

Public Meeting
January 14, 2010 (10:05 a.m.)
Verbatim

Call to Order

Adoption of Agenda and Approval of Minutes

Nuechterlein: Welcome everyone. Just chatting among my colleagues. This is the largest audience we've ever had so that bodes well for an interesting morning for everybody. Our first item and we are in our new digs here in the state, Indiana State Library, in the Author's Room so it's very inspirational. Our first item on the agenda is the adoption of the agenda which has been sent to all of us for review previously. Is there a motion for the adoption of the agenda?

Jamison: I move so

Clevenger: Second.

Nuechterlein: Okay. All those in favor signify by saying aye (3-0). Opposed and that carries. The second item is the approval of the minutes of our December 2, 2009 meeting. Those have been sent to us for review.

Clevenger: Madam Chairman I reviewed the minutes and didn't find that there was any errors. I thought they were in order and I would move for approval.

Jamison: I second.

Nuechterlein: Okay. All those in favor of the approval of the minutes of our December 2, 2009 meeting signify by saying aye (3-0). And that carries.

Clevenger: Point of clarification.

Nuechterlein: Yes. I'm sorry.

Clevenger: Are there minutes for the conference, the meeting that we held during the conference?

Carrasco: No we don't have any minutes.

Clevenger: Pardon me.

Carrasco: We don't have any minutes prepared for this meeting.

Clevenger: Should we?

Carrasco: We have the formal advisory opinion that we recorded what happened during that meeting.

Clevenger: Okay. And that's made part of the minutes somehow.

Carrasco: Yes.

Nuechterlein: Yeah, okay. So that should be incorporated. We did make a formal advisory opinion during the conference on December 1st. So we'll note that for our minutes today. We have four requests for formal advisory opinions before us this morning.

10-I-1, Request for Formal Advisory Opinion
Jacki Brown, Former Program Director
Thoroughbred & Quarter Horse Development
Horse Racing Commission

Nuechterlein: We have four requests for formal advisory opinions before us this morning. The first number 10-I-1 is a request for a formal advisory opinion from Jacki Brown, the former program director of the Thoroughbred and Quarter Horse Breed Development, Horse Racing Commission. Is Miss Brown here this morning? Would you approach the witness chair please? And do you have any . . . are there any other witnesses to testify on your behalf?

Brown: Yes.

Nuechterlein: Would you like to come forward. And any of the other witnesses if everybody would just come forward at the same time and be sworn. Good morning and welcome.

Holden: Good morning.

Nuechterlein: If you would please be sworn by Miss Flynn.

Flynn: Raise your right hands please. Do you swear or affirm that the testimony you are about to give is the truth, the whole truth, and nothing but the truth?

Brown & Holden: I do.

Nuechterlein: Would each of you state your names and the capacity in which you're testifying today? Miss Brown.

Brown: Jacki Brown asked for the formal advisory opinion.

Nuechterlein: And you are the requestor of the opinion?

Brown: Yes.

Nuechterlein: Okay.

Martin: My name is Eddie Martin. I'm the Executive Director of the Indiana Thoroughbred Owners and Breeders Association, potential employer.

Nuechterlein: Okay.

Holton: And my name is Jack Holton. And I'm the treasurer of the Indiana Standard (inaudible) Association.

Nuechterlein: Thank you. Miss Brown we have here a submission before us but would you just give us a short narrative of what it is you're requesting from us this morning?

Brown: I was . . . my last day of employment was March 13th 2009 with the Indiana Horse Racing Commission. I worked there for thirteen years and I haven't worked anywhere else other than running my own electrical business from my home. And the Indiana Thoroughbred Owners and Breeders Association approached me to be their executive secretary. And I would just like really from the (inaudible) to be able to do that.

Nuechterlein: Thank you very much. We have the . . . the Commission is charged with the enforcement of various state ethics statutes and administrative rules. The ones implicated here today impose both a one-year restriction, three hundred and sixty-five day restriction on certain activities and then also and if you were involved in a particular matter before the Horse Racing Commission during your tenure there. And certain instances would prohibit you from working on the other side of those issues too. So there are two laws that we need to work our way through. You say you stopped working with them in March of 2009, is that correct?

Brown: March 13th.

Nuechterlein: Okay. So you're very close to that three hundred and sixty five days.

Brown: Yes.

Nuechterlein: And we have before us a draft prepared by our professional staff analyzing the statutes and then applying your request to the statutes. And there's some clarification that we'd like to get from you today.

Brown: Okay.

Nuechterlein: Will you . . . do you contemplate working as a lobbyist for the organization?

Brown: No.

Nuechterlein: You would not be an executive branch lobbyist. What would your duties be generally?

Brown: Running the day-to-day secretarial office duties during (inaudible) association asked me to do just mainly clerical.

Nuechterlein: Clerical and administrative, secretarial those types of activities. When you were the program director at the Thoroughbred & Quarter Horse Breed Development, Horse Racing Commission, were you involved in any sort of particular matters what the statute states, any sort of contract or ongoing activity involving administratively with the organization that wish to employ you?

Brown: No.

Nuechterlein: So do you contemplate your future employment would not overlap with anything you did for the state? Is that fair to say?

Brown: No.

Clevenger: What did you do when you were with the state as a state employee? What were your duties?

Brown: I was in charge of the breed development program and I registered the horses for the Indiana Bred program for both quarter horses and thoroughbred. And I've overseen that program. I didn't have any contracts. I did attend meetings just mainly to give information from the program to the horseman at the Association. I didn't have any voting rights of any kind.

Clevenger: That was the only contact you had with the Indiana Thoroughbred Owners and Breeders Association?

Brown: Yes, just information only.

Clevenger: Okay. The job that you're getting now or you're seeking, it's not because of anything that you did while as state employee that there would favorable apparently you have some information I know and knowledge about this line of work but that that would be one of the reasons why these folks would look for you but didn't have anything to do with contracting or passing out money to them.

Brown: No.

Clevenger: Or anything that would put you in good favor with them while you were a state employee?

Brown: I don't see that it would.

Clevenger: I mean (inaudible) response as far as suggested for any contracts or anything like that with . . .

Brown: No that . . .

Clevenger: Indiana Thoroughbred Owners and Breeders Association.

Brown: That would have fallen under the Commission directly.

Clevenger: Okay.

Brown: And the executive director of the Commission.

Nuechterlein: So you would contemplate your duties in the job for which you're seeking guidance today to be separate and distinct from any of your duties or authorities when you were with the Commission, is that a fair . . .

