

SECRETARY OF STATE
STATE OF INDIANA
200 W. WASHINGTON STREET, INDIANAPOLIS, IN 46204
WWW.SOS.IN.GOV

INDIANA
STATE ETHICS COMMISSION

OCT 14 2021

FILED

September 3, 2021

IC 4-2-6-11

Post-employment waiver

As the Appointing Authority of the Office of the Indiana Secretary of State I am filing this waiver of the application of the Code of Ethics' post-employment restriction as it applies to **Lindsey Mayes** in her possible post-employment with **Sondhi Solutions, LLC**.

I understand that I must file and present this waiver to the State Ethics Commission at their next available meeting. I further understand that this waiver is not final until approved by the State Ethics Commission.

- A. This waiver is provided pursuant to IC 4-2-6-11(g) and specifically waives the application of IC 4-2-6-11(b)(2): 365 day required "cooling off" period before receiving compensation from an employer for whom the state employee or special state appointee was engaged in the negotiation or administration of a contract and was in a position to make a discretionary decision affecting the outcome of such negotiation or administration.

See **Attachment A** for details and the agency's consultation with Office of Inspector General staff upon which the decision to grant this post-employment waiver is based.

- B. IC 4-2-6-11(g)(2) requires that an agency's appointing authority, when authorizing a waiver of the application of the post-employment restrictions in IC 4-2-6-11(b)(c), also include specific information supporting such authorization. Please provide the requested information in the following five (5) sections to fulfill this requirement.
 1. Please explain whether the employee's prior job duties involved substantial decision-making authority over policies, rules, or contracts:

Ms. Mayes is not an agency fiscal officer and does not have agency contracting authority. With respect to the Agency's limited engagements with the potential future employer and intermittent Agency Vendor (Sondhi Solutions, LLC), Ms. Mayes decision-making authority was not substantial and her authority and involvement in two prior, completed contracts was not substantial. Her authority and involvement in a potential future engagement for which the vendor has submitted a proposal was not substantial. Nonetheless, in her capacity as IT director she had administrative awareness and involvement with the vendor's engagements with the Agency as well as a degree of discretionary decision-making authority (though unutilized). Out of an abundance of caution and to avoid the appearance of impropriety, she requested a waiver of the one-year post-employment cooling off period.

The Agency authorized Ms. Mayes to investigate outside employment opportunities commensurate with her experience, qualifications and aspirations. Ms. Mayes gave timely notice to her supervisor and the agency ethics officer when she began discussing employment with the prospective employer. Upon receiving notice of her post-employment discussions, the Agency screened Ms. Mayes from involvement, decision-making, or exercise of authority involving the prospective employer.

2. Please describe the nature of the duties to be performed by the employee for the prospective employer:

The potential position with Sondhi Solutions, LLC is Corporate Director of Operations, a senior executive position. The "broad-band" responsibilities of this position extend beyond the company's engagement with individual clients, specific industries served, specific service offerings, specific geography etc. The position represents a significant career advancement from her current employment as Secretary of State's office IT department and project management director. The position does not require or contemplate involvement with any Secretary of State's office *particular matters*, utilization of any confidential information, legislative or executive branch lobbying or regulatory or licensing activity.

3. Please explain 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:

The Agency has no reason to believe that pursuit of, or offer of, employment factored into any of Ms. Mayes discretionary authority, decisions or actions with respect to Sondhi Solutions, LLC, or utilization of confidential information. The prospective engagement does not contemplate or require any involvement with previous or potential *particular matters*. Future Business engagements with the Secretary of State's office is not an objective of the prospective employment.

4. Please explain 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:

The Secretary of State's office believes that access to career development and advancement opportunities, particularly to women and minorities, serves the public interest. In instances where there is little or no identifiable detriment to the state, the office believes that *not* waiving application of post-employment restrictions would serve as a *disincentive* to individuals in high-demand fields such as IT and cybersecurity, to engage in government employment. Also, the agency believes that the public interest is not served if employees in high-demand sectors feel the need to disengage from government employment early to avoid unwavering application of post-employment restrictions.

