

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 Consequently, the analysis reflected in the opinion may be outdated.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 6-8.1-3-2(e)
45 IAC 15-3-1**

A former DOR Deputy Commissioner sought advice regarding whether it was permissible under DOR's rules and statutes for him to represent a licensee in a tax investigation when the licensee had been under investigation during the time he was employed by DOR. SEC found DOR's regulations barred the former Commissioner from representing the licensee for two years following the day he left DOR's employ.

95-I-1 Department of Revenue's Conflict of Interest Statute

(Decision February 16, 1995)

A former employee of the Department of Revenue who had been the deputy commissioner for a period of time wanted to know if he was prohibited by IC 6-8.1-3-2(e) and 45 IAC 15-3-1 from representing a licensee and related entities to a charitable gaming licensee in a tax investigation when the licensee had been under investigation during the time the former employee was employed by the Department.

The statute provides that for two years after employment, a former employee of the Department of Revenue may not act in any capacity for a person in a matter that was pending in the Department during the period of the former employee's employment.

In June 1992, the Department of Revenue became responsible by statute for the administration, investigation, and enforcement of games of chance, including bingo. The Department issued bingo licenses to qualified organizations upon the organization's submission of the application and payment of the fees set by the Department. The statute defined "listed taxes" and included in the definition "any other tax or fee that the Department is required to collect or administer." Under the bingo laws, there were no assessments or claims for refunds as there were with various other taxes. In bingo cases, the Department issued licenses, imposed additional fees, fines and penalties, and revoked licenses. The bingo laws prohibited organizations from such activities as paying bingo workers or paying more than \$200 per month for the facility in which the bingo was played. Usually, the Department conducted an investigation when there was a complaint lodged against an organization. The Department reviewed financial records to ascertain the state of the organization. If any impropriety was found, the Department assessed a fine or penalty, or revoked a license. It could also refer a matter for criminal prosecution.

In this case, the former employee became the deputy commissioner of the Department of Revenue in March 1992. The former employee was involved in some of the formative meetings when the application for gaming license process was developed, but he did not review applications for licenses. The licensee originally received the charitable gaming license on June 1, 1992. Also in June 1992, a special agent was sent to investigate allegations that the licensee was playing bingo more than the allowable days per week. On July 10, 1992, another complaint concerning the licensee was received and investigated. In 1992, the matter was referred to the county prosecutor.

On August 15, 1992, the licensee, faced with having its license revoked, submitted a letter to the Department which indicated that it would suspend operations and agreed to surrender or relinquish its license voluntarily prior to the delivery of a revocation letter. The relinquishment of the license was made in response to an investigation which found violations. The licensee felt it was in its best interest to surrender the license and later reapply, rather than to receive the notice of revocation which the Department was prepared to tender. In addition, a court in the county where the entity was located found for the Department on that issue. The licensee had no license until March 1993. On September 1, 1992, another organization with a business relationship to the licensee was reported to have problems. On September 20, 1992, the licensee was contacted about missing records. On September 22, 1992, the licensee was contacted about invoices on rent. On December 12, 1992, the licensee reported a change in its officers.

On January 13, 1993, another application was sent to the Department, requesting that the licensee be declared a qualified organization. On March 3, 1993, the licensee bought property, and an attorney faxed to the former employee-attorney (who was an employee at the time) a letter confirming a prior phone call along with some documents necessary to licensing and requested that a license be faxed to the licensee so charitable gaming could begin on March 12, 1993. The license was reissued on March 3, 1993, and lost in the mail. A second license was reissued on March 30, 1993. Some investigation of the licensee operating under its reissued license began in April 1993 and the matter was referred over to the Criminal Investigation Division (CID). On May 14, 1993, the prosecutor's office contacted CID regarding an informant who said the licensee was paying employees in violation of the statute. By May 14, 1993, CID was conducting an investigation of the licensee in conjunction with the prosecutor's office. The Department was looking for civil violations such as payment of workers, underreporting of income, failure to report income, and falsifying records. Because there are many players involved in the operation of bingo, other organizations were identified that could have information about the licensee that would help the Department to make a determination whether it would proceed on a criminal basis against the licensee.

The former employee left state employment on May 25, 1993. In July 1993, a warning of a charitable gaming violation was issued to the licensee by the Department of Revenue in conjunction with a warning letter written by the county prosecutor. Some investigation of the licensee was begun in 1993.

Subpoenas were sent in mid-December 1994 to eight entities requesting certain business records. In December 1994, the former employee-attorney contacted the Department and said he represented the licensee. The Department also received powers-of-attorney from the entities, all listing as their attorney an individual and the law firm for which the former employee worked. The individual attorney was and had been the attorney for the charitable gaming licensee and several individuals who were active in the operations of the licensee or one of the entities which was subpoenaed. The entities which the former employee sought to represent were the licensee and other entities associated with the licensee located on the same premises and owned by individuals associated with the licensee.

Question

Is a former employee of the Department of Revenue who was a deputy commissioner for a period of time prohibited by IC 6-8.1-3-2(e) and 45 IAC 15-3-1 from representing the licensee and related entities to a charitable gaming licensee in a tax investigation when the licensee had been under investigation during the time the former employee was employed by the Department?

Opinion

The Commission found that the prohibitions of the Department of Revenue's statute and rules, under the facts that the licensee had been under investigation during the time the former employee-attorney was employed by the Department, barred the former employee from representing the licensee and any related entities of the licensee in matters pertaining to an investigation regarding the licensee's holding of a charitable gaming license or its revocation during the two year period following the day the former employee left employment with the Department of Revenue.