

42 IAC 1-5-14 Post-Employment (IC 4-2-6-11)
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IC 4-2-6-6 Compensation resulting from confidential information

The Ethics Officer for the Indiana Department of Health (IDOH) sought advice on behalf of the Regional Director for the Northern Region of Indiana (Director) regarding a post-employment opportunity with a county health department with which the Director interacted while working for IDOH. The Commission finds that the post-employment rule would neither prohibit the Director's acceptance of nor limit the scope of the Director's proposed post-employment opportunity with LCHD so long as the scope of work is as described to the Commission.

January 9, 2025
2025-FAO-001

The Indiana State Ethics Commission (Commission) issues the following Formal Advisory Opinion (FAO) 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 requestors, an agency Ethics Officer and the state employee whose post-employment opportunity serves as the basis for this request.

BACKGROUND

The employee-requestor currently serves as the Indiana Department of Health's (IDOH) Regional Director for the Northern Region of Indiana (Director). IDOH, on behalf of the Director, is requesting the Commission's FAO regarding the Director's proposed post-state employment opportunity with the Lake County Health Department (LCHD). Specifically, IDOH asks whether it would be a conflict of interests for the Director to accept the position of Administrator at LCHD where she will be working on the implementation of Health First Indiana (HFI) initiatives for Lake County. The Director is currently being recruited by LCHD to serve in the Administrator position. She has engaged in preliminary discussions with a Lake County Health Officer; the Director is interested in participating in the interview process, which has not yet been scheduled.

The Director currently leads a team that assists and supports the counties in her region with implementation of HFI. IDOH explains HFI is legislation passed in 2023 that provides state funds to local health departments to provide for the delivery of "core services" to county residents. Distribution of funds, how "core services" are defined and how the money should be spent are provided for in Indiana Code. Regional teams are in place to ensure that core public health services and programs are implemented effectively to protect the health of residents in the region. They review budgets and assist with the collection of data to ensure counties are in compliance with HFI requirements. Additionally, the teams include a public health nurse and representatives from various IDOH programs such as maternal and child health, environmental health and food protection to assist counties with implementation of programs that deliver core services to their population. According to IDOH, neither the Director nor her team supervises or directs the work of the local health department staff but rather supports them as requested. Specific to Lake County, the Director and her team met with the LCHD staff for brainstorming and planning meetings to assist the LCHD as they implemented programs involving immunizations, infant mortality, school health and infectious disease.

IDOH provides HFI is not a contract or a grant with IDOH. The spirit of the legislation is to give counties the ability to make local decisions about how the funds are spent within the statutory requirements. IDOH is given an enforcement mechanism to suspend HFI funding in IC 16-46-10-6 if a county is not complying with: the local board of health's financial report, statutory directives or rules adopted by IDOH. While the regional teams would play a role in bringing concerns to the attention of IDOH leadership, decisions regarding enforcement would be made by the executive team at IDOH. IDOH states the Director is not in a position to make a regulatory or enforcement decision regarding any local health department.

Lake County has seven active contracts or grants with various divisions at IDOH. The contracts are at the division level in IDOH. The division directors are the owners of the contracts. IDOH provides the Director is not in a position to negotiate, sign or oversee the administration of these contracts.

IDOH states that the Director possesses a depth of knowledge with public health and local government matters that is of value to both the State of Indiana and at the local level. According to IDOH, both IDOH and Lake County share the goal of utilizing HFI funding to bring the best core service delivery and health outcomes to the citizens of Lake County. The Director's role at IDOH has been to work hand in hand with local health departments to achieve these goals. She would be serving a similar role at the local level as Administrator of the LCHD.

ISSUES

What ethics issues, if any, arise for the Director in her prospective post-employment position with LCHD?

RELEVANT LAW

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.

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 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.

42 IAC 1-5-10 Benefiting from confidential information

Sec. 10. A state officer, employee, or special state appointee shall not benefit from, or permit any other person to benefit from, information of a confidential nature except as permitted or required by law.

42 IAC 1-5-11

Divulging confidential information

Sec. 11. A state officer, employee, or special state appointee shall not divulge information of a confidential nature except as permitted by 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.

ANALYSIS

The Director's request for a FAO invokes consideration of the provisions of the Code pertaining to post-employment, conflicts of interests and benefiting from and divulging confidential information. The application of each provision to the Director's situation is analyzed below.

A. 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 Director from accepting employment from an employer for 365 days from the date that she leaves state employment under various circumstances.

First, the Director 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. Based on the information provided, the Director will not be engaging in any lobbying activities in her position at LCHD. Thus, the Director's post-employment opportunity with LCHD would not violate this provision of the post-employment rule.

Second, the Director is prohibited from accepting employment for 365 days from the last day of her state employment from an employer for whom she made a regulatory or licensing decision that

directly applied to the employer or its parent or subsidiary. As IDOH has confirmed that the Director does not make any regulatory or licensing decisions, this provision would not prohibit her acceptance of the LCHD position.

Third, the Director is prohibited from accepting employment from an employer if the circumstances surrounding the hire suggest the employer's purpose is to influence her in her official capacity as a state employee. The information presented to the Commission does not suggest that LCHD is attempting to influence the Director in her capacity as a state employee.

Fourth, the Director is prohibited from accepting employment for 365 days from the last day of her state employment from an employer with whom 1) she 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. IDOH indicates that LCHD has seven active contracts with IDOH. IDOH further indicates the Director is not in a position to negotiate, sign or oversee the administration of these contracts. Based on the information presented to the Commission, this provision would not prohibit the Director from accepting employment with LCHD.

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

In this instance, the Director would be prohibited from representing or assisting LCHD or any other person in a particular matter in which she personally and substantially participated as a state employee.

Based on the information provided and the description of the Director's proposed scope of work with LCHD, the Commission finds that this provision would not limit the Director's prospective post-employment with LCHD as described to the Commission. The Commission finds the Director will be able to represent or assist LCHD with implementation of HFI initiatives in her new role.

B. Conflict of interests - decisions and votes

IC 4-2-6-9(a)(4) prohibits the Director from participating in any decision or vote, or matter relating to that decision or vote, if the business organization with whom she is negotiating or has an arrangement concerning prospective employment has a financial interest in the matter.

IC 4-2-6-9(b) requires that an employee who identifies a potential conflict of interests notify his or her Ethics Officer and Appointing Authority in writing and either seek a FAO from the Commission or file a written disclosure statement.

The Director has filed a conflict of interests disclosure statement and is therefore in compliance with this provision.

C. Confidential information

The Director is prohibited under 42 IAC 1-5-10 and 42 IAC 1-5-11 from benefitting from, permitting any other person to benefit from or divulging information of a confidential nature except as permitted or required by law. Similarly, IC 4-2-6-6 prohibits the Director from accepting any compensation from any employment, transaction or investment that is entered into or made as a result of material information of a confidential nature. The term “person” is defined in IC 4-2-6-1(a)(13) to encompass both an individual and an organization, such as LCHD. In addition, the definition of “information of a confidential nature” is set forth in IC 4-2-6-1(a)(12).

To the extent the Director has acquired or maintains access to such confidential information obtained in her role at IDOH, she would be prohibited not only from divulging that information but from ever using it to benefit any person, including LCHD or its clients, in any manner.

CONCLUSION

The Commission finds that the post-employment rule would neither prohibit the Director’s acceptance of nor limit the scope of the Director’s proposed post-employment opportunity with LCHD so long as her scope of work is as described to the Commission.

Respectfully Submitted,



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