. The SEC recommends that the state employee fully disclose to his prospective employer that he would be prohibited from representing or assisting in the foregoing particular matters. In the event that the state employee's employment

with Barnes & Thornburg were to involve any of the above listed particular matters, the state employee should disclose his inability to represent or assist in the matter and ensure that he is screened. The SEC also recommends that, in conjunction with the start of his employment with Barnes & Thornburg, the state employee ensure that the law firm has screening measures in place to shield him from the above listed particular matters.

### **C. Post-Employment Ethical Considerations under IC 4-2-6-6**

The state employee's intended post-employment is subject to the prohibition described in IC 4-2-6-6. Specifically, the state employee would be prohibited from accepting any compensation from any employment, transaction, or investment which was entered into or made as a result of material information of a confidential nature. The state employee has not disclosed any facts to the SEC that would suggest his expected employment with Barnes and Thornburg would present a violation under IC 4-2-6-6. The state employee is nevertheless cautioned by the SEC that he would be prohibited from disclosing any confidential information to his future employer, which he may have obtained during the course of his employment with the state.

### **CONCLUSION**

Subject to the foregoing analysis and identified employment restrictions, the state employee's intended employment with Barnes & Thornburg would not appear to violate IC 4-2-6-11 or IC 4-2-6-6.