5. Please explain the extent of economic hardship to the employee if the request for a waiver is denied:

Due to size and scope limitations, opportunities for significant career advancement within state agencies can be extremely limited. Opportunities for advancement to senior executive management positions outside of state government can be rare as well. Ms. Mayes may suffer significant and life-affecting economic hardship if her aspirations and demonstrated capability for continued career advancement are blocked or delayed due to route and unwavering application of the state post-employment restrictions.

C. Signatures

1. Appointing authority/state officer of agency

By signing below, I authorize the waiver of the above-specified post-employment restrictions pursuant to IC 4-2-6-11(g)(1)(A). In addition, I acknowledge that this waiver is limited to an employee or special state appointee who obtains the waiver before engaging in the conduct that would give rise to a violation.

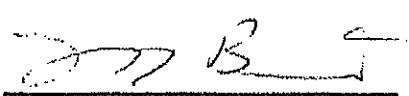


Brandon Clifton, Deputy Secretary of State

9/3/21
DATE

2. Ethics Officer of agency

By signing below, I attest to the form of this waiver of the above-specified post-employment restrictions pursuant to IC 4-2-6-11(g)(1)(B).



Jerold A. Bonnet, Ethics Officer,
Office of the Indiana Secretary of State

9/3/2021
DATE

D. Approval by State Ethics Commission

FOR OFFICE USE ONLY

Approved by State Ethics Commission



Corinne Finnerty, Interim Chair, State Ethics Commission

10/14/2021

Date

Mail to:
Office of Inspector General
315 West Ohio Street, Room 104
Indianapolis, IN 46202
OR
Email scanned copy to: info@ig.in.gov

*Upon receipt you will be contacted with
details regarding the presentation of this
waiver to the State Ethics Commission.*

Bonnet, Jerry (SOS)

Subject: FW: Secure Ethics Informal Advisory Opinion; Bonnet (Mayes); SOS; Post-Employment

From: Gore, Lyubov <LGore1@ig.IN.gov>
Sent: Thursday, September 2, 2021 4:21 PM
To: Bonnet, Jerry (SOS) <jbonnet@sos.IN.gov>
Subject: Secure Ethics Informal Advisory Opinion; Bonnet (Mayes); SOS; Post-Employment

Jerry,

Thank you for contacting our office to request ethics advice in your capacity as General Counsel and Ethics Officer for the Indiana Secretary of State (SOS). We understand that you are seeking advice on behalf of Lindsey Mayes, the SOS IT Director, regarding any post-employment restrictions that would apply to her if she leaves state employment.

Lindsey began her employment with SOS in January of 2019. You provide that, from the commencement of Lindsey's employment, SOS was aware that Lindsey's desired career path included advancement to executive management. Consistent with her performance and career objectives, in 2020, Lindsey earned the additional titles of Project Management Office Director and Deputy Chief of Staff. Lindsey has participated in the development and administration of IT service contracts, but she does not have contracting authority for SOS and is not an SOS fiscal officer.

In recent months, a new Secretary of State assumed leadership of SOS, and the Deputy Secretary of State/Chief of Staff announced that he would depart SOS no later than November of 2021. In July of 2021, Lindsey made inquiries to SOS about the possibility of her appointment to the Deputy Secretary of State/Chief of Staff position. Lindsey was informally advised that it was not likely she would receive the promotion and that, given her interest in advancement to a more senior executive position, she was welcome to pursue employment opportunities outside SOS.

You write that, due to persistent staffing shortages in the IT industry, IT professionals, such as Lindsey are frequently subject to the attention of employment recruiters. In late July, Lindsey was informed of open senior IT positions at Sondhi Solutions, LLC (Sondhi), an Indianapolis based, regional, diversified IT services company. Sondhi is an IT vendor with SOS. In August, Lindsey attended a meeting with Sondhi to discuss employment opportunities. Lindsey learned that Sondhi was looking to fill a senior executive position (Director of Operations) for which she appeared to be qualified. Because Sondhi has contracted with SOS, Lindsey informed Sondhi that she would not be in a position to consider an employment offer before consulting with SOS about the applicability of post-employment restrictions. Lindsey subsequently made inquiries with the SOS' Chief of Staff and with you about pursuing employment with Sondhi.