Brown: As far as duties, yes.

Nuechterlein: Characterization.

Clevenger: Would you agree that's what you're intending for her duties to be?

Martin: Yes. We approached Jacki because of we know what type of administrative person that she was. I was a former Commissioner with the Indiana Horse Racing Commission. I was former chairman of bred development advisory committees and I was fortunate to have Jacki on the staff when we first developed the program. And I was gone for several years. I have a commercial operation down in Florida and when I came back up here a year ago to be involved with Indiana breeding operation up here and then after she had left and so when I went back on the board of the Indiana Thoroughbred Owners and Breeders, we just . . . we were searching for secretarial, executive secretary. I'm the executive director. Somebody that would support staff. I guess I'm the big picture guy and Jacki would you know I make the snowballs and she would throw them so to speak in terms of support staff.

Clevenger: Do you have to use that example?

(Laughter.)

Holton: I'd like to add that if you had questioned contractual matters. With every association, I'm a former president of the Indiana Standard Bred Association. Our contractual matters are solely between the Association which (inaudible) association and the tracks. There is a ratification process by the Commission that it is fairly perfunctory and almost automatically granted to be honest with you. I would also like to hire Jacki

but she stuck with the thoroughbred. It's unfortunately she's decided to leave the state . . . she was really an excellent employee. And I would employ her in any of my businesses frankly.

Nuechterlein: So the Commission was not a party to those contracts.

Martin: No ma'am.

Nuechterlein: They had a ratification (inaudible).

Holton: They had a point to approve the contracts once the contract is negotiated with the tracks. And it's a very strange relationship where they say they have no input but yet they have the ability to ratify it.

Nuechterlein: But no one (inaudible)?

Martin: No Ma'am.

Nuechterlein: And they're never party to the contract itself?

Martin: No, Ma'am.

Nuechterlein: Well that's helpful because that again is under the statute is a conflict.

Martin: Anybody that would make a decision would come from the executive director and not the supporting staff in which Jacki would be . . . would have been a part of. It would . . . any of those recommendations would be made by the executive director of the Commission.

Brown: I brought a file with me a copy of my job description.

Nuechterlein: Oh, okay. Do we have a copy of that?

Carrasco: Yes.

Nuechterlein: Program Director. We had that to review too.

Clevenger: I'm satisfied with the clarification that has been given here that there isn't going to be a problem with the restriction and I would propose that we adopt as it falls in line with our thinking here to approve you know or grant approval in this matter and adopt the draft opinion with the provisions (inaudible) clarifications in some of the areas.

Nuechterlein: Is that a motion?

Clevenger: That's a motion.

Nuechterlein: Okay. Is there a second?

Jamison: Second.

Nuechterlein: Any further discussion? If not, all those in favor of Commissioner Clevenger's motion to adopt the draft advisory opinion allowing Miss Brown to accept the position with the Indiana Thoroughbred Owners Breeding Association?

Martin: Owners and Breeders Association.

Nuechterlein: Owners and Breeders Association signify by saying aye (4-0). Opposed and that carries.

Clevenger: Good luck to you.

Brown: Thank you.

Nuechterlein: Best wishes.

Carrasco: Miss Brown, you'll receive a copy of the opinion reflecting what was discussed here today some time next week.

Brown: Thank you.

Nuechterlein: Okay, we welcome (inaudible) serving Commissioner Priscilla Keith to our body.

Keith: Thank you.

10-I-3, Request for Formal Advisory Opinion
Roland Gamache, Public Health Research Chemist
Department of Health

Nuechterlein: And our second item on the agenda is a request for a formal advisory opinion, 10 -I-3, submitted by Roland Gamache.

Gamache: Gamache.

Nuechterlein: Gamache, Public Health Research Chemist for the Indiana Department of Health. Welcome.

Gamache: Thank you.

Nuechterlein: Raise you right hand to be sworn.

Flynn: Do you swear or affirm that the testimony you are about to give is the truth, the whole truth, and nothing but the truth?

Gamache: I do.

Nuechterlein: Good morning.

Gamache: Good morning.

Nuechterlein: Would you please again state your names for the record.

Gamache: Roland Gamache.

Couture: I'm Amanda Couture. I'm Mr. Gamache's attorney.

Nuechterlein: Oh, okay, thank you. We'd like a short . . . we always begin our proceedings with a short narrative by the requestor or if you'd like to speak.

Gamache: Actually I accepted a position with Indiana University after working with the State Department of Health for fifteen years. And during the course of that work, I was asked to do some work with the Regenrief Institute and become affiliated with the Regenrief Institute. So I requested a waiver because I had to have a contract with the Regenrief Institute previously. But I was surprised to hear that the State Department of Health considered the Regenrief Institute and Indiana University the same entity which really surprised me. I considered them separate entities. They have separate legal standing. They have separate contracting, separate (inaudible) purchase order. They are two different entities that we contract with. And they serve as two different board of directors. I was surprised by that. (inaudible). What I was looking to do work with the Regenrief Institute in the area of public health. There's only a number of . . . there's only a few couple of people in public health informatics in the nation and looking to develop about 2000 more. There was a lot of funding coming out through the summer with the stimulus package that I (inaudible) applied for grants for. I have a long standing grant history with the state public health. I was looking to about get some funds into the state for public health in the state of Indiana from the university and for the state public health and local public health department. So that was my reason for putting the request in because we had all that money from the (inaudible) legislation out there (inaudible) get that and work with the Department of Health at the same time.

Nuechterlein: What do you contemplate using the grant money for?

Gamache: It will be used mostly for surveillance for public health, community health assessment and trying to deliver information to the clinician from public health systems in a way that would effect the (inaudible). So we're looking at things that are very important for them. Right now we're working on H1N1 type issues. So we're providing a lot of information to Marion County Health Department and trying to test different protocols on how we might be able do that better.

Nuechterlein: Okay, thank you. Do you have anything further you would like to add?

Couture: Just a couple of other concerns that have come up in the course of dealing with Mr. Gamache. One is given how narrow his skill is. The extent of the conflict of interest if the statute is (inaudible) it has been so far. But basically prevent him from being employed anywhere (inaudible) beyond that perhaps regionally. The other thing is that there really wasn't a waiver him to foresee when he moved to Indiana University that this conflict was going to follow him because in all of his prior interactions, IU and the Institute had been treated as two separate things. The other point I don't think he made is that the contract that he did administer with the Institute while he was working for the state expired in 2006. So it's been three and a half years now since that contract is expired. And so to the extent that there was (inaudible) an appearance of impropriety (inaudible) because of that contract I think it's long since expired.

