

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

The former Director of the Medical Licensing Board took a position with the Indiana State Medical Association in which his primary duty was to lobby the legislative branch. SEC found the 365-day restriction against accepting compensation as a lobbyist would apply to the former state employee only if he was required to register as an executive branch lobbyist—and not a legislative branch lobbyist—as mandated by the administrative rules adopted by the Department of Administration.

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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 serves as the Director of Government Relations for the Indiana State Medical Association (“ISMA”). The former state employee was previously employed by the State of Indiana as the Director of the Medical Licensing Board with the Indiana Professional Licensing Agency (“IPLA”) until May 30, 2008.

The ISMA is a private, nonprofit membership association for physicians. As the Director of Government Relations for the ISMA, the former state employee’s primary duty is to lobby the legislative branch. Accordingly, he has registered as a legislative lobbyist. In addition, ISMA’s members are also affected by rules promulgated by various IPLA boards, including the Medical Licensing Board. As a result, the former state employee will also interact with various IPLA boards and committees to advocate for the ISMA’s physician members.

The former state employee explains that his interactions with the IPLA boards would generally consist of communications at meetings conducted under the Open Door Law or public or private communication solicited by the boards. He is neither currently registered as an executive branch lobbyist, nor has engaged in any activities that would require him to register as such. According to the former state employee, he and the ISMA have instituted internal controls to ensure that he does not engage in any activities which would constitute executive branch lobbying before the expiration of the 1-year post-employment period.

ISSUE

Can the former state employee interact with executive branch agencies before the expiration of the 365-day post-employment restriction, if such interaction does not subject the former state employee to register as an executive branch lobbyist?

RELEVANT LAW

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.

IC 4-2-6-1

Definitions

Sec. 1. (a) As used in this chapter, and unless the context clearly denotes otherwise:

(b) The definitions in IC 4-2-7 apply throughout this chapter.

IC 4-2-7-1

Definitions

Sec. 1. The following definitions apply throughout this chapter:

(5) "Lobbyist" means 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.

ANALYSIS

The post-employment rule imposes various restrictions on the type of post-employment activity that a former state employee may engage in. In this case, IC 4-2-6-11(b)(1) would prohibit the former state employee from accepting employment or receiving compensation as a lobbyist until the expiration of 365-days from his final day of state employment. The term lobbyist is defined in IC 4-2-7-1(5). See IC 4-2-6-1(b). For purposes of the post-employment rule, a lobbyist is an individual who both, seeks to influence decision making of an agency *and* is registered as an executive branch lobbyist under the rules adopted by the Indiana Department of Administration (IDOA). IC 4-2-7-1(5).

In this case, while it is arguable that the former state employee would be seeking to influence the decision making of an agency when interacting with it, the one-year prohibition against lobbying the executive branch would only apply if his interaction/activities with the executive agencies would require him to register as an executive branch lobbyist pursuant to the rules adopted IDOA. If he is not required to register as an executive branch lobbyist, the former state employee would not be considered a “lobbyist” for purposes of the 365 day post-employment restriction.

CONCLUSION

The Commission finds that the 365-day post-employment restriction against accepting compensation as a lobbyist would not apply to the former state employee only if he is not required to register as an executive branch lobbyist as mandated by the administrative rules adopted by IDOA. The former state employee remains subject to all of the restrictions applicable to a former state employee.