

**CAUTION:** The following advice may be based on a rule that has been revised since the opinion was first issued. Consequently, the analysis reflected in the opinion may be outdated.

**IC 4-2-6-11**

An IHFA manager was interested in working for the prior recipient of an award for which the employee had drafted the plan's changes and amendments but was not otherwise involved in the process. SEC found it was not a violation for the employee to work for the recipient and assist it in applying for the next year's award since the application for credits for two different years would be two distinct particular matters.

## **No. 02-I-3      Post Employment Restriction**

Indiana State Ethics Commission

Official Advisory Opinion

September 12, 2002

### **Background**

The State Ethics Commission received a request for an opinion from a Tax Credit Allocation Manager for the Rental Housing Tax Credit Program at the Indiana Housing Finance Authority. The state employee had drafted the changes and amendments to the Qualified Allocation Plan for 2002, but was not involved in the process for the 2003 allocation. The employee is planning to leave state government and is interested in working for a recipient of a 2002 award. She would be working on applications for the 2003 awards.

### **Question**

May a former state employee who administered a grant program become an employee of an awardee of the program for the purpose of assisting the awardee and other persons with future applications?

### **Facts**

The state employee administered a program that allocated Rental Housing Tax Credits. The credits are allocated on a competitive basis to for-profit and not-for-profit developers of affordable rental housing who submit an application pursuant to the Qualified Allocation Plan. After the applications for the Credits for 2002 were reviewed and scored by department staff, the state employee made the recommendations for funding awards to the Executive Director based on how the applications were ranked. The state employee is interested in working for a recipient of a 2002 award.

### **Relevant Law**

**IC 4-2-6-11**

Sec. 11. (a) This section applies only:

- (1) to a former state officer or former employee; and
- (2) during the period that is twelve (12) months after the date the former state officer or former employee had responsibility for the particular matter.

(b) As used in this section, "legislative matter" has the meaning set forth in IC 2-2.1-3-1.

(c) 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.

(d) A former state officer or former employee may not represent or assist a person regarding a particular matter involving a specific party or parties:

(1) that was under consideration by the agency that was served by the state officer or employee; and

(2) in which the officer or employee participated personally and substantially through:

- (A) a decision;
- (B) an approval;
- (C) a disapproval;
- (D) a recommendation;
- (E) giving advice;
- (F) an investigation; or
- (G) the substantial exercise of administrative discretion.

(e) An appointing authority or state officer of the agency that was served by the former state officer or former employee may waive application of this section if the appointing authority or state officer determines that representation or assistance of a former state officer or former employee is not adverse to the public interest. A waiver under this subsection must be in writing and must be filed with the commission.

(f) This section does not prohibit an agency from contracting with a former state officer or employee to act on a matter on behalf of the agency.

### **Conclusion**

The Commission found that it would not be a violation of state ethics rules on post-employment for a former state employee to assist an awardee of a program that she had administered with future applications to the program. The Commission concluded that applications for credits for 2003 are a different particular matter than those for 2002.

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Timothy J. McClure, Director

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Date Signed