Gamache: (inaudible) the contract itself I'm not doing any type of work currently that was associated or that was part of the contract (inaudible).

Nuechterlein: Are you doing or do you contemplate doing any kind of executive branch lobbying in your position?

Gamache: No.

Nuechterlein: And that would not ever be a variable that you would go into with the position that you currently hold.

Gamache: Not perceivable at all.

Nuechterlein: You're seeking grants from them, seeking to get those grants distributed.

Gamache: (inaudible) you in the state to try you know stimulate public health research and work in the state of Indiana.

Nuechterlein: Good, thank you.

Clevenger: I'm not sure maybe both of you can help me with this. It appears that the opinion you received from the Ethics Officer from your Department suggested a waiver by your Commissioner and that you requested that waiver and your Commissioner denied that waiver.

Gamache: That's correct, yes.

Clevenger: Is there any elaboration as to your opinions as to what transpired why that occurred.

Gamache: I don't. I had a very good working relationship with the Health Commissioner. I mean I don't know why it was just the one sentence.

Clevenger: I see that.

Gamache: I don't know what the rationale was.

Nuechterlein: Yeah. No supporting documentation or explanation for that, just you've got a conflict because they viewed IU and the two bodies as one.

Clevenger: Is the Health Department here? Are they represented?

Carrasco: They are indeed Commissioners. Sabra Weliever, the Ethics Officer for the agency is here.

Nuechterlein: Oh, come on up.

Clevenger: Maybe we can get an explanation on that from her.

Nuechterlein: Would you please swear the third witness.

Flynn: Raise your right hand please. Do you swear or affirm that the testimony you are about to give is the truth, the whole truth, and nothing but the truth?

Weliever: I do.

Clevenger: Your name is?

Weliever: Sabra Weliever.

Clevenger: Okay, thank you.

Weliever: And I'm the agency ethics officer.

Clevenger: You're the one who issued the original opinion suggesting the waiver?

Weliever: Yes. Well my original opinion to Mr. Gamache was that the rule did apply to him because the story that I received was that he had done a contract with IU in 2006. And the way the rule reads doesn't matter when your contract occurred during your employment, you still have 365 days prohibition. So that was the reason I gave him for not . . . not approving his post-employment for the 365 days revolving door.

Nuechterlein: Right, right.

Weliever: Because it was my understanding from my discussions with him that that was an IU contract. He is now working for IU. So on . . . after I issued that opinion I told him that he could request a waiver from the State Health Commissioner. He did request that waiver and I got back the same information that you all got back that she declined to grant him a waiver. I did not.

Nuechterlein: Do you know the basis for that?

Weliever: I don't know the basis for it and I did not pursue it.

Nuechterlein: Okay. When did you leave the employ of the Department of Health?

Gamache: July 15th.

Nuechterlein: Last year?

Gamache: Yes.

Nuechterlein: So we're still within the 365 days?

Gamache: That's correct.

Weliever: But if I may.

Nuechterlein: Sure.

Weliever: My suggestion to Mr. Gamache was that he take this issue to the Commission because of the lack of a time limit in the (inaudible). Because theatrically if I worked on a contract with IU twenty years ago and I retire next week and am offered a position with IU, it doesn't matter that I have had no contact with IU for twenty years under the rule I would have to wait the 365 days. So I suggested that maybe the Commission would like to take a look at that issue and that is my understanding why it was brought here today. I have not seen his submissions to this Commission but that was my reasoning for suggesting a formal advisory opinion.

Nuechterlein: That's helpful, thank you.

Carrasco: Commissioners if I may with respect to the point that Miss Weliever just made, I would like to bring to your attention that the legislation in 2005, pre 2005 the ghost employment rule included language that made a distinction between or suggested that there was a time limitation as to when you had interaction with a potential employer. I don't remember the exact language but it said something to the effect that if you negotiated or administered a contract with the potential employer within the past year or two before going to the employer. That's when the one-year cooling off period applied. In 2005, in the amendments to the post employment rule were made that language was taken out to read and reflect what it does today. Now with respect to Mr. Gamache's specific situation here given that the employers are different the issue I believe regarding the negotiation time, the time between the negotiation or administration of the contract that the employer is not really an issue here. Instead it's that he went to work for another . . . a different employer than the one that he negotiated with or administered the contract with while he was he was with the Department of Health.

Keith: So it's a different employer.

Carrasco: It's a different employer.

Keith: Okay.

Nuechterlein: Yeah.

Carrasco: From my understanding.

Keith: Okay.

Jamison: As you indicated you thought he was employed by IU.

Weliever: Yes.

Jamison: The contract.

Weliever: Yes.

Jamison: And now you're saying that the way you understand it that's not the case.

Weliever: No, what I was advised was that he was going to work for IU and he had negotiated the contract with IU in two thousand . . . that ended in 2006.

Keith: So it's really Regenstrief? Who's the employer here?

Gamache: The contract is with Regenstrief.

Keith: Oh, okay.

Gamache: My employer is Indiana University.

Keith: Okay.

Gamache: And I did say Regenstrief in the second paragraph of (inaudible) talking about.

Keith: I just wanted to make sure.

Gamache: Something just happened in our conversations with (inaudible) Tim (inaudible) and I had spoke on the phone and had email exchanges.

Keith: Okay.

Gamache: There might be something in there that was talking about that gave her that impression that (inaudible) it's Regenstrief.

Keith: Okay.

Weliever: May I show this to Mr. Gamache what he gave me?

Nuechterlein: What . . . would you identify the document for the record?

Weliever: This is a document that he sent me as an attachment to an email, I believe and it was July 15 of 2009. And it outlines his proposed job description . . . his expected job functions, his history and his past experiences with Indiana University. And in this document he states, "I have had one contract with Indiana University. This contract was a part of a joint grant application with the National Governor's Association on behalf of the Governor's Office and FSSA in the area of electronic records.

Nuechterlein: Do we have a copy of that?

Carrasco: No.

Gamache: I definitely miswrote that. The contract was with Regenstrief Institute. It wasn't with Indiana University so I gave Sabra the wrong information on that document.

Nuechterlein: Would you submit a copy of that for the record?

Weliever: I will.

Nuechterlein: And your request today is to continue your . . .

Keith: Your employment.

