

From: Shumaker, Todd <[REDACTED]>
Sent: Tuesday, November 16, 2010 9:17 AM
To: Todd Huston
Subject: Ethics Informal Advisory Opinion, Huston, Postemployment

Dear Mr. Huston,

Thank you for contacting our office. I understand from your inquiry that you are the Chief-of-Staff at the Department of Education ("DOE") and are responsible for the agency's day-to-day operations. You explain that you came to DOE from Cisco and have been given the opportunity to return to Cisco in the role of a Business Development Manager, working with higher education and K-12 customers. You note that you would not be involved in working with DOE, nor would you be working on any contractual agreements between Cisco and the State of Indiana. You comment that DOE purchased Cisco equipment pursuant to a State QPA during your time with DOE; however, you state that you were not involved in any purchasing decisions and ensured you were not engaged in any related discussions. I understand you are seeking advice to determine whether you would be prohibited by the Code of Ethics from leaving DOE to accept employment with Cisco.

Your inquiry primarily implicates 42 IAC 1-5-14, Postemployment restrictions (IC 4-2-6-11). I included all relevant rules and definitions at the end of this opinion for your reference.

In general, the Postemployment rule consists of two separate limitations: a cooling off period and a particular matter restriction. The first prohibition, commonly referred to as the revolving door, prevents you from accepting employment for 365 days from when you leave state government: 1) as a lobbyist, 2) from an employer with whom you engaged in the negotiation or administration of a contract on behalf of your state agency and were 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 you made a regulatory or licensing decision that directly applied to the employer or its parent or subsidiary. In addition, you are also prohibited altogether from accepting employment from an employer if the circumstances surrounding the hire suggest the employer's purpose is to influence you in your official capacity as a state employee.

Based on the information you have provided, it does not appear as though the restrictions in 1) or 3) above would apply to you. Specifically, you indicate you would be working with higher education and K-12 customers at Cisco which does not appear to implicate the definition of a lobbyist pursuant to IC 4-2-7-1(5). Further, the only interaction you identify between the two entities during your time at DOE was the equipment DOE purchased from Cisco pursuant to the QPA. This does not appear to amount to a regulatory or licensing decision as contemplated by the Postemployment rule. Regarding 2) above, although the equipment was purchased from Cisco pursuant to a QPA, you would still be subject to the restrictions in this portion of the rule if you engaged in the negotiation or administration of the contract and were in a position to make a discretionary decision affecting the outcome of the negotiation or nature of the administration. Since you state that you were not involved in any purchasing decisions and ensured you were not engaged in any related discussions, it appears as though you were neither involved in the negotiation nor the administration of DOE's purchase from Cisco and, as a result, would not be bound by this restriction. Finally, you would need to ensure that the circumstances surrounding your hire by Cisco would not suggest its purpose is to influence you in your official capacity with DOE.

While it appears as though the revolving door portion of the Postemployment rule would not apply to your employment opportunity with Cisco, you are still subject to the rule's "particular matter" prohibition in your potential employment. This restriction prevents you from working on any of the following twelve matters if you 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 QPA purchase you identify between DOE and Cisco would qualify as a particular matter in that it is a contract. However, it does not appear from the information you have provided as though you personally and substantially participated in procuring this purchase. Please note, however, that the particular matter restriction would apply to any such matter in any employment you encounter once you leave state employment. As a result, you would be prohibited from assisting any future employer on any of the twelve matters if you personally and substantially participated in the matter during your time with DOE.

In addition, IC 4-2-6-6 would prohibit you from accepting any compensation from any employment, transaction, or investment which was entered into or made as a result of material information of a confidential nature. So long as your employment with Cisco would not result from information of a confidential nature, any such post-employment would not violate IC 4-2-6-6.

Also, 42 IAC 1-5-6 (IC 4-2-6-9) pertains to conflicts of interest. This rule prohibits you from participating in any decision or vote if you have knowledge that various persons may have a "financial interest" in the outcome of the matter, including you as a state employee or any person or organization with whom you are negotiating or have an arrangement concerning prospective employment. In this case, you would be prohibited from participating in any decision or vote during the remainder of your employment with DOE in which you or Cisco would have a financial interest in the outcome of the matter.

