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DOCKET NO.: 2020-708
REGARDING: City of Slidell
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La. R.S. 42:1121B(1) provides:

No former public employee shall, for a period of two years following the termination of his public employment, assist another person, for compensation, in a transaction, or in an appearance in connection with a transaction in which such former public employee participated at any time during his public employment and involving the governmental entity by which he was formerly employed, or for a period of two years following termination of his public employment, render, any service which such former public employee had rendered to the agency during the term of his public employment on a contractual basis, regardless of the parties to the contract, to, for, or on behalf of the agency with which he was formerly employed.

The question that has been posed, in light of the privatization of governmental services, is whether public employees who lose their positions due to a decision to privatize a governmental service are still bound to the two-year prohibition period contained in §1121B.

Prior Board opinions (see below) have considered this issue and determined that public employees who are laid off due to a privatization decision do not have to wait the two-year period provided that they did not participate in the decision to privatize the services.

The question in this case is whether the governmental entity must privatize all positions? Here, the City of Slidell proposes privatizing the water and wastewater systems and facilities. The City anticipates that 33 of the 37 employees would be privatized. The City would retain four employees in these service areas to provide managerial oversight of the contract with the private entity, but these employees would not provide day-to-day operations.

NOTE: The Board has not applied the privatization exception to agency heads under 1121A(1).

In Docket No. 2017-219, the Board found no prohibition where the layoff was due to a reduction in force or as a result of budget cuts. This would seem to imply that the governmental entity does not need to privatize all positions to apply this unique exception. Here, applying the exception to the City employees (who are not considered agency heads) would be consistent with prior rulings.

PRIOR ADVISORY OPINIONS

No. 2018-1021: Occupational and physical therapists formerly employed by the East Baton Rouge School System not prohibited by §1121B from entering into contracts with the East Baton Rouge School System or being employed by a private entity who contracts with the East Baton Rouge School System, since the East Baton Rouge School System will no longer provide such services and the employees did not participate in the agency's decision to privatize their services.

No. 2017-219: A former employee in the Medicaid Quality Improvement Section within the Louisiana Department of Health was not prohibited by §1121B from accepting employment with a private entity and assisting them in transactions with LDH in which he participated while employed by LDH, where the layoff was due to a reduction in force or as a result of budget cuts, provided that the employee did not participate in the decision and the termination was not attributable to his actions or job performance.

No. 2014-945: A former employee of the Imperial Calcasieu Human Service District (IMCAL) not prohibited by § 1121B from entering into a contract with IMCAL within two years of the termination of their employment, where all of the public positions were converted into contractual positions due to a privatization decision, provided that the employee did not participate in the decision.

Nos. 2012-1707 & 2012-1596: A former occupational therapist employed by the North Lake Resource Center on Developmental Disabilities in the Office for Citizens with Developmental Disabilities under the La. Department of Health and Hospitals was not prohibited by §1121B from contracting with her former agency since the agency was privatizing those services and the employee did not participate in the decision.

No. 2010-352: Former employees of the Office of Risk Management are not prohibited by §1121B from being employed by private entities who are contracting with the Office of Risk Management, since their former agency no longer provided the services, provided that the former employees did not participate in the decision to privatize the services.

No. 2010-341: Former employees of the Office for Addictive Disorders within the La. Department of Health and Hospitals were not prohibited by §1121B from contracting with OAD or being employed by a private contractor, as long as the employees did not participate in the decision to privatize the services.

No. 2010-080: Former custodial employees of the Office of State Buildings are not prohibited by §1121B from being employed by a private contractor, provided that the employees did not participate in the decision to privatize the custodial services.

No. 2009-934: Former employees of the Office of Risk Management were not prohibited by §1121B from being employed by a private contractor to provide claims adjusting and loss prevention services when those services were privatized by ORM and the employees did not participate in the decision to privatize.

No. 2004-759: Former employees at the New Orleans Lakefront Airport were not prohibited by §1121B from being employed by a private contractor, following the decision by the Orleans Levee Board to privatize the airport services, provided that the employees did not participate in the decision to privatize the services.