Nuechterlein: Continue your employment.

Gamache: Yes.

Nuechterlein: Okay. And there will be no lobbying activity?

Gamache: I'm sorry.

Nuechterlein: It does not contemplate any lobbying activity?

Gamache: No.

Nuechterlein: And the contract with which you were substantially involved while with the state that occurred . . . ended in what '06?

Gamache: '06.

Nuechterlein: Your contact with them.

Keith: And that was with Regenstrief?

Gamache: Yes.

Keith: Okay.

Nuechterlein: Well . . .

Jamison: I'm still confused. Why would you submit this it was IU when you . . .

Gamache: I wanted to . . . I was applying for grant funding with the high tech and (inaudible) funds that are available and I wanted to partner with the Regenstrief Institute on a grant proposal so I asked for the waiver based on that just to make sure there wasn't any type of problem with this actually. That is why (inaudible). I could work with them as a partner without there being any issue here.

Jamison: Is there documentation of that contract?

Gamache: Of the contract with Regenstrief?

Jamison: Yes.

Gamache: Yes. I think I have a copy of it in my file somewhere, I don't know if I brought it with me or not. And the contract itself is actually it was grant from the National Governor's Association. So everything went through the Governor's Office. I just signed off on this particular contract.

Nuechterlein: And is it your testimony that you never negotiated or administered a contract with the IU School of Medicine, is that correct?

Gamache: I did not, no.

Nuechterlein: But it was with Regenstrief on behalf of the state that you were . . . that was your (inaudible).

Gamache: Yes.

Nuechterlein: Well any further questions for the witnesses? Mr. Clevenger.

Clevenger: I guess I'm having trouble getting grasping all of this to some degree but the bottom line is is while you were a state employee with . . . at your first job, you were in a position that to do something with the IU School of Medicine but now they look

favorably upon you and are now hiring you as a result of what you did with the state. I mean the idea of the (inaudible) is that state employees deal with folks all the time and if they grant them funds and things like that as part of their employment, you know, (inaudible) idea is if they don't get jobs, you know, offered back to them when, you know, they leave state employment. And I guess that's my question to some degree is that any of that kind of thing has gone on in your position with the Department of Health?

Gamache: I mean the work I did was was really a lot of things both locally and nationally. It wasn't necessarily work directly with IU or for IU or anything like that. It was work that I was just doing in public health, more general than that. And so a lot of that work now is at a place where a few (inaudible) is starting to look at that type of information (inaudible). There's a lot of good reason to move forward (inaudible). There's a lot of people (inaudible) expanded area to get more people educated in this field, in public health (inaudible). And so looking for people to educate, you know, people who are (inaudible), 5,000 more people in this field.

Clevenger: (inaudible) IU (inaudible) is looking to hire you because of the knowledge and skills you acquired but not necessarily because of any contract you negotiated in the past.

Gamache: Correct.

Nuechterlein: So it's your general expertise in the field.

Gamache: Yes.

Nuechterlein: And it's your testimony that you did not negotiate or administer a contract with IU School of Medicine involved with the state?

Gamache: Correct.

Keith: Do you need a motion?

Nuechterlein: Yes.

Keith: Madam Chairperson I'd like to make a motion that we approve Mr. Gamache's employment with IU School of Medicine as the contract that he worked on while his employment with ISDH was with Regenstrief (inaudible) School of Medicine and all the (inaudible) closely affiliated (inaudible) work together. They are two separate entities at this time. And I would also advise Mr. Gamache to follow the rules of compliance with regard . . . with regard to his employment with IU School of Medicine so that there are no conflicts in the future.

Nuechterlein: Thank you. Is there a second?

Jamison: I'll second.

Nuechterlein: Okay, any further discussion to Commissioner Keith's motion before us.

Clevenger: My only comment is with the Health, you know, when the Commissioner denies a waiver under these circumstances, it would have been nice to know a little more particular what's going on like that. So you know you might indicate to the Commissioner that if they're opposed to this kind of thing that they either arm you with more information or a better explanation of what's going on. But other than that, I don't have (inaudible) with the motion.

Nuechterlein: Okay, any other statements. If not, I'll call for the question, all those in favor of Commissioner Keith's motion signify by saying aye (4-0). Opposed and it carries. Best wishes to all of you.

Gamache: Thank you.

Carrasco: A copy of this opinion will be forward to you next week.

Gamache: Thank you.

10-I-4, Request for Formal Advisory Opinion
Karen Weber, Chief Compliance & Ethics Officer
Department of Workforce Development

Nuechterlein: Okay. Our next request for a formal advisory opinion 10-I-4 has been presented by Karen Weber, the Chief Compliance and Ethics Officer, Indiana Department of Workforce Development. The witnesses would approach and be sworn in please. Good morning everyone.

All: Good morning.

Nuechterlein: If you all raise your right hand and be sworn in.

Flynn: Do you swear or affirm that the testimony you are about to give is the truth, the whole truth, and nothing but the truth?

All: I do.

Nuechterlein: And if each of you would state your name and the capacity in which you are testifying today.

White: My name is Darrell White. I'm the current board chair of Economic Development Region 8, south central Indiana.

Nuechterlein: Thank you.

Pennington: Brooke Pennington, I'm president and CEO of the Indianapolis Private Industry Council, the workforce investment board for Marion County.

West: Larry West, the Board Chair for Region 4 which is west central Indiana. Also the board chair for the Indiana Workforce Board Association.

Nuechterlein: Thank you.

Voors: I'm Teresa Voors. I'm the Commissioner of the Indiana Department of Workforce Development.

Nuechterlein: Thank you.

Weber: Karen Weber, Department of Workforce Development, Chief Compliance and Ethics Officer.

Nuechterlein: And you're the requestor this morning?

Weber: I am.

Nuechterlein: Thank you and welcome everybody. Who would like to give . . . I suppose Miss Weber would you give the narrative of what it is or Miss Voors?

Voors: I'd be happy to do that.

Nuechterlein: Sure.

