



INVESTIGATIVE REPORT

Cynthia V. Carrasco, Inspector General

OFFICE: INSPECTOR GENERAL
TITLE: 2015 LEGISLATIVE RECOMMENDATIONS
CASE ID: 2014-07-0154 (4)
DATE: JUNE 2, 2015

Inspector General Cynthia V. Carrasco reports as follows:

The Indiana Office of Inspector General (“OIG”) is statutorily charged to make recommendations to the Indiana General Assembly (“General Assembly”) to strengthen public integrity laws. I.C. 4-2-7-3(9). On November 19, 2014, the OIG issued a report making various recommendations for consideration by the General Assembly to further strengthen the existing public integrity laws that govern the ethical conduct of members of the executive branch of state government. The OIG made five recommendations, and the General Assembly adopted them all. This report addresses the fourth recommendation and how the General Assembly addressed it.

The OIG’s fourth recommendation involved making various amendments to the ethics law governing post-employment set forth in I.C. 4-2-6-11. Specifically, the OIG recommended that the General Assembly amend the law to (1) require a mandatory reporting for individuals who form professional practices immediately upon leaving state employment, (2) establish that the one-year cooling-off restriction only applies if an individual has negotiated or administered a contract with their intended employer within two years of commencing employment negotiations, (3) require the application of a one-year cooling off period to administrative law judges who preside over information gathering and order drafting in regulatory or licensing

proceedings; and (4) require that post-employment waivers articulate specific criteria, be approved by the State Ethics Commission (“Commission”), be published online, and be limited to those who seek and file a waiver with the Commission before engaging in the conduct that would give rise to the violation. I.C. 4-2-6-11(b) and (c) prohibit state officers, employees and special state appointees from accepting employment from certain employers for one year after leaving state employment and from ever working on particular matters. The OIG made these recommendations after careful consideration with the intent to strike the right balance between ensuring that state workers make decisions and take actions that are intended to be in the interest of the public good instead of an individual’s personal gain while still allowing an individual to continue his or her career beyond his or her tenure with the State.

The OIG’s first recommendation regarding the post-employment law involved state employees who wished to become independent contractors upon leaving state employment and who wished to enlist clients and customers who they had business with as a state employee. The General Assembly opted to eliminate this option. Accordingly state employees who wish to be self-employed in a sole proprietorship or professional practice after leaving their state employment are now subject to the post-employment restrictions set forth in I.C. 4-2-11.

The OIG’s second recommendation regarding the post-employment law involved I.C. 4-2-6-11(b)(2). This particular provision of the post-employment law prohibits an individual from accepting employment from an entity until one year after leaving state employment if the individual engaged in the negotiation or administration of a contract with that employer on behalf of the State and was also in a position to make a discretionary decision affecting the outcome of the negotiation or nature of the administration. This prohibition is intended to ensure that state workers make decisions regarding state contracts with the state’s interests in mind and

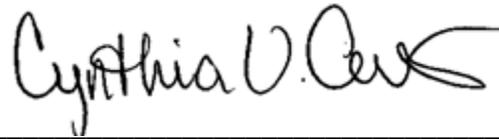
not because of a promise of future employment. Further, this prohibition is intended to insulate an individual from influence. To accomplish these objectives, while still balancing the ability of an individual to leave state employment, the OIG recommended that the one year cooling off period regarding contracts not apply to an individual who has neither negotiated nor administered a contract with his or her intended employer in the two years preceding the commencement of employment negotiations so long as the contract is completed or terminated and the individual has not had any interaction or contact with the intended employer in that time period.

The OIG's third recommendation regarding post-employment restrictions involved I.C. 4-2-6-11(b)(3). This law prohibits an individual from accepting employment from an entity until one year after leaving state employment if he or she made a regulatory or licensing decision that directly applied to the potential employer. The OIG recommended that this restriction be clarified to include Administrative Law Judges and others who preside over information gathering and order drafting proceedings related to regulatory or licensing decisions because these individuals often have more influence and discretion in the regulatory or licensing decision than the individual that makes the final decision.

The OIG's fourth recommendation regarding post-employment restrictions involved I.C. 4-2-6-11(g). This law permits an agency appointing authority to waive the application of the cooling off and particular matter prohibitions when consistent with the public interest. The OIG made three recommendations to enhance accountability and ensure that the waiver provision does not unnecessarily weaken the post-employment rule. First, the OIG recommended that these waivers include more stringent criteria and be approved by the Commission instead of an agency appointing authority. Second, the OIG recommended that the OIG post all waivers on its

website. Third, the OIG recommended that waivers be limited to those who seek and obtain one before engaging in the conduct that would give rise to the violation.

In House Enrolled Act 1002, which goes into effect July 1, 2015, the General Assembly adopted the OIG's recommendations and amended I.C. 4-2-6-11 extensively and accordingly.

A handwritten signature in black ink that reads "Cynthia V. Carrasco". The signature is written in a cursive style with a large initial "C" and a long horizontal flourish at the end.

Cynthia Carrasco, Inspector General