

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

The Senior Counsel and Chief of Staff for the Office of the Governor was required to inform his colleagues in a new position with the corporate practice group of a law firm that he was prohibited from assisting them in particular matters with which he was involved as a state employee. In addition, the Counsel and Chief of Staff maintained a duty to not disclose confidential information in his new position with the corporate practice group of a law firm.

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No. 06-I-23

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 in accordance with the advice rendered, unless material facts were omitted or misstated by the person in the request for the opinion or testimony before the Commission.

**BACKGROUND**

A current state employee seeks an advisory opinion to address any ethical considerations that would apply to his future employment with a law firm upon leaving state government. The employee serves as Senior Counsel and Chief of Staff in the Office of the Governor. His primary responsibility has been to support and assist the Governor in the performance of his duties and responsibilities as Governor, which include the Governor serving as Chief Executive of the executive branch of state government (the operation of all agencies, departments and other units of the executive branch of state government); interactions and relationships with the legislative and judicial branches of state government as well as local and federal government officials; and, as the elected political leader of the State, the economic, workforce and educational development and promotion of the overall welfare of the people of the State of Indiana. He has been responsible for the supervision of staff in the Office of the Governor, who liaison with agency and departments heads, Indiana legislators and other appointed and elected governmental officials, the press and media, and constituents. His duties have also included providing legal advice to the Governor and to his staff on various matters.

The employee will conclude his employment with the State on or about November 17, 2006, and plans to accept the position of partner with a law firm effective on or about December 1, 2006. He will join the corporate practice group of the firm and focus primarily on the development of the firm's life sciences practice.

The employee is familiar with the state ethics laws pertaining to confidential information and post-employment. He is aware of his ethical obligation to safeguard any confidential information that he may have gained during the course of his state employment. In addition, he is aware of the specific prohibitions set forth in the State's post-employment statute. While the employee represents that his position with the law firm will not involve participating in any executive branch lobbying, he nevertheless affirms his understanding that he may not register as an executive branch lobbyist before the elapse of at least three hundred sixty-five (365) days after the date on which he ceases state employment. He also discloses that he has personally and substantially participated in the following particular matters during his service with the Office of the Governor:

- Orange County Holdings, LLC v. Lauth Resorts and Casino, LLC and Robert J. Lauth, Jr.  
In the Circuit Court of Orange County  
Cause No. 59C01-0606-PL-220
- Lauth Resorts and Casino, LLC v. William "Bill" Cook  
In the Circuit Court of Orange County

Cause No. 59C01-0606-PL-235

- The award of State incentives by the Indiana Economic Development Corporation to the Honda project (Greensburg Indiana); and the Cummins Engine light duty clean-diesel engine project (Columbus, Indiana), initiated prior to the date of separation

### ISSUE

What State ethics laws would apply to the employee's future employment with the law firm?

### RELEVANT LAW

IC 4-2-6-6

IC 4-2-6-11

### ANALYSIS

As a threshold matter, the Commission finds that it has jurisdiction over the employee in his position as Senior Counsel and Chief of Staff with the Office of the Governor. The Commission renders this advisory opinion by virtue of its authority under IC 4-2-6-4(b)(1)(A). This analysis is limited to the factual representations and testimony presented to the Commission.

#### **A. Post-employment ethical considerations under IC 4-2-6-6, the prohibition against 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.**

Upon ceasing employment with the State, the employee will have a continuing duty to ensure compliance with ethics law pertaining to the use or disclosure of confidential information that may have been gained during the course of his employment with the State. Specifically, he must ensure compliance with IC 4-2-6-6. The latter statute would prohibit him 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. No facts have been disclosed to the Commission that would suggest the employee's expected employment with the law firm would be contrary to IC 4-2-6-6.

#### **B. Post-employment ethical considerations under IC 4-2-6-11, restrictions related to lobbying, negotiating and administering certain contracts, restriction applicable to those who made certain regulatory or licensing decisions, and the particular matter restriction.**

The employee's future employment with the law firm is subject to the State's post employment statute, IC 4-2-6-11. He is aware of the various post-employment restrictions set forth in this statute, which generally provides for a three hundred sixty-five (365) day waiting period before a former state officer, employee, or appointee may accept certain employment or may represent or assist a person with a particular matter. The waiting period may be longer than 365 days in cases where the former state officer, employee, or appointee has personally and substantially participated in a "particular matter" as defined by the statute. In general, IC 4-2-6-11 would prohibit him 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 he ceases state employment (See IC 4-2-6-11(b)(1));

(2) Accepting employment or receiving compensation from any employer with whom Senior Counsel 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 he ceases state employment (See IC 4-2-6-11(b)(2));

(3) Accepting employment or receiving compensation from any employer for whom Senior Counsel 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 state employment (See IC 4-2-6-11(b)(3));

(4) Representing or assisting an employer or any person in a "particular matter" on which Senior Counsel worked while employed by the state if he personally and substantially participated in the matter while employed by the state, even if he 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 Senior Counsel in the performance of his duties or responsibilities while a state officer, an employee, or a special state appointee (See IC 4-2-6-11(d)).

With respect to the "particular matter" restriction, 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; rather, it has been interpreted to apply for the life of the matter. 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 employee represents that he does not intend to engage in executive branch lobbying and, in any case, affirms his understanding of the 365-day post-employment restriction on such activity. He also represents that his responsibilities have never entailed negotiating or administering a contract on behalf of the State or an agency with his prospective employer. His duties have also not included making any regulatory or licensing decisions that have directly applied to the law firm or to a parent or subsidiary of the firm, nor have any facts been presented to suggest that his offer of employment with the law firm has been made for the purpose of influencing him in the performance of his official duties with the State.

Based on the foregoing, the Commission's analysis of IC 4-2-6-11 with regard to the employee's prospective employment with the law firm is limited to consideration of the statute's particular matter restriction that is set forth in IC 4-2-6-11(c). The employee represents that he has personally and substantially participated in the following lawsuits and economic development projects, which qualify as "particular matters" for purposes of IC 4-2-6-11(a):

- Orange County Holdings, LLC v. Lauth Resorts and Casino, LLC and Robert J. Lauth, Jr. In the Circuit Court of Orange County Cause No. 59C01-0606-PL-220
- Lauth Resorts and Casino, LLC v. William "Bill" Cook In the Circuit Court of Orange County Cause No. 59C01-0606-PL-235
- The award of State incentives by the Indiana Economic Development Corporation to the Honda project (Greensburg Indiana); and the Cummins Engine light duty clean-diesel engine project (Columbus, Indiana), initiated prior to the date of separation

The Commission finds that the employee would be prohibited from assisting or representing any person in these matters upon ceasing state employment. This prohibition would apply irrespective of whether he were to any receive compensation for representing or assisting a person with any of these matters. For purposes of state ethics law, the term "person" is defined as follows: "Person" means any individual, proprietorship, partnership, unincorporated association, trust, business trust, group, limited liability company, or corporation, whether or not operated for profit, or a governmental agency or political subdivision. See IC 4-2-6-1(a)(12). The Commission's

finding that the employee's future employment is subject to certain particular matter restrictions does not preclude his appointing authority from waiving application of any of these restrictions if such waiver were deemed consistent with the public interest.

The Commission directs the employee to fully disclose to his colleagues at the law firm his inability to represent or assist a person with the particular matters outlined in this opinion. In the event that the firm currently has or may have any involvement with any of these particular matters, the employee must ensure that he is screened from such matters.

### **CONCLUSION**

Subject to the foregoing analysis, the employee must ensure compliance with this advisory opinion and all applicable ethics laws upon his departure from state government.