Sondhi's relationship with SOS has previously consisted of a six-month IT consulting project that concluded in June 2019; a one-time purchase of AV equipment by SOS' Communications Department in 2021; and a cybersecurity assessment project currently being negotiated by the Deputy Secretary of State/Chief of Staff. It appears likely that Sondhi will be selected as the vendor for the cybersecurity assessment project. Lindsey provided information about operations under her authority and participated in the development and administration of the three contracts, but she did not engage in financial negotiations, make recommendations or

exercise contracting authority. You provide that SOS has no regulatory or licensing involvement with Sondhi and that Lindsey will not serve as a lobbyist for Sondhi.

You have met with Lindsey regarding this post-employment opportunity and made her aware that she may not use privileged or confidential SOS information in pursuit of, or in the course of, her post-employment. You also made Lindsey aware that, depending on the particulars of her involvement with SOS' engagements with Sondhi, she could be subject to a one-year "cooling off" period before beginning employment with or receiving compensation from Sondhi. You also notified Lindsey that, to the extent that she personally and substantially participated in "particular matters" involving Sondhi, she may not ever represent or assist Sondhi with those matters.

You provide that SOS has encouraged Lindsey to pursue private-sector employment opportunities; that SOS has no reason to believe or suspect that Lindsey has, or would ever, utilize confidential information in pursuit of employment, or in the course of employment with Sondhi; that SOS has no reason to believe or suspect that Lindsey exerted influence over contract development or administration with Sondhi in pursuit of an employment opportunity with Sondhi; that SOS will require that Sondhi's two concluded SOS engagements and one potential future engagement would be identified as "particular matters" forever barring Lindsey from representing or assisting Sondhi with those matters; and that SOS believes a waiver for Lindsey of the one-year cooling off period restriction with respect to pursuing and possibly accepting employment with Sondhi is appropriate.

You inquire whether, under the Code of Ethics (Code), Lindsey would be permitted to leave state employment with SOS and immediately begin working for Sondhi. Your inquiry primarily invokes consideration of IC 4-2-6-11, the post-employment rule; IC 4-2-6-9, the conflicts of interests related to decisions and votes rule; and IC 4-2-6-6, the confidentiality rule. We have included the relevant definitions and rules at the end of this opinion.

1. IC 4-2-6-11 - Post-employment

The post-employment rule (IC 4-2-6-11) consists of two separate limitations: a "cooling off" period and a particular matter restriction.

A. The "cooling off" period

The first prohibition, commonly referred to as the cooling off or revolving door period, prevents Lindsey from accepting employment: (1) as a lobbyist, (2) from an employer with whom she was engaged in the negotiation or administration of a contract on behalf of any state agency and was in a position to make a discretionary decision affecting the outcome of the negotiation or nature of the administration or (3) from an employer for whom she made a regulatory or licensing decision that directly applied to the employer or its parent or subsidiary, until the lapse of 365 days from when she leaves state employment. In addition, Lindsey is prohibited from accepting employment from an employer if the circumstances surrounding the hire suggest the employer's purpose is to influence Lindsey in her official capacity as a state employee.

Regarding subsection (1), Lindsey will not be able to work as an executive branch lobbyist for one year after leaving state employment. Based on the information you provided regarding Lindsey's prospective employment with Sondhi, it does not appear that Lindsey will serve as a lobbyist or perform any actions as a lobbyist in Indiana. We recommend that Lindsey review IDOA's Executive Branch Lobbying Manual to learn about the types of interactions with members of the executive branch that are considered executive branch lobbying. So long as Lindsey's intended post-employment opportunity would not require executive branch lobbying, then this portion of the cooling off period would not apply to Lindsey's post-employment opportunity.

Based on the information you provided, it appears that Lindsey has been engaged in the administration of contracts with Sondhi while she has been employed with SOS. Specifically, you write that there have been two past contracts between SOS and Sondhi and a cybersecurity assessment project currently being negotiated between Sondhi and SOS. Lindsey provided information about operations under her authority and participated in the development and administration of the three contracts, but she did not engage in financial negotiations, make recommendations or exercise contracting authority. It is unclear whether Lindsey had discretionary decision-making authority over the contracts, even if she did not exercise such authority.