Voors: Our agency is charged with managing unemployment insurance, workforce training, (inaudible) during this recession help them find jobs, technical education and labor market data. In that role we manage various federal funds. One of the funds is called the Workforce Investment Act. It's a federal training program that we have. Dollars come into through the Governor to our agency and then our agency manages that to state workforce council. That council makes decisions on those dollars and those dollars are typically (inaudible) down to our regional workforce board for the Indianapolis Private Industry Council. And so our questions today are really to help out . . . help us to find what a special state appointee is in regards to our state council, our regional boards and the local board, the Indianapolis Private Industry Council. Our state council is appointed by the Governor. Our regional workforce boards are dictated in state law, not federal law. And they are appointed by willful elected officials not by the Governor. County mayors and commissioners decide who those volunteer board members are. And the Indianapolis Private Industry Council is appointed as well by the local elected officials but they are dictated in Federal Workforce Investment Act law not in our state law. And so our question really today is just surrounding the definition of special state appointees. And we brought some representatives who will be affected by your decision so that they can kind of give you their thoughts on the responsibilities under the ethics laws.

Nuechterlein: Good, thank you. Do you any of you wish to speak to that?

Pennington: On behalf of the Indianapolis Private Industry Council, the board is as Commissioner Voors stated is set out in federal law. It dictates not only who may make those appointments but what those appointments consist of. Those . . . all appointments for the Indianapolis Private Industry Council Board of Directors are made by the Mayor of Indianapolis. So from our prospective our board members are not state special state appointees by definition in having them comply with that definition is cumbersome from a work prospective.

Nuechterlein: Thank you. And gentlemen do you wish to speak to that or give background.

White: I'll go ahead. Most of my recent professional activity was working for a large medical device company in south central Indiana, (Inaudible) Scientific. And there are ethics and procedural training which was very strict from the very top level to every employee inside of the building. And taking a somewhat counter position to her I believe ethics is so crucial to what we do in our society. And I think there has been so much suspicion among governmental activities and a lack of ethical practices there. Even though we may not have direct responsibility for some of the things where ethics concerns might arise, I think it's something that's appropriate at all levels of professional life and governmental entities as well. On the other hand the way it was enacted when I first so it this last summer if I hadn't been through it in my previous you know job experience it would have been a little bit foreign and unusual and strange to do this training online electronically. I think that some improvements could be made around notification and facilitation of that process, certainly to make it an easier task for people that may not be familiar with those kinds of procedures.

Nuechterlein: Good, thank you.

West: Now we polled all of the board chairs around the state to get feedback on this and the numbers came back. Eight felt like we should comply with the training. We should be . . . we should fall under it. Only one came back and said basically they felt like no that we should not. I also polled all of our board members and all of the results were similar. Now to Darrell's point there were some concerns about these people are all volunteers. They've all got jobs that pay them money and there are concerned well we don't want to pile too much on them but on the other hand the training with a few (inaudible), the training was easy. It only took a few minutes. They understood it. And again like Darrell said, most people in business today probably get some of this training with their paying job but overwhelmingly everybody thought yes we should . . . we should comply whether or not the technical point of state special appointees is applicable or not. We still should go through the training. But there was that concern. We don't want too much of this coming to the board because they have enough time spent with their normal board duties but other than that nobody felt it was that much of an imposition on them.

Nuechterlein: Thank you.

Pennington: If I may.

Nuechterlein: Sure.

Pennington: I would like to be clear our board is not saying that they should not have ethics training. They are concerned about the applicability of state ethics training when we are appointed again all of our board members by the city of Indianapolis, the Mayor of Indianapolis and have other ethics requirements because of that additionally they complied with the economic interest statement and go through conversation and education on the filling out that economic interest statement. It is not a question of the importance of ethics and ethics training it's a question of whether or not they actually meet this definition.

Nuechterlein: Thank you. The question here are the various boards and commissions members fall as under the special state appointee's status which is defined in Indiana Code 4-2-6-1. We can just go through some of that with you and then we'll go through one by one I guess of the three Commissions and Boards that are before us today, advice accordingly. Do you have the code in front of you? Have any of you seen it? We can read into the record the definitions.

Weber: I have an extra copy.

Nuechterlein: Okay. Special state appointee of which all four of us Commissioners fall under that category and I think the Governor has about twenty-five hundred positions in you know relatively small state that fall under that status. So it's (inaudible) a "special state appointee means a person who is (A) not a state officer or employee; and (B) elected or appointed to an authority, a board, a commission, a committee, a council, a task force, or other body designated by any name that; (i) is authorized by statute or executive order; and (ii) functions in a policy or an advisory role in the executive (including the administrative) department of state government, including a separate body corporate and politic." So that in a nutshell is the statutory definition of special state appointee. It's a broad definition. I think it seeks to encompass rather than limit I would say by its language. So we have before us three categories of commission and board members to consider today and I suggest we just go through one by one. Is that agreeable to everybody?

Keith: Absolutely.

Nuechterlein: The first one is the State Workforce Investment Board, is that right, known as SWIC?

Voors: Yes.

Nuechterlein: S-W-I-C. Which was established pursuant to Indiana Code 22-4-18.1-3. And who can . . . can you Miss Voors or one of your colleagues speak about the status of the people on that board?

Voors: Sure. They are about around 40 individuals on that board. They are appointed by the Governor and they are . . . they've currently been trained. So you know, we've historically believed that they've been responsible for the ethics law provided because they are appointed by the Governor. We thought while we were coming to you with some other issues we would make sure and ask all of the questions related to our workforce investment act boards.

Nuechterlein: Okay, good, thank you. So they are not state officers, state employees. They are volunteers who have been appointed, on direct appointment by the Governor?

Voors: That's correct. They are all volunteers.

Nuechterlein: Okay.

Weber: If I may clarify one point. Some of the SWIC members for example pursuant to the law . . . someone from IEDC would be appointed to SWIC so that individual who is already a state employee we don't treat them as special state appointees because they . . . (inaudible) responsibility of that . . . the employer in that case which would be IEDC to ensure that that person completes the ethics training.

Nuechterlein: So there are SWIC members who are state employees, correct?

Weber: That's correct.

Nuechterlein: But there are other SWIC members who are not state employees or state officers. They serve only on direct appointment of the Governor (inaudible).

Voors: That's correct. The federal law mandates that fifty percent of the appointees be business appointees.

Nuechterlein: Okay.

Voors: And so those are individuals just from the business community who are volunteers to the state workforce council.

Nuechterlein: Good, thank you. Questions by my fellow Commissioners. This seems like pretty straightforward.

Keith: It's straightforward to me.

Nuechterlein: It clearly fits the definition under the statute. So we'll take this up by separate motion. I move that the members of the SWIC board be found to be special state appointees as defined in the statute found at Indiana Code 4-2-6-1.

Keith: I'll second that.

