

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

The Superintendent of the Indiana Veterans' Home was prohibited from accepting employment with a long term care consulting firm until the elapse of 365 days due to the fact that he made recommendations on contracts and maintained general oversight of the work performed by his future employer under those contracts.

April 12, 2007
No. 07-I-2

The Indiana State Ethics Commission ("Commission") issues the following advisory opinion concerning the State Code of Ethics pursuant to IC 4-2-6-4(b)(1).

BACKGROUND

A former state employee served as the Superintendent of the Indiana Veterans' Home ("IVH") from July 17, 1995 through November 30, 2006. The former state employee has been offered an employment opportunity to work as a consultant with a long-term-care consulting firm based in Indiana. As a consultant, the former state employee indicates that he would not be performing consulting work for compensation that would involve the IVH, would not engage in contract negotiations between IVH and the long-term-care consulting firm, or lobby on the long-term-care consulting firm's behalf.

While the former state employee served as Superintendent, IVH and the long-term-care consulting firm had a contract for the provision of long-term-care consulting services. The contract was already in place at the time that the former state employee became Superintendent in July 1995. The contract was subsequently renewed and competitively awarded to the long-term-care consulting firm. That contract ended on March 21, 2006, and was not renewed. However, two long-term-care consulting firm consultants continued to provide services to the IVH on an as-needed, fee-for-service basis, until October 2006.

As Superintendent, the former state employee was involved in the assessment and review process of the IVH's contract with the long-term-care consulting firm. Specifically, while the former state employee did not have full discretion to make the final decision to determine which vendor was to be awarded a contract, the former state employee did make recommendations on IVH contracts and had general oversight of the work performed under those contracts.

ISSUE

The issue presented in this case is whether the former state employee's acceptance of an employment opportunity with the long-term-care consulting firm would be contrary to IC 4-2-6-11, the post-employment statute.

RELEVANT LAW

IC 4-2-6-11

One year restriction on certain employment or representation; advisory opinion; exceptions

ANALYSIS

The former state employee, as Superintendent for the IVH, was engaged in the negotiation and administration of one (1) or more contracts with the long-term-care consulting firm on behalf of the IVH. Specifically, the former state employee was involved in the assessment and review process of the contract with the long-term-care consulting firm in that he made recommendations on the contract and was responsible for the general oversight of the work performed pursuant to that contract. Moreover, as Superintendent, the former state employee had the ability to make a

discretionary decision affecting the negotiation or administration of the agency's contract with the long-term-care consulting firm. While the former state employee may not have had the final authority to award the contract renewal to the long-term-care consulting firm, he was in fact engaged in the negotiation and administration of the IVH's contract with the long-term-care consulting firm.

CONCLUSION

Pursuant to the foregoing analysis, the Commission finds that the former state employee is prohibited from accepting employment with the long-term-care consulting firm until the elapse of 365 days following his last day of state employment. Moreover, should the former state employee accept employment from the long-term-care consulting firm after the 365-day waiting period, he would be prohibited from assisting the long-term-care consulting firm in any "particular matter" that he personally and substantially participated in as a state employee.