The State Ethics Commission (Commission) has interpreted "in a position to make a discretionary decision" broadly. Based on the description you provided regarding Lindsey's involvement with these contracts, it is likely that the Commission would find that Lindsey could have exercised discretionary decision making authority over the contracts in her role as Deputy Chief of Staff with SOS. We recommend that Lindsey request a formal advisory opinion from the Commission for a final determination as to whether she would be subject to the one-year cooling off period. More information on the formal advisory opinion process can be found here: <https://www.in.gov/ig/request-advice/formal-advisory-opinions/>.

Alternatively, you provide that SOS would be willing to seek a post-employment waiver for Lindsey. A post-employment waiver would allow Lindsey to accept a position with Sondhi immediately after leaving state employment. Post-employment waivers must be provided by the appointing authority of the agency and then be approved by the Commission at one of their public meetings prior to the employee starting work for the new employer. The requirements for a post-employment waiver are included in IC 4-2-6-11(g). More information on post-employment waivers can be found here: <https://www.in.gov/ig/file/post-employment-waiver/>

With respect to subsection (3), it does not appear that Lindsey has been involved in any regulatory or licensing decisions that directly applied to Sondhi in her position with SOS. Thus, subsection (3) would not apply to Lindsey's prospective employment with Sondhi.

We note that SOS was engaged in contract negotiations with Sondhi at the time that Lindsey was offered the employment opportunity. Because Sondhi had previously contracted with SOS, Lindsey informed Sondhi that she would not be in a position to consider an employment offer before consulting with SOS about the applicability of the post-employment restrictions. As long as Lindsey's prospective employment with Sondhi was not offered to her to influence her in her official capacity as a state officer, then this prospective opportunity would not be in violation of the last part of the rule; however, Lindsey should be aware of the appearance of impropriety that this situation may create. SOS should consider implementing a screen to ensure that Lindsey has no further contact with Sondhi in her official role with SOS during the duration of employment negotiations (see Section 2 of this opinion for additional analysis regarding a potential conflict of interests under IC 4-2-6-9).

Therefore, based on the information you provided, the prospective position with Sondhi may trigger the one-year cooling off period, and Lindsey could not begin her employment immediately after leaving her state position unless she obtains a post-employment waiver.

B. The particular matter restriction

The second prohibition, commonly referred to as the "particular matter" restriction, prevents Lindsey from working on the twelve types of matters listed in IC 4-2-6-11(a) if she personally and substantially participated in the matter as a state employee. These matters are 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 statute specifically excludes "the proposal, consideration, adoption, or implementation of a rule or an administrative policy or practice of general application" from the definition of particular matter. 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.*

Under this restriction, Lindsey would be prohibited from representing or assisting Sondhi or any other person in any particular matter in which she personally and substantially participated as a state employee.

You write that Lindsey provided information about operations under her authority and participated in the development and administration of three contracts with Sondhi. You also provide that SOS will require that Sondhi's two concluded SOS engagements and one potential future engagement would be identified as "particular matters" forever barring Lindsey from representing or assisting Sondhi with those matters. We agree that these matters should be considered particular matters for purposes of the post-employment rule. **The particular matter restriction would prohibit Lindsey from working on these matters and any other contracts or other particular matters for Sondhi or other future employer if she personally and substantially participated in those particular matters as a state employee for SOS. This restriction extends for the entire life of the matter at issue.**

Please note Lindsey will be able to represent or assist Sondhi with contracts and other matters in which she was not personally and substantially involved while employed with SOS and with any *new* matters. Further, if SOS or Lindsey is interested in pursuing a waiver, the Commission may also waive the particular matter restriction, as well as the cooling off period.

If you or Lindsey have any questions regarding Lindsey's work after reviewing the twelve matters listed above, you may follow up with our office at any time.

2. IC 4-2-6-9 - Conflicts of Interests Related to Decisions and Votes

Because Lindsey is still a state employee, she must also keep in mind the rule prohibiting conflicts of interests related to decisions and votes (IC 4-2-6-9). This rule prohibits a state employee from participating in any decision or vote, or matter related to any such decision or vote, if he or she has knowledge that various persons may have a "financial interest" in the outcome of the matter, including (1) the state employee him/herself; (2) an immediate family member; (3) a business organization in which the state employee is serving as an officer, director, member, trustee, partner or employee, or (4) an organization with whom the state employee is negotiating or has an arrangement concerning prospective employment. Please note that this prohibition extends beyond merely the decision or vote on the matter to encompass any participation in that decision or vote.

