

**42 IAC 1-5-14 Post-employment restrictions (IC 4-2-6-11)**  
**42 IAC 1-5-6 Conflict of interests; decisions and voting (IC 4-2-6-9)**  
**IC 4-2-6-6 Compensation resulting from confidential information**

An FSSA employee sought advice regarding whether his potential post-employment opportunity working as a Consultant for Public Consulting Group (PCG) would create any conflicts of interests under the Code of Ethics. SEC determined that the employee's post-employment opportunity would not violate any ethics rules as long as the employee did not receive compensation resulting from confidential information; the employee did not participate in any decisions or votes or matters related to same in which he or PCG would benefit from the outcome for the remainder of his state employment; the employee did not engage in executive branch lobbying for one year following his state employment; and the employee did not assist or represent any person with regard to the post-employment rule's particular matter restrictions. Further, the SEC determined that the cooling off period did not apply to the employee, as the employee did not engage in the negotiation or administration of any contracts between PCG and the State nor did the employee make any regulatory or licensing decisions that directly affected PCG, its parent, or its subsidiary.

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The Indiana State Ethics Commission (Commission) issues the following advisory opinion 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 requestor.

**BACKGROUND**

The Ethics Officer for the Indiana Family and Social Services Administration (FSSA), is requesting a Formal Advisory Opinion on behalf of the employee.

The employee began working for FSSA as a contractor through Knowledges Services in March 2017 in the Office of Medicaid Policy and Planning (OMPP). OMPP oversees the administration of Indiana Health Coverage Programs (IHCP), which include Medicaid, the Children's Health Insurance Program (CHIP) and the Healthy Indiana Plan (HIP). The employee became an FSSA employee in February 2017. His duties include ensuring that Medicaid reimbursement rates and payments are established and implemented in accordance with the State Plan, as well as state and federal laws and regulations. The purpose of his position is to effectively manage the Medicaid and CHIP state plan amendment process ensuring compliance with all IHCP programs, the Code of Federal Regulations, Indiana Code, and Centers for Medicare and Medicaid Services (CMS) requirements. He collaborates with FSSA and CMS staff to ensure amendments are submitted timely and tracks pending state plan amendments to ensure compliance with CMS deadlines. He also maintains the OMPP Civil Rights Plan and provides assistance to the OMPP Government Affairs Analyst and Manager of State Plans and Projects, among other duties.

On April 24, 2018, the employee notified the Ethics Officer that he applied for a consultant position with Public Consulting Group (PCG) on April 6, 2018. He completed a phone interview on April 10, 2018 and an in person interview on April 25, 2018. The Ethics Officer reviewed the post-employment restrictions with the employee. Additionally, his supervisor has put in place an internal screen so that the employee does not have any involvement with matters related to PCG.

PCG is a for profit company providing management consulting and technology services to public sector education, health, human services, and other government. The company is headquartered

in Boston, Massachusetts with offices in the United States, Canada, England and Poland. FSSA currently has contracts with PCG-Indiana, Inc. through the Division of Aging and Division of Disability and Rehabilitative Services. These PCG contracts are administered at the division level by the respective divisions. The employee does not have any involvement with these contracts.

The employee has neither engaged in the negotiation or administration of any contract between the FSSA and PCG. Further, the employee was not in a position to make any discretionary decisions affecting the outcome of the negotiation or administration of any contract with PCG. The employee's only involvement with matters related to PCG was in 2017 for three months when he assisted a team of two FSSA employees reviewing the FSSA Home and Community Based Services Statewide Transition Plan for grammar and structure while working as a contractor to FSSA through Knowledges Services. He has not worked on any matters related to any contract with PCG since that time. Furthermore, his supervisor is currently screening him by not assigning any Home and Community Based Services Statewide Transition Plan work to him.

The employee's role as a consultant with PCG would include tasks on a variety of consulting and operational projects; including travel to client sites for meetings, observations, focus groups, and data collection. He would be expected to complete a wide range of work assignments that may include data collection, quantitative analysis, report design, report drafting, and preparation of various materials for client presentations.

The Ethics Officer provides that the employee knows and understands that Indiana's ethics laws will continue to apply to him as a private sector employee. He understands and agrees not to divulge confidential information of FSSA during his post-employment endeavors. Furthermore, the employee understands and agrees to abide by the one-year restriction regarding registering as an executive branch lobbyist.

Given that FSSA believes the employee would not use confidential information in his potential employment with PCG; that he did not make any regulatory or licensing decisions that directly related to PCG who is not regulated by FSSA; that as an employee he did not personally or substantially work on any matter identified as a particular matter under IC 4-2-6-11; that there is no evidence that PCG offered him the position to influence him in his capacity as an FSSA employee; and that he has not participated in any decision vote or other matter related to such decision or vote in which he, by virtue of his employment negotiations with PCG, or PCG would have any financial interest, FSSA believes the employee's prospective employment is permissible under Indiana's ethics laws and that he should be able to accept a position with PCG immediately upon leaving employment.

