

42 IAC 1-5-6 Conflicts of interest; decisions and voting (IC 4-2-6-9)

SEC found the employee had complied with IC 4-2-6-9 by disclosing the existence of a conflict of interest to both her appointing authority and the SEC and directed the employee's agency to set up a screen for the remainder of her employment with the State to avoid any additional conflict of interest.

42 IAC 1-5-14 Postemployment restrictions (IC 4-2-6-11)

SEC determined that although the employee was not subject to the 365-day "cooling off" restriction, she was prohibited under the "particular matter" restriction from working with her new employer on any IMPACT claims in which she was personally and substantially involved as a state employee.

IC 4-2-6-6 Present or former state officers, employees, and special state appointees; compensation resulting from confidential information

Although the employee had not disclosed any information to suggest that she had inappropriately used confidential information, SEC directed her to continue to comply with IC 4-2-6-6 regarding the prohibited use and/or disclosure of confidential information that she may have gained in the course of her employment with the state.

September 14, 2006
No. 06-I-22

The Indiana State Ethics Commission ("Commission") issues the following advisory opinion concerning Indiana Code 4-2-6. Any opinion rendered by the Commission, until amended or revoked, is binding on the Commission in any subsequent allegations concerning the person who requested the opinion and who acted in good faith, unless material facts were omitted or misstated by the person in the request for the opinion or testimony before the Commission.

BACKGROUND

1. On August 23, 2006, the Commission received a website inquiry from a Family Case Coordinator Supervisor 5 employed with the Family and Social Services Administration (FSSA), seeking advice regarding the application of the state's post-employment statute to a position she had been offered by WorkOne. On August 28, 2006, the State Ethics Director issued the Family Case Coordinator an informal advisory opinion analyzing the various state ethics laws that would apply to the Family Case Coordinator's post-employment opportunity, including the state's post-employment statute, IC 4-2-6-11. In response to the informal advisory opinion, the Family Case Coordinator sent an e-mail on August 29, 2006, requesting clarification as to who her appointing authority would be for purposes of state ethics laws. The Family Case Coordinator also asked what steps she would need to take to seek an official advisory opinion from the Ethics Commission. On August 31, 2006, the State Ethics Director responded to the Family Case Coordinator's questions, explaining who her appointing authority is and outlining the information she would need to submit for an advisory opinion from the Commission. Also on August 31, 2006, the Family Case Coordinator forwarded to the State Ethics Director a copy of her formal resignation letter from state employment, which the Family Case Coordinator addressed to her County Director.

2. On September 7, 2006, the Family Case Coordinator submitted an e-mail request to the State Ethics Director for an official advisory opinion from the Commission. The Family Case Coordinator states in her request that she is seeking to ensure compliance with IC 4-2-6-9(b), which requires a state employee who identifies a potential conflict of interest to notify her appointing authority and to seek an advisory opinion from the Commission by filing a written description detailing the nature and circumstances of the particular matter giving rise to the conflict and making full disclosure of any related financial interest in the matter. On September 7, 2006, the State Ethics Director also received an e-mail notice regarding the Family Case Coordinator's case from the Deputy Assistant Attorney General who is assigned to FSSA and works with the Agency's Ethics Officer. The Deputy Assistant Attorney General disclosed that the Family Case Coordinator notified the agency appointing authority of her potential conflict under IC 4-2-6-9 and that FSSA has screened the Family Case Coordinator from approving WorkOne claims that could give rise to a conflict of interest. The Deputy Assistant Attorney General also explained that the Family Case Coordinator is aware of her obligations under IC 4-2-6-11 regarding the "particular matter" prohibition.

3. In her September 7, 2006 e-mail to the State Ethics Director, the Family Case Coordinator attached the following documents for review: (1) the Position description for the WorkOne Manager/IMPACT Coordinator, (2) a letter dated August 31, 2006 from the CEO of East Central Opportunities/WorkOne ("WorkOne"), to the County Director, which outlines WorkOne's understanding of the state ethics laws and the post-employment restrictions the Family Case Coordinator would face, and (3) the "Individual Position Description and Performance Standards" for the Family Case Coordinator's current position with the state as a Family Case Coordinator Supervisor 5.

ISSUE

Based on the Family Case Coordinator's request for an advisory opinion and her various documentary submissions, the Commission understands that the Family Case Coordinator is seeking advice regarding the following issue: What state ethics laws and rules would apply to the Family Case Coordinator's employment opportunity with WorkOne to serve as a WorkOne Manager/IMPACT Coordinator, and would her acceptance of the offered position subject her to any post-employment restrictions under IC 4-2-6-11?

RELEVANT 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. (Formerly: Acts 1974, P.L.4, SEC.2.) As amended by P.L.15-1992, SEC.4; P.L.89-2006, SEC.7.

IC 4-2-6-9

Conflict of economic interests

Sec. 9. (a) A state officer, an employee, or a special state appointee may not participate in any 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 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 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:

(1) 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

(2) 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.

(c) A written determination under subsection (b)(2) 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)(2) shall be filed with the appointing authority.