The Commission has determined that employment negotiations begin when there is a back-and-forth exchange. Based on the information you provided regarding Lindsey's interaction with Sondhi, it appears that employment negotiations have begun for purposes of this rule. Lindsey is, therefore, prohibited from participating in any matters related to a decision or vote in which Sondhi would have a financial interest, including the current contract negotiations.

Based on the information you provided regarding Lindsey's involvement with the contract negotiations with Sondhi, Lindsey has an identified potential conflict of interests. Please note that mere recusal from the matter is not enough. The rule also requires that Lindsey notify SOS's appointing authority and you in writing and either (1) seek a formal advisory opinion from the Commission or (2) file a written disclosure form with our office in accordance with IC 4-2-6-9's notification requirements.

3. IC 4-2-6-6 - Confidential Information

Finally, Lindsey should keep in mind the ethics rule pertaining to confidential information found at IC 4-2-6-6. IC 4-2-6-6 prohibits a state 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. So long as any compensation Lindsey receives from Sondhi does not result from information of a confidential nature that she learned in her position with SOS, any such post-employment would not violate IC 4-2-6-6. You provide that SOS has no reason to believe or suspect that Lindsey has, or would ever, utilize confidential information in pursuit of employment, or in the course of employment with Sondhi. Thus, this rule should not present a problem for Lindsey.

Thank you again for submitting your inquiry. Please let us know if you have any questions regarding this opinion. Please note that this response does not constitute an official advisory opinion. Only the Commission may issue an official advisory opinion. This informal advisory opinion allows us to give you quick, written advice. The Commission will consider that an employee or former employee acted in good faith if it is determined that the individual committed a violation after receiving an informal advisory opinion, and the alleged violation was directly related to the advice rendered. Also, remember that the advice given is based on the facts as we understand them. If this e-mail misstates facts in a material way, or omits important information, please bring those inaccuracies to our attention.

Sincerely,

Lyubov Gore
Staff Attorney
Office of Inspector General

*Please take a few moments to provide feedback on your experience:
<https://www.surveymonkey.com/r/OIGInformals>. Thank you!*

IC 4-2-6-1

Definitions

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

...

(4) "Assist" means to:

(A) help;

(B) aid;

(C) advise; or

(D) furnish information to;

a person. The term includes an offer to do any of the actions in clauses (A) through (D).

...

(7) "Compensation" means any money, thing of value, or financial benefit conferred on, or received by, any person in return for services rendered, or for services to be rendered, whether by that person or another.

...

(11) "Financial interest" means an interest:

(A) in a purchase, sale, lease, contract, option, or other transaction between an agency and any person;
or

(B) involving property or services. The term includes an interest arising from employment or prospective employment for which negotiations have begun. The term does not include an interest of a state officer or employee in the common stock of a corporation unless the combined holdings in the corporation of the state officer or the employee, that individual's spouse, and that individual's unemancipated children are more than one percent (1%) of the outstanding shares of the common stock

of the corporation. The term does not include an interest that is not greater than the interest of the general public or any state officer or any state employee.

...

(12) "Information of a confidential nature" means information:

- (A) obtained by reason of the position or office held; and
- (B) which:
 - (i) a public agency is prohibited from disclosing under IC 5-14-3-4(a);
 - (ii) a public agency has the discretion not to disclose under IC 5-14-3-4(b) and that the agency has not disclosed; or
 - (iii) is not in a public record, but if it were, would be confidential.

(13) "Person" means any individual, proprietorship, partnership, unincorporated association, trust, business trust, group, limited liability company, or corporation, whether or not operated for profit, or a governmental agency or political subdivision.

...

(17) "Represent" means to do any of the following on behalf of a person:

- (A) Attend an agency proceeding.
- (B) Write a letter.
- (C) Communicate with an employee of an agency.

...

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.

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

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 relating 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 not 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

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.

Thank you,

Lyubov Gore

Staff Attorney

Office of Inspector General

315 West Ohio Street, Room 104

Indianapolis, IN 46202

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Subject: Advice

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Formstack Submission For: Informal Advisory Opinions Submitted at 09/01/21 1:11 PM

Name: Jerry Bonnet

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Phone: (317) 232-6534

State Agency: Indiana Secretary of State

Description of Your State Occupation: General Counsel and Agency Ethics Officer, requesting a confidential informal advisory opinion concerning post-employment restrictions on behalf of Lindsey Mays, an employee of the agency.