Nuechterlein: Okay. Is there any further discussion or comments? If not, I'll call for the question, all those in favor of my motion signify by saying aye (4-0). Opposed and that carries. So SWIC members, yes.

Carrasco: Madam Chair, if I may.

Nuechterlein: Yes.

Carrasco: Before you begin your analysis of the Indiana Private Industry Council Members and the Regional Workforce Board Members I wanted to point out just a couple of details that might be relevant with respect to these two particular groups as they relate to the definition of special state appointee.

Nuechterlein: Okay.

Carrasco: I want to highlight that the definition of special state appointee under subsection (B) requires that the individual be elected or appointed. However that portion of the definition doesn't require or specify whether the appointment or the election must be by the Governor or specific official. So that's something that you may want to consider as you discuss these two particular boards. I also want to highlight that under the definition of special state appointees subsection (B)(i) also it dictates that the board or commission is authorized by statute or executive order. And again the definition does not clarify whether or not it is a state statute, a federal statute, or any type of specific jurisdiction. So that's something you may want to consider that with your analysis as it relates to the IPIC Board Members and the Regional Workforce Board Members.

Nuechterlein: Good, thank you. And then the third part of section (B) of that statute functions in a policy or an advisory role in the executive (including the administrative) department of state government. Which both those boards do, correct? They're both advising the . . .

Voors: They do function as a policy advising role. They do not set policy for the state as a whole. The Department and the State Workforce Council do not. They set policy and advisory for their particular region of the state.

Nuechterlein: And that is all in the capacity of enforcing the Department of Workforce Development statutes and funding and all that?

Voors: Yes, that's correct. And that's all in furtherance of the workforce, the federal workforce investment act in which the department has been charged with enforcing.

Nuechterlein: Thank you for the clarification. Let's start with the I-P-I-C, the Indiana Private Industry Council begin our discussion there. And again the clarification on the statute does state that they be appointed. The appointing authority is not . . . is not listed in the statute suggesting that it may be given a broad interpretation by the Commission. And they serve in an advisory capacity is that fair to say to the Department?

Voors: That's correct.

Pennington: I would actually disagree with that. Our Board would not advise the Department of Workforce Development where formally the State Workforce Innovation Council in any way unless I'm interpreting that differently than Commissioner Voors.

Nuechterlein: What is your contact with the State Department of Workforce Development?

Pennington: I work directly with the state Department of Workforce Development and would have some relationship there but the board of directors does not.

Nuechterlein: The board does not but in your capacity as . . . you're the executive director is that right?

Pennington: Yes.

Voors: If I may our State Workforce Council makes the decision on Workforce Investment Act (inaudible) what we receive from the federal government and contracts those dollars to the Indianapolis Private Industry Council and to the Regional Workforce Boards in the state.

Keith: Okay.

Voors: Both the Indianapolis Private Industry Council and the Regional Workforce Boards then administer the Workforce Investment Act training programs. They run our WorkOne offices which are the local education of training and unemployment offices throughout the state pursuant to that contract.

Clevenger: Does your contract include a requirement that they follow state ethics rules?

Weber: I believe IDOA requires that every contract in the state of Indiana (inaudible) that the vendor would comply with state ethics rules to the extent that . . .

Clevenger: So if we found that the Private Industry Council is not a special state employee by contract . . . your contract with them they would still have to comply with the rules.

Weber: I am . . . I've been evaluating that issue, currently my understanding though is with respect to that vendor the only ethics rule that typically applies to those vendors is the donor rule which would prohibit that donor from giving money to employees within the state of Indiana. Just like I am an employee of the state of Indiana, I can't accept gifts, the reciprocal is that vendors shouldn't be giving me gifts and that there's a rule that directly applies to them to prevent them from doing that. That's . . .

Clevenger: That's the only part of . . .

Weber: The ethics rules that apply to IPIC as a vendor.

Nuechterlein: But then a finding of special state appointee status then makes all the members subject to all the ethics rules then and statutes that the Commission (inaudible).

Weber: So this really would not you know it's outside the context of the vendor or of any relationship that we have amongst others.

Nuechterlein: And just to clarify there are . . . there is an advisory role to the DWD of these Commissions is that fair characterization in some capacity.

Pennington: By the board of directors or by the staff to the Board?

Nuechterlein: By the commission.

Voors: Let me give you an example (inaudible). The Workforce Investment Act sets forth that a state plan for workforce services in the state be developed. The state Workforce Council outlines the general guidance for those plans and the IPIC and every regional workforce board sets forth their plan for their particular region which gets rolled up into a state plan for workforce development for the state as a whole. So in effect they're . . . they're serving as a policy role both the DWD and the SWIC. The DWD is the staff to the SWIC much like the . . . Cyndi and her staff are staff to you. And we set forth statewide policy. These boards have the ability to write their own local policy but the Indianapolis Private Industry Council could not set a policy that affects the whole state. She could only set a policy that affects that particular region.

Nuechterlein: Okay. So it's a geographic . . . they can vary geographically. But they're under the general guidelines of the DWD . . . they (inaudible) outside the general guidelines that DWD (inaudible).

Voors: That's correct. So if we were to write any sort of policy all of the boards would need to in their contract follow the policies that we set forth.

Carrasco: Commissioners, if I may ask a question. I reviewed in this submission that the Workforce Investment Act in various provisions provides that the boards, like the IPIC would submit a local plan to the Governor that would provide to the Governor in conjunction with the Governor should negotiate and reach an agreement on local

performance measures which is I think encapsulated in what you've been describing. There's also mentioned about local boards shall assist the Governor in developing the statewide employment statistics system. Can you talk a little bit about what the requirements in the Workforce Investment Act that I just mentioned in how that plays out with regard to IPIC specifically?

Voors: Sure. The Indianapolis Private Industry Council can use some of the dollars in its contract to do labor market studies to determine what the right strategic direction or strategic plan might be for their region. They can make a policy decisions based on that. So for example, if it does a labor market study, it could make a determination that there's a certain industry that needs more workforce training and use the dollars that we've contracted to that . . . that local board to try to increase or bolster the training pipeline in that particular area. And so it can certainly advise the Governor or let the Governor know these are the avenues that this particular region is deciding to take in regard to its workforce strategy for Indianapolis specifically.

Nuechterlein: Okay, thank you.

