

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

A former Deputy Legislative Director/Policy Director for the Office of the Governor was prohibited from accepting a position as an executive branch lobbyist with a law firm until the elapse of 365 days from the end of her state employment. At the end of that period of time, she maintained a duty to not disclose confidential information once she assumed her new position with the firm.

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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

This advisory opinion is rendered at the request of a former employee of the Office of the Governor who serves as Deputy Legislative Director/Policy Director. The former employee seeks an advisory opinion to determine how State ethics laws would apply to her employment opportunity with a law firm. In her request for an advisory opinion, the former employee explained that will join the legislative affairs practice group of a law firm. She advised that she will focus on consulting and lobbying the legislature during the 2007 legislative session. The former employee affirms her understanding that she may not register as an executive branch lobbyist for one year from the date on which she ceases to be a state employee. The former employee also represents to the Commission that she has never negotiated or administered a contract with the law firm on behalf of any agency during the course of her employment with the State.

ISSUE

What State ethics laws apply to the former 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 inquirer as a former state employee. 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 former employee's factual representations and testimony before 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 former employee will have a continuing duty to ensure compliance with ethics law pertaining to the use or disclosure of confidential information that she may have been gained during the course of her employment with the State. Specifically, the former employee must ensure compliance with IC 4-2-6-6. The latter statute would prohibit the former employee 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 former employee's 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 former employee's employment with the law firm is also subject to the State's post employment statute, IC 4-2-6-11. The former employee 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 personally and substantially participated in a "particular matter" as defined by the statute. In general, IC 4-2-6-11 would prohibit the former employee 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 state employment (See IC 4-2-6-11(b)(1));
2. Accepting employment or receiving compensation from any employer with whom The former employee 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 state employment (See IC 4-2-6-11(b)(2));
3. Accepting employment or receiving compensation from any employer for whom The former employee 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 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 The former employee worked while employed by the state if she personally and substantially participated in the matter while employed by the state, 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 former employee 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)).

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).

For purposes of the "lobbyist" restriction set forth in IC 4-2-6-11(b)(1), the term "lobbyist" is defined as follows: an individual who seeks to influence decision making of an agency and who is registered as an executive branch lobbyist under rules adopted by the Indiana department of administration. See IC 4-2-6-7-1(5).

In this case, the former employee represents that she will comply with the restriction pertaining to executive branch lobbying in IC 4-2-6-11; as such, she will not accept employment or receive compensation as an executive branch lobbyist until the elapse of three hundred sixty-five (365) days from her separation date from the State. The former employee also affirms that her responsibilities with the State never entailed negotiating or administering a contract on behalf of the State or an agency with the law firm. The former employee's duties while employed with the State also never included making any regulatory or licensing decisions that directly applied to her prospective employer or to a parent or subsidiary of the law firm, nor have any facts been presented to suggest that the former employee's employment offer was made for the purpose of influencing her in the performance of official duties while she was employed with the State. Finally, with regard to the particular matter restriction set forth in IC 4-2-6-11(c), the former employee does not disclose any "particular matters" on which she may have worked while employed with the State. To the extent the former employee's future employment activities with the law firm would have the potential to implicate a "particular matter" as contemplated by IC 4-2-6-11, the Commission directs the former employee to immediately disclose such matter to the Commission for review prior to representing or assisting a party with any "particular matter."

CONCLUSION

Subject to the foregoing analysis, the former employee must ensure compliance with this advisory opinion and all applicable ethics laws during the course of her employment outside state government.