(Formerly: Acts 1974, P.L.4, SEC.2.) As amended by P.L.9-1990, SEC.8; P.L.15-1992, SEC.5; P.L.22-1995, SEC.2; P.L.222-2005, SEC.7.

IC 4-2-6-11

One year restriction on certain employment or representation;

advisory opinion; exceptions

Sec. 11. (a) 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.

(b) This subsection applies only to a person who served as a state officer, employee, or special state appointee after January 10, 2005. 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 his or her 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) representation by; or
- (3) 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 a special state appointee who serves only as a member of an advisory body.

(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. Waivers must be in writing and filed with the commission. The inspector general may adopt rules under IC 4-22-2 to establish criteria for post employment waivers.

(h) Subsection (b) does not apply to a special state appointee who:

(1) was a special state appointee before January 10, 2005; and

(2) is a special state appointee after January 9, 2005. This subsection expires

January 1, 2007.

As added by P.L.9-1990, SEC.9. Amended by P.L.15-1992, SEC.6; P.L.222-2005, SEC.9; P.L.89-2006, SEC.10.

42 IAC 1-5-10

Benefiting from confidential information

Authority: IC 4-2-7-3; IC 4-2-7-5

Affected: IC 4-2-7

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. (*Office of the Inspector General; 42 IAC 1-5-10; filed Dec 7, 2005, 2:45 p.m.: 29 IR 1210*)

42 IAC 1-5-11

Divulging confidential information

Authority: IC 4-2-7-3; IC 4-2-7-5

Affected: IC 4-2-7

Sec. 11. A state officer, employee, or special state appointee shall not divulge information of a confidential nature except as permitted by law. (*Office of the Inspector General; 42 IAC 1-5-11; filed Dec 7, 2005, 2:45 p.m.: 29 IR 1210*)

ANALYSIS

As a threshold matter, the Commission finds that it has jurisdiction over the Family Case Coordinator in her position as a current state employee with FSSA. The Commission notes that the Family Case Coordinator's letter of resignation from the state indicates that her expected last day of state employment will be September 15, 2006. The Commission finds, however, that its jurisdiction over the Family Case Coordinator would extend to her status as a former state employee in accordance with IC 4-2-6-2.5(2). The Commission renders this advisory opinion by virtue of its authority under IC 4-2-6-4(b)(1)(A). This opinion is limited to the facts and testimony that the Family Case Coordinator has presented.

A. What state ethics laws and rules would apply to the Family Case Coordinator's employment opportunity with WorkOne to serve as a WorkOne Manager/IMPACT Coordinator, and would her acceptance of the offered position subject her to any post-employment restrictions under IC 4-2-6-11?

The Commission has identified the relevant state ethics laws and rules that apply to the Family Case Coordinator's post-employment opportunity with WorkOne. The Commission will address each of the identified ethics statutes and rules and explain the Family Case Coordinator's corresponding ethical obligations with regard to each one in the following order: (1) The Family Case Coordinator's obligations with regard to confidential information, (2) the Commission's recommendations regarding the Family Case Coordinator's potential conflicts of interest as between her current position and her position with WorkOne, and (3) any post-employment restriction(s) that would apply to the Family Case Coordinator.

First, the Family Case Coordinator has an ethical obligation to ensure compliance with the following state ethics statute and ethics rules pertaining to confidential information: IC 4-2-6-6 42 IAC 1-5-10, and 42 IAC 1-5-11. Specifically, IC 4-2-6-6 would prohibit the Family Case Coordinator 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. Under 42 IAC 1-5-10, the Family Case Coordinator would be prohibited from benefiting from, or permitting any other person to benefit from, information of a confidential nature except as permitted or required by law. Finally, 42 IAC 1-5-11 would prohibit the Family Case Coordinator from divulging information of a confidential nature except as permitted by law. Based on the Family Case Coordinator's factual representations to the Commission in the course of her

written submissions and testimony, the Family Case Coordinator has not disclosed any information to suggest that she has inappropriately used confidential information. Nevertheless, the Commission directs the Family Case Coordinator to ensure continued compliance with the foregoing statute and rules regarding the prohibited use and/or disclosure of confidential information that she may have gained in the course of her employment with the state.

Second, the Family Case Coordinator has disclosed to the Commission and her appointing authority an actual conflict of interest that exists between her current state duties and her prospective employer. Specifically, the Family Case Coordinator discloses that her current state duties include her serving as a secondary approver for IMPACT claims that are filed through WorkOne Centers. The Commission finds that the Family Case Coordinator has a conflict of interest under IC 4-2-6-9(a)(4) insofar as her current state duties include participating in decisions involving the claim approval process, which includes her making decisions on IMPACT claims that are submitted through WorkOne, an organization with which she has been negotiating prospective employment or has an arrangement concerning prospective employment. The Commission finds that the Family Case Coordinator has complied with the requirement set forth in IC 4-2-6(b) in that she has notified both her appointing authority and the Commission of this conflict of interest. The Commission also notes the factual representations that have been submitted by the Deputy Assistant Attorney General, who explains that FSSA has screened the Family Case Coordinator from her approval duties involving IMPACT claims. The Commission recognizes that the Family Case Coordinator's expected last day of employment with the state is scheduled to be within one day of her testimony before the Commission; therefore, the Commission recommends to the Family Case Coordinator's appointing authority that the Family Case Coordinator continue to be screened from the IMPACT claim approval process for her remaining day(s) as a state employee.

