

**42 IAC 1-5-14 Post-employment restrictions (IC 4-2-6-11)**  
**42 IAC 1-5-6 Conflicts of interest; decisions and voting (IC 4-2-6-9)**

A DCS employee sought advice regarding the application of the post-employment restrictions to an opportunity for future employment with an organization that has a service provider contract with DCS. As part of a multi-person committee, the employee scored vendor responses to RFPs, including those submitted by the organization, and made recommendations to the DCS Central Office. The DCS Central Office then makes the final decision to award a contract to a particular vendor. SEC determined that the former employee was not subject to the one-year cooling off requirement found in IC 4-2-6-11, and he could begin employment with the organization immediately, so long as he complied with the executive branch lobbying restrictions. SEC further found that the employee must refrain from assisting or representing the organization or its clients in any particular matters he personally and substantially participated in as a state employee.

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The Indiana State Ethics Commission (Commission) issues the following advisory opinion concerning the State Code of Ethics (Code) pursuant to IC 4-2-6-4(b)(1). The following opinion is based exclusively on sworn testimony and documents presented by the requestor.

**BACKGROUND**

A state employee at the Indiana Department of Child Services (DCS) works as the Regional Manager of DCS Region 11. The employee began working at DCS in March 2002, where he worked in Marion County as a Family Case Manager (FCM). He was later promoted to FCM Supervisor and then to Division Manager. He became the Regional Manager of Region 11 (Hamilton, Hancock, Madison, and Tipton counties) in February 2013. In this position, the employee oversees the daily operations of the four local DCS offices in each county. As Regional Manager, the employee also works to ensure that each local office follows DCS policy, to help build and sustain relationships with various stakeholders in the local communities in his region, and to serve as the conduit between the DCS Central Office and his local offices. Although he typically works directly with other DCS staff members, he also works with foster parents, bio-parents, community stakeholders, and provider agencies to help navigate challenges that arise with children and families involved with DCS. He also works with these various individuals, groups, and providers through his role on the Regional Services Council (RSC) in Region 11.

The RSC is comprised of the employee, his Region's four local office directors, two foster parents, a Court Appointed Special Advocate (CASA), a Juvenile Prosecutor, two members from Juvenile Probation and two DCS FCMs. The RSC is tasked with identifying community-based service needs within the region for families who are involved with DCS as well as preventative services for families who are experiencing challenges, but who are not yet involved with DCS. The employee and the RSC work to identify potential service gaps in the community. Once the RSC identifies community-based service needs, DCS issues a Request for Proposal (RFP) to search for and solicit vendors to provide those services. These RFPs are developed by the DCS Central Office and scored at the regional or local level by DCS staff, including the employee, and the non-DCS staff members of the RSC provide input. A DCS Service Specialist guides the local staff in the scoring process, ensuring that the local staff is reviewing proposals based on

how it relates to the actual RFP. After scoring is complete, the RSC identifies the number of providers needed in each service category and recommends the providers with the highest scores to the DCS Service Specialist so that the DCS Central Office can work on contract negotiations. The DCS Central Office finishes contract negotiations and decides which entities receive contracts based on their proposals sent in response to the RFP.

In addition to community-based services, the RSC also works with a “Community Partner” agency to provide prevention services to families. In Region 11, the Community Partner is the Indiana Children’s Bureau (the Bureau). DCS works with the Bureau to identify and provide prevention services for families who are not yet involved with DCS. Similar to community-based services, the RSC identifies potential prevention service needs for the region. However, the Bureau, as the Region’s Community Partner, is the one who develops and puts out the RFP for the prevention services. The DCS local offices score the prevention RFPs similarly to how they score the community-based RFPs, and the RSC then makes a recommendation to the Bureau regarding which services should be added. The Bureau then works with the DCS Central Office to determine if the proposed services and providers meet the prevention criteria, and then the Bureau and DCS Central Office begin the contract negotiation process and determines which providers will receive contracts. The Bureau and DCS have the discretion to turn down a recommendation made by the RSC. The Bureau then subcontracts directly with the chosen providers for these prevention services.