Thank you again for contacting our office. Please note that this response does not constitute an official advisory opinion. Only the State Ethics Commission may issue an official advisory opinion. This informal advisory opinion allows us to give you quick, written advice. The Commission will consider that an employee or former employee acted in good faith if it is determined that the individual committed a violation after receiving advice and the alleged violation was directly related to the advice rendered. Also, remember that the advice given is based on the facts as I understand them. If this e-mail misstates facts in a material way, or omits important information, please bring those inaccuracies to my attention.

Sincerely,

Todd Shumaker, Staff Attorney
Office of Inspector General & State Ethics Commission

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**IC 4-2-6-1
Definitions**

Sec. 1. (a) As used in this chapter, and unless the context clearly denotes otherwise:

...

(9) "Employer" means any person from whom a state officer or employee or the officer's or employee's spouse received compensation. For purposes of this chapter, a customer or client of a self-employed individual in a sole proprietorship or a professional practice is not considered to be an employer.

4-2-7-1

Definitions

Sec. 1. The following definitions apply throughout this chapter:

...

(5) "Lobbyist" means an individual who seeks to influence decision making of an agency and who is registered as an executive branch lobbyist under rules adopted by the Indiana department of administration.

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.

42 IAC 1-5-6 Conflicts of interest; decisions and voting

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

Affected: IC 4-2-6-9; IC 4-2-7

Sec. 6. Decision and voting restrictions are set forth in IC 4-2-6-9.

IC 4-2-6-9

Conflict of economic interests

Sec. 9. (a) A state officer, an employee, or a special state appointee may not participate in any 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 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 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:

(1) 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

(2) 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.

(c) A written determination under subsection (b)(2) 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)(2) shall be filed with the appointing authority.

42 IAC 1-5-14 Postemployment restrictions

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

Affected: IC 4-2-6-11; IC 4-2-7

Sec. 14. Postemployment restrictions are set forth in IC 4-2-6-11.

IC 4-2-6-11

One year restriction on certain employment or representation; advisory opinion; exceptions Sec. 11. (a) As used in this section, "particular matter" means:

- (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 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) This subsection applies only to a person who served as a state officer, employee, or special state appointee after January 10, 2005. 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 his or her 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) representation by; or
- (3) 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 a special state appointee who serves only as a member of an advisory body.

(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. Waivers must be in writing and filed with the commission. The inspector general may adopt rules under IC 4-22-2 to establish criteria for post employment waivers.

(h) Subsection (b) does not apply to a special state appointee who:

(1) was a special state appointee before January 10, 2005; and
(2) is a special state appointee after January 9, 2005.
This subsection expires January 1, 2007.

-----Original Message-----

From: Todd Huston [mailto:thuston@doe.in.gov]
Sent: Friday, November 12, 2010 5:44 PM
To: IG Info; Carrasco, Cynthia (Cyndi)
Subject: Advice

Name
Todd Huston

Email
[REDACTED]

Phone
[REDACTED]

State Agency
Department of Education

Description of Your State Occupation
I am the Chief-of-Staff for Dr. Tony Bennett in the IN Department of Education. I am responsible for the day-to-day operations of the Department.

What is your ethics question?
I came to this position from Cisco. I have been offered a position to return to Cisco in the role of a Business Development Manager with Cisco working with Higher Education and K-12 customers. I will not be involved in working with the Indiana Department of Education nor I will be working on any contractual agreements between the Cisco and the State of Indiana.

While at the Department of Education, we did purchase Cisco equipment via the state QPA. I was not involved in any purchasing decisions and made sure that I was not engaged in these discussions.

I don't see any potential conflicts of interest but I did want to see an informal opinion. I respectfully request this opinion.

FIELDS NOT DEFINED IN THE TEMPLATE FOLLOW
