

**CAUTION:** The following advice may be based on a rule that has been revised since the opinion was first issued. Consequently, the analysis reflected in the opinion may be outdated.

**IC 4-2-6-11**

A former ISDH director sought advice as to whether he was permitted under the Post-employment restriction rule to enter into a personal services contract with FSSA. SEC found the former director would be permitted to do so because the restriction did not prohibit an agency from contracting with a former state employee to act on a matter on behalf of the agency.

## **93-I-20, Post-Employment Restriction (Decision December 16, 1993)**

### **Fact Situation**

The former director of the Office of Legal Affairs for the Indiana State Department of Health wanted the State Ethics Commission to determine if it was a violation of the post-employment restriction for him to enter into a personal services contract with the Family and Social Services Administration. He had served as director of the Office of Legal Affairs for approximately four years until his resignation in the fall of 1993. His responsibilities in that position included being agency general counsel, general supervisor of the legal work for the agency's Office of Legal Affairs, and legislative liaison for the Health Department. He rendered policy advice to the Commissioner, other members of the agency's executive staff and, upon request, to the Governor's Office and to other departments during the 1993 general session of the General Assembly. He advised on legislative health care reform proposals, consideration of Department of Health rules, and general agency administrative policies and procedures.

After resigning from his position at the State Department of Health (last day October 29), he began (November 1) working as an independent contractor under the terms of a personal services contract with the Indiana Family and Social Services Administration. Under the contract, he performed policy review, analysis, and consultation regarding health and social services reform issues similar to those he performed at the Department of Health, only now focusing more on multi-agency concerns under the direction of the FSSA general counsel.

His contact with FSSA was nearly full-time, but he expected to work a higher average number of hours per week at the beginning of the contract and a lower average towards the end.

### **Question**

Is the former director of the Office of Legal Affairs for the Indiana State Department of Health permitted by the post-employment restriction to enter into a personal services contract with the Family and Social Services Administration?

### **Opinion**

The Commission found that the contract of the former director of the Office of Legal Affairs for the Indiana State Department of Health with Family and Social Services Administration was not prohibited by the post-employment restriction because the restriction did not prohibit an agency from contracting with a former state employee to act on a matter on behalf of the agency.

The relevant statute is as follows:

Sec. 11. (a) This section applies only:

- (1) to a former state officer or former employee; and
  - (2) during the period that is twelve (12) months after the date the former state officer or former employee had responsibility for the particular matter.
- (b) As used in this section, "legislative matter" has the meaning set forth in IC 2-2.1-3-1.
- (c) 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.

- (d) A former state officer or former employee may not represent or assist a person regarding a particular matter involving a specific party or parties:
- (1) that was under consideration by the agency that was served by the state officer or employee; and
  - (2) in which the officer or employee participated personally and substantially through:
    - (A) a decision;
    - (B) an approval;
    - (C) a disapproval;
    - (D) a recommendation;
    - (E) giving advice;
    - (F) an investigation; or
    - (G) the substantial exercise of administrative discretion.

(e) An appointing authority or state officer of the agency that was served by the former state officer or former employee may waive application of this section if the appointing authority or state officer determines that representation or assistance of a former state officer or former employee is not adverse to the public interest. A waiver under this subsection must be in writing and must be filed with the commission.

(f) This section does not prohibit an agency from contracting with a former state officer or employee to act on a matter on behalf of the agency.