The employee is submitting this request because, in November 2016, he was offered a position with the Bureau to be the Vice President of four Community Partner Child Safety Programs outside of Region 11 (Regions 8, 9, 10, and 12). The Bureau serves as the Community Partner in these four regions performing prevention services. The employee, as the Regional Manager and a member of the RSC, has worked with the Bureau regarding both community-based and preventative services contracts. He has participated in scoring teams for RFPs for various types of community-based services in his region. The Bureau often responds with proposals to provide services for several types of services, and the employee has been a part of the team to review these proposals. He has also been involved in scoring the preventative services RFPs that the Bureau administers.

### **ISSUE**

What rules in the Code apply to the employee’s prospective post-employment opportunity with the Bureau?

### **RELEVANT LAW**

## **IC 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.

## **IC 4-2-6-9 (42 IAC 1-5-6)**

### **Conflict of economic interests; commission advisory opinions; disclosure statement; written determinations**

Sec. 9. (a) A state officer, an employee, or a special state appointee may not participate in any decision or vote, or matter related to that decision or vote, if the state officer, employee, or special state appointee has knowledge that any of the following has a financial interest in the outcome of the matter:

(1) The state officer, employee, or special state appointee.

(2) A member of the immediate family of the state officer, employee, or special state appointee.

(3) A business organization in which the state officer, employee, or special state appointee is serving as an officer, a director, a member, a trustee, a partner, or an employee.

(4) Any person or organization with whom the state officer, employee, or special state appointee is negotiating or has an arrangement concerning prospective employment.

(b) A state officer, an employee, or a special state appointee who identifies a potential conflict of interest shall notify the person's appointing authority and ethics officer in writing and do either of the following:

(1) Seek an advisory opinion from the commission by filing a written description detailing the nature and circumstances of the particular matter and making full disclosure of any related financial interest in the matter. The commission shall:

(A) with the approval of the appointing authority, assign the particular matter to another person and implement all necessary procedures to screen the state officer, employee, or special state appointee seeking an advisory opinion from involvement in the matter; or

(B) make a written determination that the interest is not so substantial that the commission considers it likely to affect the integrity of the services that the state expects from the state officer, employee, or special state appointee.

(2) File a written disclosure statement with the commission that:

(A) details the conflict of interest;

(B) describes and affirms the implementation of a screen established by the ethics officer;

(C) is signed by both:

(i) the state officer, employee, or special state appointee who identifies the potential conflict of interest; and

(ii) the agency ethics officer;

(D) includes a copy of the disclosure provided to the appointing authority; and

(E) is filed no later than seven (7) days after the conduct that gives rise to the conflict.

A written disclosure filed under this subdivision shall be posted on the inspector general's Internet web site.

(c) A written determination under subsection (b)(1)(B) constitutes conclusive proof that it is not a violation for the state officer, employee, or special state appointee who sought an advisory opinion under this section to participate in the particular matter. A written determination under subsection (b)(1)(B) shall be filed with the appointing authority.

#### **IC 4-2-6-11 (42 IAC 1-5-14)**

#### **One year restriction on certain employment or representation; advisory opinion; exceptions; waivers; disclosure statements; restrictions on inspector general seeking state office**

Sec. 11. (a) As used in this section, "particular matter" means any of the following:

- (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.
- (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) 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 the individual's 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) consultation by;
- (3) representation by; or
- (4) 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 the following:

- (1) A special state appointee who serves only as a member of an advisory body.
- (2) A former state officer, employee, or special state appointee who has:
  - (A) not negotiated or administered any contracts with that employer in the two (2) years before the beginning of employment or consulting negotiations with that employer; and
  - (B) any contract that:
    - (i) the former state officer, employee, or special state appointee may have negotiated or administered before the two (2) years preceding the beginning of employment or consulting negotiations; and
    - (ii) is no longer active.