What is your ethics question?:

Lindsey Mays began employment with the Secretary of State in January 2019 as IT Director. From commencement of her employment it was mutually known that her desired career path included advancement to executive management. Consistent with her performance and career objectives, in 2020 Ms. Mays earned additional titles of Project Management Office Director, and Deputy Chief of Staff. Ms. Mays has participated in the development and administration of IT service contracts but does not have contracting authority and is not an agency fiscal officer.

In recent months a new Secretary of State assumed leadership of the Agency and the Deputy Secretary of State/Chief of Staff announced that he would depart the agency no later than November 2021. In July 2021 Ms. Mays made inquires to the Agency about the possibility of her appointment to the Deputy Secretary of State/Chief of Staff position. Ms. Mays was informally advised by the Agency that it was not likely she would receive the promotion to Deputy Secretary of State/Chief of Staff and that given her interest in advancement to a more senior executive position, she was welcome to pursue employment opportunities outside the agency.

Due to persistent staffing shortages in the IT industry, IT professionals, such as Ms. Mays are frequently subject to the attention of employment recruiters. In late July Ms. Mays was informed of open senior IT positions at Sondhi Solutions, LLC, (www.sondhisollutions.com) an Indianapolis based, regional, diversified IT services company, and occasional IT vendor to the Agency. In August Ms. Mays attended a meeting with Sondhi Solutions to discuss employment opportunities. She learned that the company was looking to fill a senior executive position (Director of Operations) for which she appeared to be qualified. Because the company has been an agency vendor, Ms. Mays informed them that she would not be in position to consider an employment offer before consulting with the Agency about the applicability of post-employment restrictions. Ms. Mays subsequently made inquiries with the Agency Chief of Staff and me (Jérolid Bonnet, Ethics Officer) about pursuing employment with the company – resulting in this request for a confidential ethics advisory.

Sondhi Solutions history with the Agency consists of the following: a) a six-month (\$44,520.) IT consulting project concluded in June 2019; b) a one-time purchase of AV equipment (\$13,040.) by the Agency Communications Department in 2021; and c) a cybersecurity assessment project currently being negotiated by the Deputy Secretary of State/Chief of Staff. It appears likely that Sondhi Solutions will be selected as the vendor for the cybersecurity assessment project. Ms. Mays provided information about operations under her authority and participated in the development and administration of the three contracts (all prior to discussing employment with the vendor) but did not engage in financial negotiations, making recommendations or exercising contracting authority. The Agency has no regulatory or licensing involvement with the vendor and service as a lobbyist is not at issue.

On August 31st I conducted a review of post-employment restrictions with Ms. Mays. Ms. Mays is aware that under no circumstances could she ever use privileged or confidential information in pursuit of, or in the course of, post-employment. Ms. Mays is aware that depending on particulars of her involvement with the Agency's engagements with the vendor that she could be subject to a one-year "cooling off" period before employment or receiving compensation from that vendor. Also, to the extent that she personally and substantially participated in "particular matters" involving the vendor, she may not ever, represent or assist the vendor with those matters.

The Agency's initial assessment is as follows:

- a) For lack of suitable career advancement positions, the Agency authorized Ms. Mays to pursue outside employment opportunities.
- b) The Agency has no reason to believe or suspect that Ms. Mays has, or would ever, utilize confidential information in pursuit of employment, or in the course of employment with the vendor.
- c) The Agency has no reason to believe or suspect that Ms. Mays exerted influence over contract development or administration with the vendor in pursuit of an employment opportunity with the vendor.
- d) With respect to an employment opportunity with the vendor, out of an abundance of caution, the Agency would require Ms. Mays and the vendor's

agreement that vendor's two concluded Agency engagements and one potential future engagement are "particular matters" forever barring the employee from representing or assisting the vendor with those matters.

e) Subject to Ms. Mays agreement concerning permanent restriction on use of confidential information and involvement with the particular matters identified, the Agency believes a waiver of the one-year cooling off period restriction with respect to pursuing and possibly accepting employment with the vendor is appropriate.

Guidance from the Inspector General's on this matter is appreciated.

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