

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

SEC found no good policy reason existed to warrant a waiver of the Postemployment restrictions rule where an INDOT Deputy Commissioner had made and exercised discretionary decisions affecting the negotiation or administration of a subcontract with his future employer.

January 30, 2006
No. 06-I-4

BACKGROUND:

A former state employee seeks a waiver of the post employment statutory restrictions. The employee was employed by INDOT from November, 2001 until she resigned as a state employee on April 18, 2005. She served as a Deputy Commissioner for Planning and Intermodal Transportation at INDOT. The former state employee first submitted her resignation as Deputy Director of INDOT in January, 2005. At the request of INDOT Commissioner, she agreed to stay with the agency to help with the transition of administration. She has been offered a position with DLZ Corporation to work exclusively on DLZ's contract with the City of Indianapolis to upgrade the Marion County sewer system. She will be assigned specifically to the public works division of DLZ and represents that she will have nothing to do with DLZ's transportation-related work. The sewer cleanup contract between DLZ and the City will run until at least November 2008. Her position with DLZ will be deputy program manager/legal counsel, and the City and DLZ have agreed that all deputy program managers will be committed exclusively to the sewer upgrade project. The former state employee represents that she has never previously worked with anyone in DLZ's public works division. DLZ employs a total of about 700 people. She also represents that there were no discussions between her and DLZ regarding her prospective employment until August 2005, when she represents that DLZ first contacted her.

In 2003, the former state employee was involved in the selection process for the I-69 Tier 2 Project, on which DLZ was one of six successful offerors for subcontracts on the project. DLZ and the other five subcontractors report to the project's program manager, Bernardin Lochmueller & Associates. Thus the former state employee, as INDOT Deputy Director, was in a position to exercise discretionary authority over DLZ and exercised that authority in signing a contract for I-69, approving change orders on the contract, and, on occasion, making decisions about the administration of the I-69 contracts in which DLZ was involved.

ISSUE:

Should the former state employee be granted a waiver of the post-employment statute so that she can accept employment with DLZ before April 18, 2006?

RELEVANT LAW:

Executive Order 05-12, paragraph 8.

I.C. § 4-2-6-11(b)

CONCLUSION

Pursuant to the above-cited statute, the threshold issues are whether the former state employee: (1) was personally engaged in the negotiation or the administration of the DLZ subcontract for the I-69 Tier 2 Project; and (2) was in a position to make a discretionary decision affecting the outcome of the negotiation or the nature of the administration. As a Deputy Commissioner, the former state employee had the ability to make discretionary decisions affecting the negotiation or administration of the DLZ subcontract and exercised that discretion.

Since the former state employee resigned her employment prior to the effective date of IC 4-2-6-11, the Commission looks to Executive Order 05-12 to determine whether or not a waiver of the post-employment restriction is supported by the facts of this case. The Commission determines that a waiver of the post-employment restriction should be granted only when a good policy reason exists. The Commission concludes that the facts of this case do not rise to the level of a good policy reason. Accordingly, the request for a waiver of the post-employment restriction is denied.