

42 IAC 1-5-14 Postemployment restrictions (IC 4-2-6-11)

A former IDEM employee was not precluded under the particular matter restriction from assisting a new employer with a similar lawsuit against a party he had worked on while with the State to the extent it was a separate lawsuit which pursued the same objectives the State had.

June 8, 2006
No. 06-I-15

BACKGROUND

A former state employee resigned from IDEM to accept a job with EnviroForensics, Inc., an environmental consulting company. His resignation from IDEM and current employment with EnviroForensics took place at the end of March and beginning of April of this year. He is currently employed as a project manager with EnviroForensics.

The former state employee's employment with IDEM began in October, 1999. During his six plus years at IDEM, he was employed as an environmental manager and senior environmental manager in the State Cleanup Section of the Office of Land Quality. During this time he managed environmental remediation and cleanup projects. His specific role as remediation manager included oversight of cleanups conducted by consultants and their clients (responsible parties), occasional administration and management of contracts released by IDEM, and enforcement against responsible parties unwilling to adequately cleanup and remediate on-going environmental contamination.

During his tenure at IDEM, the former state employee had limited contact with EnviroForensics. He was in charge of managing one project with the company. This project did not include administration or management of a contract or issuance of any permit regarding EnviroForensics. His involvement was limited to oversight of remediation conducted by the consulting firm and "responsible party" or the consulting firm's client. The former state employee does not currently have any involvement with the IDEM project in his job at EnviroForensics.

While at IDEM, the former state employee managed another project, the Western Scrap site. His role in this project while at IDEM was to manage the remediation aspects and possibly enforce "responsible parties" to require remediation pursuant to applicable State Law. Again, no state contracts were released or managed by IDEM on this project. IDEM is currently engaged in legal enforcement matters against the "responsible party." The former state employee had a role in these legal matters. During this same time, the City of Gary and Lake County were actively involved in similar legal enforcement against the "responsible party", owner and operator of the Western Scrap site, to require cleanup and correction of operating violations under local ordinance and statute. Currently, the former state employee's new employer, EnviroForensics, is working for the City of Gary and Lake County to manage environmental issues and inspections of the Western Scrap site to support the environmental claims and law suit being brought against Western Scrap by the City of Gary and Lake County.

The former state employee has been asked by EnviroForensics to participate in management of this site in an advisory or possibly a management role. He would be advising and supporting the City of Gary and Lake County and their lawsuit against Western Scrap by collecting environmental sample data and managing periodic inspections. His new role in this project would be similar to his former role while at IDEM. The two lawsuits are similar but are separate judicial cases.

ISSUE

Can Former state employee work on the Western Scrap Site lawsuit on behalf of his new employer without violating the "particular matter" prohibition of IC 4-2-6-11?

RELEVANT LAW

IC 4-2-6-11

IC 4-2-6-6

Present or former state officers and employees; special state appointees; compensation resulting from confidential information

IC 35-44-1-7

Profiteering from public service; pecuniary interest

42 IAC 1-5-10 Benefiting from confidential information

Authority: IC 4-2-7-3; IC 4-2-7-5

Affected: IC 4-2-7

42 IAC 1-5-11 Divulging confidential information

Authority: IC 4-2-7-3; IC 4-2-7-5

Affected: IC 4-2-7

CONCLUSION

Clearly, the Western Scrap site project is a "particular matter" that the former state employee worked on as an employee of IDEM. He managed the Western Scrap site project in an attempt by IDEM to clean up the site to meet environmental standards.

The former state employee now works for a private employer who is engaged in a lawsuit against the owner of the Western Scrap site. The objective of the lawsuit is the same as the IDEM objective, to require compliance with environmental standards and clean up the site.

The post employment statute prohibits the former state employee from representing or assisting his new employer in a particular matter "involving the state." In this case, EnviroForensics is not involved in the same lawsuit as IDEM against the owner of the Western Scrap site. Thus, the separate lawsuit does not involve the state. Further, the interest of the City of Gary and Lake County lawsuit should be the same as IDEM's interest.

However, the former state employee should be aware of other statutes (cited above) to which he must adhere. In his role of advising or managing the Western Scrap site project for EnviroForensics, the former employee may not divulge confidential state information to EnviroForensics nor can he permit his new employer to benefit from any confidential IDEM information that he may have obtained during the course of his employment with the state.