### **ISSUE**

What rules in the Code apply to the employee's post-employment opportunity with PCG?

### **RELEVANT 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.

**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 related 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 no 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 (42 IAC 1-5-14)**

#### **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.

## ANALYSIS

The employee's post-employment opportunity with PCG implicates the provisions of the Code pertaining to confidential information, conflicts of interests, and post-employment. The application of each provision to the employee's prospective post-employment opportunity with PCG is analyzed below.

### *A. Confidential Information*

IC 4-2-6-6 prohibits the 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. The employee confirmed that he would not utilize confidential information in his potential employment with PCG. So long as any compensation the employee receives does not result from confidential information, his potential employment with PCG would not appear to violate IC 4-2-6-6.

### *B. Conflicts of Interests*

IC 4-2-6-9(a)(1) prohibits the employee from participating in any decision or vote, or matter related to any such decision or vote, if he has a financial interest in the outcome of the matter. Similarly, IC 4-2-6-9(a)(4) prohibits the employee from participating in any decision or vote, or matter related to any such decision or vote, in which a person or

organization with whom he is negotiating or has an arrangement concerning prospective employment has a financial interest in the outcome of the matter. The definition of financial interest in IC 4-2-6-1(a)(11) includes, “an interest arising from employment or prospective employment for which negotiations have begun.”

In this case employment negotiations have already begun, as the employee completed a phone interview on April 10, 2018 and an in-person interview on April 25, 2018. Accordingly, a conflict of interests would arise for the employee if he participates in a decision or vote, or matter related to such decision or vote, in which PCG would have a financial interest in the outcome.

The Ethics Officer provides that the employee’s normal job responsibilities with FSSA do not include participating in decisions or votes, or matters related to such decisions or votes, in which PCG would have a financial interest in the outcome. PCG-Indiana Inc. has contracts with FSSA through the Division of Aging and Division of Disability and Rehabilitative Services. These PCG contracts are administered at the division level by the respective divisions, and the employee does not have any involvement in these contracts.

The employee informed the Ethics Officer of the employment opportunity with PCG, and the employee’s supervisor has implemented an internal screen to ensure that the employee does not have any involvement with matters related to PCG as a precautionary measure.

The Commission finds that the employee does not have a potential conflict of interests at this time. However, the employee must continue to ensure he does not participate in any decisions or votes, or matters relating to any such decisions or votes, in which PCG has a financial interest in the outcome of the matter for the remainder of his state employment. Further, if he identifies a potential conflict of interests, he must follow the requirements in IC 4-2-6-9(b).

### *C. 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 employee from accepting employment from an employer for 365 days from the date that he leaves state employment under various circumstances. Employer is defined in IC 4-2-6-1(a)(10) as any person from whom a state employee receives compensation and therefore includes a client or customer of a self-employed individual.

First, the employee 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 (IDOA). The information provided by the Ethics Officer indicates that the employee understands this restriction and has agreed to abide by the one-year restriction regarding registering as an executive branch lobbyist.

The employee does not anticipate engaging in any lobbying activities in his prospective employment with PCG. To the extent that the employee does not engage in executive branch lobbying for one year after leaving state employment, his intended employment with PCG would not violate this provision of the post-employment rule.

Second, the employee is prohibited from accepting employment for 365 days from the last day of his state employment from an employer with whom 1) he 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. Based on the information provided, the employee neither engaged in the negotiation or administration of any contract between the State and PCG, nor was he in a position to make a discretionary decision affecting the outcome of the negotiation or administration of any contract with PCG.

Accordingly, the Commission further finds that the employee is not prohibited under this provision from accepting employment with PCG immediately upon leaving state employment.

Third, the employee is prohibited from accepting employment for 365 days from the last day of his state employment from an employer for whom he made a regulatory or licensing decision that directly applied to the employer or its parent or subsidiary.

This provision does not apply to the employee's role with FSSA, as PCG is not regulated by FSSA and the employee did not make any regulatory or licensing decisions that directly applied to PCG as a state employee. Accordingly, he is not prohibited under this provision from accepting employment with PCG immediately upon leaving state employment.

Fourth, the employee is prohibited from accepting employment from an employer if the circumstances surrounding the hire suggest the employer's purpose is to influence him in his official capacity as a state employee. The information presented to the Commission does not suggest that the offer of employment from PCG would be extended to the employee in an attempt to influence him in his capacity as a state employee. Accordingly, the Commission finds that this restriction would not apply to his intended employment opportunity with PCG.

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



The employee has not identified any particular matters. The Commission finds that the employee must ensure compliance with the particular matter restriction and refrain from assisting or representing any person on any of the particular matters listed above that he may have personally and substantially worked on during his state employment.

### **CONCLUSION**

Subject to the foregoing analysis and the application of the one-year restriction regarding executive branch lobbying, the Commission finds that the employee's potential post-employment opportunity with PCG would not violate the post-employment restrictions found in IC 4- 2-6-11.

Respectfully Submitted,

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Ethics Director