Carrasco: Commissioners, in reviewing this, this particular board I think that a couple of things should be highlighted here. The members of the IPIC are clearly not state employees or state officers. They are elected or appointed to a qualifying board granted they're not appointed by the Governor. They are . . . the board is authorized by a statute or executive order albeit federal but it's a statute. I think the . . . one of the main decisions that should be determine here is whether or not the IPIC functions in an advisory or policy setting over the executive branch.

Keith: I guess my concern is that although we're talking about IPIC I can imagine that there are other entities similar to you who are in a similar situations where federal monies flow through the state and they offer advisory opinion but that such as IPIC is (inaudible) the Mayor nominates then we not only have IPIC but how many other agencies similar to yours would come under the jurisdiction of the state in this capacity. So that's really my concern and then federal monies flow through the state. They are given to IPIC. It's almost like it's subcontracted out and then have you take the money, follow a process and then you're giving data back to the Governor to say based on the information that we have here are some recommendations but how is that really an advisory or policy (inaudible)?

Pennington: I think that last part is my question as well. We provide data. We generally don't provide recommendations. We do submit a local plan, however, it is less of an advice or an advisory piece as this is the direction that we plan to go.

Keith: Right.

Pennington: And I question . . . we are a vendor and we are being contracted how are we also then advising. So I would have the same questions that you have, Commissioner Keith.

Nuechterlein: So you're more in the position of implementing what the DWD tells you to do and then gathering data under their direction and supplying it.

Pennington: Yes. And data that we submit with the (inaudible) performance if we conduct a labor market study we might share that information as an information resource but it really would be strictly for that because we are capable under the statute to carry forth the direction of the Workforce Investment Act law and under policy set by the state of Indiana.

Keith: I'm pretty certain that there's some deliverables that you have to provide to the state as a subcontracting.

Pennington: That's correct.

Keith: Based on the information that I have I don't know where the other Commissioners are I would be inclined to say that you're not a special state appointees just based on the information that I have now. My colleagues might have a different thought process.

Nuechterlein: I'd like to continue on Commissioner Keith's . . . it appears that the information is or the direction the advisory as it were or authority to require these IPICs to do certain things comes from the state to them. And you are more in the position of a vendor following what they're telling you to do versus you advising them. So I'm inclined to . . . I agree with the analysis of Commissioner Keith.

Clevenger: Does the Department feel the same way?

Voors: The Department really has no position here. We just want to make sure that you know we have a responsibility to ensure that our boards all the way down through understand their obligations and responsibilities under the law. So I honestly, the Department can see it either way and just would like some clarification.

Clevenger: Well the leaning is is because they're not operating basically a policy function of the state level. That would not be a special state employee and I guess that's my question to you is do you see it the same way?

Voors: And that's honestly the question that we have. They do set policy but not at a statewide level. They set policy at a local level.

Keith: Right.

Nuechterlein: They set it for themselves and that policy can vary and I imagine does vary responding to the needs around the state.

Voors: That's correct.

Nuechterlein: And that's probably the reason for having multiple (inaudible).

Voors: And by they this is the same issue for IPIC as it is for the Regional Boards.

Nuechterlein: Okay.

Voors: The state sets statewide policies. So for example we can say here's your contract and you must spend twenty percent of those dollars on training (inaudible) for your clients. Then Brooke's board and Indianapolis can decide that she going to give out three thousand dollars per worker that meets these qualifications. And Larry or Darrell's board could decide two thousand dollars is their policy and only in (inaudible) engineering because that's the economic development initiative that they have. So we're all sort of setting policy. Ours would be a state wide policy and theirs would be a local.

Nuechterlein: Okay. And the statewide policy obviously always takes precedence. They can't set a policy opposite to what the state initiatives are.

Voors: That's correct.

Nuechterlein: So you don't have the authority to tell them that we don't want to do (inaudible) engineer. Any other questions? Mr. Clevenger (inaudible).

Clevenger: No, you know I guess coming in I was inclined to follow the draft opinion concerning these folks as well but I see the distinction (inaudible) I guess the function of a policy or advisory board (inaudible) state government I don't know that that's the criteria that is met under the statute and it does say and so I'm inclined to go along with the two of you.

Nuechterlein: Mr. Jamison.

Jamison: I agree.

Nuechterlein: Would you like to make your commentary into a motion?

Keith: Madam Chairperson I would like to make a motion that IPIC members having been appointed by the Mayor of Indianapolis do not fit the criteria of being a special state employee.

Nuechterlein: Okay. And is there a second to the motion?

Clevenger: Well I'm not . . . my reasoning for my going along with it is because the latter part not necessarily the appointment.

Keith: Well, I'll amend it. Okay. They do not meet the criteria of a special state employee as they do not render advisory opinions to the Governor nor do they set state policy. Okay. Is that good Jim?

Clevenger: Yeah. That fits better for me. Thank you.

Nuechterlein: Okay. Is there a second to Commissioner Keith's motion?

Jamison: I'll second.

Nuechterlein: Okay. Any further comments or questions. If not, I'll call for the question all those in favor of Commissioner Keith's motion to find that IPIC members are not special state appointees signify by saying aye (4-0). Opposed and that carries. So it's a no on IPIC members. The third one question before us is whether members of the Regional . . . what's W?

Carrasco: Workforce.

Nuechterlein: Regional Workforce Board Members are special state appointees. And can someone give us an overview of what they do particularly with reference to serving in an advisory capacity to the executive branch.

Voors: The difference between the Regional Workforce boards and the Indianapolis Private Industry Council is the Regional Workforce boards duties are set forth in state law as opposed to federal workforce investment law.

Nuechterlein: Okay.

Keith: Okay.

Voors: So they too set local policy but not state policy and function in almost the same capacity as the Indianapolis Private Industry Council with the exception that they are . . . they exist in state laws as opposed to federal.

Nuechterlein: And who is the appointing authority for those members?

Voors: The local elected officials appoint those members. So as the Mayor in Indianapolis appoints all of the members of the Indianapolis Private Industry Council, local mayors and county commissioners appoint from each county the representatives to the regional workforce boards.

Nuechterlein: So the important distinction here is that they are comprised under state statute.

Voors: As opposed to federal, that's correct.

Nuechterlein: And do they serve in any sort of . . . again the statutory language in any sort of advisory capacity to the executive branch to the . . . are they advising you as Commissioner of the DWD or any other parts of state government?

Voors: They serve in the same capacity as the Indianapolis Private Industry Council that's where they could come to the SWIC and say this is what I think but the SWIC and the DWD set the policy for the entire state. They can do their own policies for their particular region but can't set a statewide policy.