(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. A waiver must satisfy all of the following:

- (1) The waiver must be signed by an employee's or a special state appointee's:
  - (A) state officer or appointing authority authorizing the waiver; and
  - (B) agency ethics officer attesting to form.
- (2) The waiver must include the following information:
  - (A) Whether the employee's prior job duties involved substantial decision making authority over policies, rules, or contracts.
  - (B) The nature of the duties to be performed by the employee for the prospective employer.
  - (C) Whether the prospective employment is likely to involve substantial contact with the employee's former agency and the extent to which any such contact is likely to involve matters where the agency has the discretion to make decisions based on the work product of the employee.
  - (D) Whether the prospective employment may be beneficial to the state or the public, specifically stating how the intended employment is consistent with the public interest.
  - (E) The extent of economic hardship to the employee if the request for a waiver is denied.

(3) The waiver must be filed with and presented to the commission by the state officer or appointing authority authorizing the waiver.

(4) The waiver must be limited to an employee or a special state appointee who obtains the waiver before engaging in the conduct that would give rise to a violation of subsection (b) or (c).

The commission may conduct an administrative review of a waiver and approve a waiver only if the commission is satisfied that the information provided under subdivision (2) is specifically and satisfactorily articulated. The inspector general may adopt rules under IC 4-22-2 to establish criteria for post employment waivers.

(h) Subsection (b) applies, subject to waiver under subsection (g), to a former state officer, employee, or special state appointee who:

(1) made decisions as an administrative law judge; or

(2) presided over information gathering or order drafting proceedings;

that directly applied to the employer or to a parent or subsidiary of the employer in a material manner.

(i) A former state officer, employee, or special state appointee who forms a sole proprietorship or a professional practice and engages in a business relationship with an entity that would otherwise violate this section must file a disclosure statement with the commission not later than one hundred eighty (180) days after separation from state service. The disclosure must:

(1) be signed by the former state officer, employee, or special state appointee;

(2) certify that the former state officer, employee, or special state appointee is not an employee of the entity; and

(3) state in detail the treatment of taxes, insurance, and any other benefits between the entity and the former state officer, employee, or state appointee.

(j) The inspector general may not seek a state elected office before the elapse of at least three hundred sixty-five (365) days after leaving the inspector general position.

## ANALYSIS

### *A. Confidential Information*

IC 4-2-6-6 prohibits the employee from accepting any compensation from any employment, transaction, or investment that was entered into or made as a result of material information of a confidential nature. The employee confirmed that he would not be required to utilize any confidential information in his prospective employment with the Bureau. So long as any compensation the employee receives does not result from confidential information, his potential employment with the Bureau would not violate IC 4-2-6-6.

### *B. Conflicts of Interest*

IC 4-2-6-9(a)(1) prohibits the employee from participating in any decision or vote, or matter related to that decision or vote, if he has a financial interest in the outcome of the matter. Similarly, IC 4-2-6-9(a)(4) prohibits him from participating in any decision or vote, or matter related to that decision or vote, in which a person or organization with

whom he is negotiating or has an arrangement concerning prospective employment has a financial interest in the outcome of the matter. The definition of financial interest in IC 4-2-6-1(a)(11) includes, “an interest arising from employment or prospective employment for which negotiations have begun.”

In this case, employment negotiations have already begun, as the employee indicates that the Bureau offered him the position in November 2016. Accordingly, the employee would be prohibited from participating in any decision or vote, or matter related to a decision or vote, in which he, by virtue of his employment negotiations with the Bureau, or the Bureau itself, would have a financial interest in the outcome of the matter.

The employee stated that he has not participated in any votes or decisions, or matters relating to such decisions or votes, in matters in which the Bureau would have a financial interest since employment negotiations have begun. Further, he stated that his current job responsibilities do not include participating in such matters.

The employee must ensure that he does not participate in any decisions or votes, or matters relating to any such decisions or votes, in which he or the Bureau has a financial interest in the outcome of the matter for the remainder of his state employment. Further, if he identifies a potential conflict of interests, he must follow the requirements in IC 4-2-6-9(b) to avoid violating this rule.

