

**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 Director of FSSA's Division of Family Resources (DFR) left state employment in December 2011 to accept employment as the CFO for a software solutions company (see AO 11-I-17). The Company expects to serve as a subcontractor for a vendor that has responded to an RFP regarding DFR's Indiana Eligibility Determination Services System, and the vendor has asked the former Deputy Director to serve as an advisor on the response team. SEC found there would be no violation of the rule on Compensation resulting from confidential information since the former Deputy Director's involvement on the team would be limited to her knowledge of federal regulations and the general operation of DFR. Furthermore, SEC concluded the limited involvement the former Deputy Director may have had in the RFP process did not amount to personal and substantial participation that would prohibit her from representing or assisting another person in the matter as provided for by the particular matter provision in the rule on Postemployment restrictions.

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

**BACKGROUND**

A former state employee currently serves as the Chief Financial Officer ("CFO") for a local software solutions company. The former state employee was employed by the Indiana Family and Social Services Administration ("FSSA"). She served in various positions at FSSA including Deputy Director of the Division of Family Resources ("DFR"), Director of Aging, CFO, Appointing Authority for the DFR, and Chief of Staff. She left state employment in December 2011 after seeking post-employment advice from the Commission and receiving Advisory Opinion 11-I-17.

On May 14, 2012, the Indiana Department of Administration released Request for Proposal 12-113 ("RFP") for the Indiana Eligibility Determination Services System ("IEDSS"). This eligibility system is managed by DFR. DFR determines participant eligibility for Food Stamps, TANF, and Medicaid. The local software solutions company will be a subcontractor for a vendor ("Vendor") that is responding to the RFP. The former state employee has been asked by the Vendor to serve as an advisor on the response team. As an advisor, the former state employee would provide assistance to the response team through her knowledge of federal regulations and DFR operations.

The RFP had not been written while the former state employee was still employed by FSSA and she did not participate in its creation or provide input in any way. She is aware that FSSA procured a vendor to write the RFP on behalf of the agency, but she did not participate in that process. While not certain, it is possible that the former state employee may have signed the award letter for that vendor in her role as DFR appointing authority. The former state employee neither managed the current vendor of the IEDSS nor participated in any prior RFPs for this work while she was employed by FSSA. While she did not negotiate or sign the current contract FSSA has in place for the IEDSS with the current vendor, her initials are on the EDS cover sheet

because she was the agency's former CFO. The initials verify that funding existed to cover the costs of any contracts that were executed on behalf of FSSA.

### ISSUE

Would the Code prohibit the former state employee from participating in her current employer's intended RFP response?

### RELEVANT LAW

#### **I.C. 4-2-6-6**

#### **Present or former state officers, employees, and special state appointees; compensation resulting from confidential information**

Sec. 6. No state officer or employee, former state officer or employee, special state appointee, or former special state appointee shall accept any compensation from any employment, transaction, or investment which was entered into or made as a result of material information of a confidential nature.

#### **I.C. 4-2-6-11 (42 IAC 1-5-14)**

#### **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 I.C. 4-22-2 to establish criteria for post employment waivers.

## ANALYSIS

The former state employee's intended employment with the local software solutions company invokes consideration of the provisions of the Code pertaining to confidential information and post-employment. The application of each provision to the former state employee is analyzed below.

### *A. Confidential Information*

I.C. 4-2-6-6 prohibits the former state 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. Based on the information provided, it does not appear that

the former state employee's participation in the response team would require her to disclose confidential information she may have gained throughout the course of her employment with FSSA. Specifically, she would only draw upon her knowledge of federal regulations and DFR operations. Accordingly, the Commission finds that the former state employee's participation in the RFP response offer is not in violation of I.C. 4-2-6-6.

## *B. Post-Employment*

I.C. 4-2-6-11 consists of two separate limitations: a “cooling off” period and a particular matter restriction. The first prohibition would not apply in this case because the former state employee is already employed by the local software solutions company. Instead, the nature of her question invokes consideration of the post-employment rule’s “particular matter” prohibition. This restriction prevents her from working on any of the following twelve matters if she personally and substantially participated in the matter as a state employee: 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 limited to 365 days but instead extends for the entire life of the matter at issue, which may be indefinite.

In this case, the former state employee indicates that she would like to participate in the RFP response to FSSA on behalf of her employer. To the extent that the RFP would be considered a contract, an application, or a business transaction, it would appear that the RFP would be a particular matter. It does not appear, however, that the former state employee ever personally and substantially participated in the RFP during her employment with the State. Specifically, the RFP had not been written while the former state employee was still employed by FSSA and she did not participate in its creation or provide input in any way. While it is possible that the former state employee may have signed the award letter for that vendor hired by FSSA to draft the RFP in her role as DFR appointing authority, it does not appear that this interaction would rise to the level of “personal and substantial” involvement. Moreover, despite the fact that her initials, as the agency’s former CFO, are on the EDS cover sheet for the contract of the current vendor in charge of the IEDSS, the current contract is a matter separate from the RFP the former state employee wishes to participate in. Accordingly, it is the opinion of the Commission that the particular matter restriction would not apply to the former state employee’s intended work on the RFP.

## **CONCLUSION**

The Commission finds that the former state employee is not prohibited by the Code from participating in her current employer’s intended RFP response.