Finally, the Commission considers whether the Family Case Coordinator would be subject to any post-employment restrictions set forth in IC 4-2-6-11. The latter statute outlines various post-employment restrictions that apply to former state officers, employees, and special state appointees. The statute generally provides for a 365-day waiting period before a former state officer, employee, or appointee may engage in or accept certain types of work. The waiting period may be longer than 365 days in cases that involve a "particular matter" as defined by the statute. In general, IC 4-2-6-11 would prohibit the Family Case Coordinator from the following:

- (1) Accepting employment or receiving compensation as a lobbyist until the elapse of at least three hundred sixty-five (365) days after the date on which she ceases to be a state employee (See IC 4-2-6-11(b)(1));
- (2) Accepting employment or receiving compensation from any employer with whom the Family Case Coordinator negotiated or administered a contract on behalf of the state and was in a position to make a discretionary decision affecting the outcome of the negotiation or the nature of the administration of the contract until the elapse of at least three hundred sixty-five (365) days after the date on which she ceases to be a state employee (See IC 4-2-6-11(b)(2));
- (3) Accepting employment or receiving compensation from any employer for whom the Family Case Coordinator 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 she ceases to be a state employee (See IC 4-2-6-11(b)(3));
- (4) Representing or assisting an employer or any person in a "particular matter" on which the Family Case Coordinator worked while employed by the state if she personally and substantially participated in the matter as a state employee, even if she were to receive no compensation for the representation or assistance (See IC 4-2-6-11(c)); or
- (5) Accepting employment or receiving 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 Family Case Coordinator in the performance of her duties or responsibilities while a state officer, an employee, or a special state appointee (See IC 4-2-6-11(d)).

Please note that with respect to the “particular matter” restriction that is set forth in paragraph four above, IC 4-2-6-11 (a) defines a “particular matter” as follows: (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 necessarily limited to a 365-day waiting period. IC 4-2-6-11 also provides that a state employee’s state officer or appointing authority may waive application of subsections (b) and (c) of the statute when deemed “consistent with the public interest.” See IC 4-2-6-11(g).

In this case, the facts that the Family Case Coordinator has disclosed to the Commission implicate consideration of the post-employment statute’s restriction that would apply to former state employees who have participated in the negotiation or administration of a contract, as well as the “particular matter” prohibition.

In the Family Case Coordinator’s request for an official advisory opinion, she discloses that her former director had final decision authority to award a contract to the Family Case Coordinator’s prospective employer. The Family Case Coordinator states her belief that she does not think the post-employment restriction pertaining to contract negotiation or administration under IC 4-2-6-11(b)(2) should apply to her, because she lacked the authority to make a discretionary decision affecting the outcome of the contract. The Commission has not heard any evidence that would contradict the Family Case Coordinator’s representations in this regard, and therefore finds that the Family Case Coordinator would not be subject to a 365-day post-employment restriction with respect to IC 4-2-6-11(b)(2).

With regard to the “particular matter” restriction under IC 4-2-6-11, the Commission finds that the Family Case Coordinator would be subject to a post-employment restriction pertaining to IMPACT claims with which she was involved as a state employee. Specifically, the Impact claims that she reviewed and/or approved that involved WorkOne would fit within the statutory definition of a “particular matter” under the post-employment statute, insofar as the term “particular matter” is defined to include “a claim.” See IC 4-2-6-11(a)(3). The Commission finds that the Family Case Coordinator’s duties as a Family Case Coordinator Supervisor and secondary approver of IMPACT claims would have entailed personal and substantial participation in the claim approval process for purposes of IC 4-2-6-11(c). Therefore, application of the “particular matter” restriction in the Family Case Coordinator’s case would preclude her from representing or assisting WorkOne on any claim(s) with which she had participated as a Family Case Coordinator Supervisor. However, the Family Case Coordinator would not be restricted from assisting or representing WorkOne with any new claim that may arise on behalf of the same person or situation that may have been the basis of an original claim on which she may have worked.

The Commission reiterates that the “particular matter” restriction is not necessarily limited to three-hundred sixty five (365) days. In this case, the Family Case Coordinator would be prohibited from assisting or representing WorkOne on any claim(s) with which she personally and substantially participated as a state employee for the “life” of the claim(s), even if it extended beyond 365 days from the date that she ceases state employment. The Commission’s finding that the Family Case Coordinator would be subject to a post-employment restriction under the “particular matter” restriction under IC 4-2-6-11(c) does not preclude her appointing authority from waiving application of this restriction if he were to deem such a waiver consistent with the public interest.

Conclusion

Subject to the foregoing analysis, the Family Case Coordinator must ensure compliance with this advisory opinion and all provisions of the state ethics code. To the extent that her appointing authority would seek to waive application of the identified post-employment restriction under IC 4-2-6-11(c), the Commission directs the appointing authority to comply with the waiver guidelines provided in IC 4-2-6-11(g).