### *C. Post-Employment*

IC 4-2-6-11 consists of two separate limitations: a “cooling off” period and a “particular matter” restriction. The first prohibition, commonly referred to as the cooling off or revolving door period, prevents the employee from accepting employment from an employer for 365 days from the date that he left state employment under various circumstances. Employer is defined in IC 4-2-6-1(a)(10) as any person from whom a state employee receives compensation.

First, the employee is prohibited from accepting employment as a lobbyist for the entirety of the cooling off period. A lobbyist is defined as an individual who seeks to influence decision making of an agency and who is registered as an executive branch lobbyist under the rules adopted by the Indiana Department of Administration (IDOA).

The employee provided that he does not anticipate engaging in any lobbying activities in his prospective employment with the Bureau. To the extent that the employee does not engage in executive branch lobbying for one year after leaving state employment, his intended employment with the Bureau would not violate this provision of the post-employment rule.

Second, the employee is prohibited from accepting employment for 365 days from the last day of his state employment from an employer with whom 1) he engaged in the negotiation or administration of a contract on behalf of a state agency and 2) was in a position to make a discretionary decision affecting the outcome of the negotiation or nature of the administration of the contract.

The employee serves on the Regional Services Council (RSC) that helps identify community-based and preventative service needs throughout his community. As part of the RSC, the employee, along with other committee members, participate in scoring RFPs that are developed by the DCS Central Office to address these needs. After scoring is complete, the RSC identifies the number of providers needed in each service category and recommends the providers with the highest scores to the DCS Service Specialist so that the DCS Central Office can work on contract negotiations. The DCS Central Office finishes contract negotiations and decides which entities receive contracts based on their proposals sent in response to the RFP.

The Commission finds that the employee's participation in scoring the RFPs and making recommendations to the DCS Central Office as part of the RSC does not amount to making a discretionary decision in the negotiation of a contract. The employee is one of several committee members on the RSC and the committee's recommendations are forwarded to the DCS Central Office for decision-making regarding contracts. Specifically, the Central Office considers the RSC's recommendations, but ultimately makes the decision whether to award a contract to any providers and negotiates all contracts. Accordingly, the Commission finds that the employee is not prohibited under this provision from accepting employment with the Bureau immediately upon leaving state employment.

Third, the employee is prohibited from accepting employment for 365 days from the last day of his state employment from an employer for whom he made a regulatory or licensing decision that directly applied to the employer or its parent or subsidiary. Nothing in the information provided indicates that the employee ever made any regulatory or licensing decisions that directly applied to the Bureau at any time during his state employment.

The Commission finds that this provision does not apply to the employee because he has not made any regulatory or licensing decisions that applied to the Bureau as a DCS employee. Consequently, he is not prohibited under this provision from accepting employment with the Bureau immediately upon leaving state employment.

Fourth, the employee is prohibited from accepting employment from an employer if the circumstances surrounding the hire suggest the employer's purpose is to influence him in his official capacity as a state employee. The information presented to the Commission does not suggest that the Bureau extended an offer of employment to the employee in an attempt to influence him in his capacity as a state employee. Accordingly, the Commission finds that this restriction would not apply to his intended employment opportunity with the Bureau.

Finally, the employee is subject to the post-employment rule's "particular matter" prohibition in his prospective post-employment. This restriction prevents him from representing or assisting a person on any of the following twelve matters if he 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.

Based on the information provided, the employee may have personally and substantially participated in various contracts, determinations, and business transactions. However, the employee does not expect to work on any of these matters in his prospective employment with the Bureau. Specifically, the employee indicated that his prospective position with the Bureau is in regions 8, 9, 10, and 12, outside of his current region. He indicates that he would not be working on any of the same matters he worked on while serving as Regional Manager of Region 11.

The Commission finds that the employee must ensure compliance with the particular matter restriction and refrain from assisting or representing the Bureau, or any other person, on any of the particular matters listed above that he personally and substantially worked on during his state employment regardless of whether it involved the Bureau.

### **CONCLUSION**

Subject to the foregoing analysis and the application of the one-year restriction regarding executive branch lobbying, the Commission finds that the employee's post-employment opportunity with the Bureau would not violate the post-employment restrictions found in IC 4-2-6-11.

Respectfully Submitted,

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