



INVESTIGATIVE REPORT

Lori Torres, Inspector General

OFFICE: INDIANA DEPARTMENT OF TRANSPORTATION
TITLE: INDOT EMPLOYEE POST-EMPLOYMENT (UNSUBSTANTIATED)
CASE ID: 2020-01-0017
DATE: April 23, 2020

Inspector General Staff Attorney Kelly Elliott, after an investigation by Special Agent Charles Coffin, reports as follows:

The Indiana General Assembly charged the Office of Inspector General (OIG) with addressing fraud, waste, abuse and wrongdoing in the executive branch of state government. I.C. § 4-2-7-2(b). The OIG also investigates criminal activity and ethics violations by state workers. I.C. § 4-2-7-3. The OIG may recommend policies and carry out other activities designed to deter, detect and eradicate fraud, waste, abuse, mismanagement and misconduct in state government. I.C. § 4-2-7-3(2).

On January 22, 2020, the OIG received a complaint alleging that a former Indiana Department of Transportation (INDOT) employee (Employee) violated the Code of Ethics' post-employment rule, which is found in I.C. § 4-2-6-11. The complaint alleged that the Employee left state employment and began working on INDOT matters for his new employer (Company).

OIG Special Agent Charles Coffin investigated the matter. During the course of Special Agent Coffin's investigation, he interviewed the Employee and other INDOT employees. He also reviewed information received from INDOT, including the Employee's personnel file, emails, administrative records and contracts.

Special Agent Coffin learned that the Employee worked in an INDOT Division (Division), and he ended his employment with INDOT in January 2020. Shortly thereafter, the Employee began employment as a temporary contingency worker for the Company and was assigned to work at INDOT. Special Agent Coffin learned that INDOT contracts with the Company for staffing services.

Special Agent Coffin interviewed the Employee's supervisor (Supervisor). The Supervisor explained that due to the Employee's broad and specialized knowledge, INDOT wanted to re-hire the Employee on a temporary basis after he left state employment in order to provide support to INDOT and assist in training his replacement. The Supervisor stated that INDOT utilized the Company for the temporary hire of the Employee. The Supervisor stated that he and his supervisor vetted the matter through INDOT's executive office as well.

The Supervisor stated that the Employee did not participate in the negotiation or administration of the Company's contract with INDOT. The Supervisor explained that he and other INDOT employees were involved in the negotiation and administration of the Company's contract with the agency. The Supervisor also stated that the Employee did not make any regulatory or licensing decisions regarding the Company for INDOT. He explained that the Employee only had minimal involvement or interaction with the Company while he was an INDOT employee.

Special Agent Coffin interviewed the Employee. The Employee stated he provides assistance to INDOT through a temporary employment arrangement with the Company. The Employee stated he never made any regulatory or licensing decisions while employed with INDOT. The Employee explained that he only worked on one contract as a state employee with INDOT and that contract was for a different organization unrelated to the Company. The Employee stated that a member of INDOT's executive staff approved the temporary contingent work arrangement with the Company.

Special Agent Coffin reviewed the evidence obtained in this matter to determine if the Employee's employment with the Company violated the cooling off provision or particular matters restriction of the Code of Ethics' post-employment rule, which is found in I.C. § 4-2-6-11. The cooling off provision prohibits a state employee from accepting employment or compensation from certain employers¹ until the lapse of 365 days from when the state employee leaves state employment. The particular matter restriction prevents former state employees from working on certain particular matters if the employee personally and substantially participated in the matter as a state employee.² The particular matter restriction is not limited to 365 days but instead extends for the entire life of the matter at issue.

Special Agent Coffin determined that the Employee's employment with the Company does not violate the post-employment rule's cooling off provision. He found that the Employee is not serving as a lobbyist or performing any actions as a lobbyist in Indiana on behalf of the Company. The Employee also was not involved in the negotiation or administration of the Company's contract with INDOT. Furthermore, the Employee did not make any regulatory or licensing decisions that directly applied to the Company, its parents or subsidiaries.

Special Agent Coffin also determined that the Employee's employment with the Company does not violate the post-employment rule's particular matter restriction. In serving as a temporary

¹ The post-employment rule's cooling off provision, which is found in I.C. § 4-2-6-11(b), reads that a former employee may not accept employment or compensation: (1) as a lobbyist, (2) from an employer with whom the state employee 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 the state employee made a regulatory or licensing decision that directly applied to the employer or its parent or subsidiary.

² The post-employment rule's particular matter restriction, which is found in I.C. § 4-2-6-11(c), prohibits former state employees from working on the following particular matters if the employee personally and substantially participated in the matter as a state employee: (1) an application, (2) business transaction, (3) claim, (4) contract, (5) determination, (6) enforcement proceeding, (7) investigation, (8) judicial proceeding, (9) lawsuit, (10) license, (11) economic development project or (12) public works project. The rule does not prevent a former state employee from working on an "administrative policy or practice of general application."

contingent employee for the Company, the Employee is assisting INDOT with the training of his replacement and providing support to INDOT. Accordingly, Special Agent Coffin found that the Employee is not participating in a “particular matter” that he worked on while with INDOT through his temporary contingent employment with the Company.

Special Agent Coffin also reviewed the evidence obtained in this matter to determine if the Employee violated the Code of Ethics’ rule on conflict of interests related to decision and votes, which is found in I.C. § 4-2-6-9.³ Special Agent Coffin learned that the Employee’s involvement with the Company while employed with INDOT was very limited and did not involve participating in matters related to decisions in which the Company has a financial interest. The Employee also was not involved in the Company’s contract with INDOT. As such, Special Agent Coffin determined that the Employee did not violate I.C. § 4-2-6-9.

In conclusion, Special Agent Coffin found no evidence to support the allegations that the Employee violated the Code of Ethics’ post-employment rule by engaging in post-employment with the Company. Additionally, Special Agent Coffin found no evidence to indicate that the Employee violated Code of Ethics’ rule on conflict of interests related to decision and votes as it pertains to his employment with the Company. As a result, the OIG is closing this case for insufficient cause.

Dated: April 23, 2020

APPROVED BY:



Lori Torres, Inspector General

³ The conflict of interests related to decisions and votes rule prohibits a state employee from participating in any decision or vote, or matter related to that decision or vote, if the employee has knowledge that various persons may have a “financial interest” in the outcome of the matter, including the state employee himself or any person or organization with whom the state employee is negotiating employment.