Carrasco: Commissioners, very similar to the analysis that you just did with regard to IPIC, the points here, the major points are these members (inaudible) state officers, they are not. Are they elected or appointed irrespective of the appointing authority, they wouldn't be appointed. They are authorized by statute the distinction here being here state statute versus federal statute but statute nonetheless. Again the analysis focuses on whether the as you, Madam Chair pointed out . . .

Keith: So they're similar to IPIC.

Carrasco: Functioning (inaudible) executive . . . advisory or policy setting in the executive branch.

Nuechterlein: So they are not in an advisory capacity such as IPIC is not in an advisory capacity to track that language in the statute.

Carrasco: To the extent that you find that they are not functioning advisory or policy setting role for the executive then they would not qualify as special state appointees. If you do find that they function in an advisory or policy function in the executive branch and they would appear to qualify as special state appointees.

Keith: They're just a creature of state statute but really it's on the local level.

Carrasco: Yes.

Keith: That's it.

Carrasco: Yeah.

Keith: Okay.

Clevenger: I hate to be consistent but do we have to . . .

Nuechterlein: Yeah (inaudible).

Clevenger: The same program that the RWB Members functions are such that they're not in a role executive department under state government (inaudible) as special state appointees.

Keith: I'll second that.

Nuechterlein: Okay. Any further questions or comments before we vote. If not, I'll call for the question, all those in favor of Commissioner Clevenger's motion that the RWB Members be found not to be state special appointees signify by saying aye (4-0). Opposed and that carries. So yes to SWIC, no to IPIC and RWB. Any further comments?

Voors: Thank you very much for (inaudible).

Nuechterlein: Thank you for coming today.

White: I would just like to add that there are a lot of good ideas and good practices that aren't necessarily laws.

Nuechterlein: Yeah and we are complied to interpreting the language of the statute.

White: Exactly, that makes sense.

West: Thank you.

Nuechterlein: Okay. Thank you for coming in. Thanks very much.

10-I-2, Request for Formal Advisory Opinion
Stephen Carter, Former Attorney General
Attorney General's Office

Nuechterlein: Next item on the agenda 10-I-2 is a request for a formal advisory opinion from Mr. Stephen Carter who is the former Attorney General of the state of Indiana. Welcome.

Carter: Good morning.

Keith: Madam Chairperson before General Carter proceeds I would like to inform the Commission that in order to avoid the appearance of impropriety I will have to recuse myself having worked with General Modisett in the office and having some knowledge of tobacco litigation and expanding that when I was assistant counsel for Governor O'Bannon during his tenure. So I will not be participating in this.

Nuechterlein: Good, thank you. Good morning.

Carter: Good morning.

Nuechterlein: Would you please raise your right hand to be sworn? Thanks.

Flynn: Do you swear or affirm that the testimony you are about to give is the truth, the whole truth, and nothing but the truth?

Carter: I do.

Nuechterlein: Would you kindly give us just a general narrative of what it is you wish us to advise you on?

Carter: Yes. First of all thank you very much Chair and members of the Commission for giving me this time today. I'll try to be brief. I know ethics issues in government are some times difficult to talk about but they're very important having dealt with public corruption issues in the past. I know many times it's . . . can avoid those things if you address the ethics of them early so that's why I'm here today. I'll offer a little bit of context from my personal situation and talk a little bit about the environment in which this request comes to you. Having been a former state official obviously I'm concerned about our ethics laws. I am past the one year time from leaving office but in reviewing appropriate activities that former employees or officials may engage in I notice many of the examples related to instances where the former state official or employee then is contemplating working in opposition to state government. My situation is one where I was asked to become involved in a matter on behalf of state government. So the scenarios that I could read through and find didn't seem to be a very helpful and I think the general public believes these matters are designed, processes are designed to prevent appearances of conflict where somebody is on one side of an issue for a while and then they change to do something else. But the detail of the statute didn't seem to spell that out so I thought it wise to present the matter for your consideration. The tobacco matter that we have before us is an anticipated national arbitration forum. It has not been established yet but processes are moving forward quickly and there is a very strong likelihood that that forum will take place. This arises from the original master settlement agreement between forty-six states and four major tobacco companies which was finalized in 1998. The Attorney General's Office has particular enforcement responsibilities related to that settlement. One of the provisions in the agreement is if certain things occur and disputes have to be resolved that there are alternatives to pursue that and that is what has led it to the first ever national arbitration that it looks like forty-six states will be involved with. With not only the four original companies that were part of the master settlement agreement but other companies had the opportunity to join in that settlement through the years and many of them have taken advantage of that. Each year tobacco companies make a payment to the states that's been a significant amount of money to the state of Indiana over the past several years. I believe it's now more than one point four billion dollars. In the original agreement there was a requirement that states do certain things to maintain receipt of those payments in the future. And that involves several things. It involves actions by our legislature to regulate tobacco companies that were not part of the master settlement agreement. It involves activities by the Indiana Department of Revenue with respect to collection of taxes on cigarettes and it involves enforcement matters (inaudible) state attorney general. And there have been matters where the Attorney General's been involved in litigation. Some of those occurred in 2003. The current dispute with the tobacco companies the part of the settlement agreement is that the state did not properly enforce the terms of the master settlement agreement in 2003. And for that reason they withheld certain payments to not just Indiana but all states. There's been a possibility that those matters would be resolved through litigation over the past few years but now it's clear that barring this settlement

which is always a possibility on that particular matter there will be a national arbitration proceeding. The current Attorney General asked me to consider being involved in helping Indiana playing a significant role in representing or deciding how our state should best be represented in that national arbitration proceeding. And that's what I bring to you today.

Nuechterlein: What interest would you be representing?

Carter: Be representing the state of Indiana at the direction of the Attorney General's Office.

Nuechterlein: And you'd be under a private contract with the Attorney General. So you'd be coming back in house?

Carter: Yes.

Nuechterlein: Before this national arbitration board should they be . . .

Carter: Yes.

Nuechterlein: (inaudible).

Carter: Yes, I think they're actually the panel will be made up of three former federal judges. Two of those have been selected. I don't believe the third has been but I anticipate that will occur. Then some formal more official proceedings will start to take place. So until that time Indiana's work will be preparatory but then there will be the actual representation piece and I could be involved in that.

Nuechterlein: But again you're sole representation would be the interest of the state of Indiana?

Carter: Yes.

Nuechterlein: In resolving these tobacco litigation related issues, continuing issues.

Carter: Yes.

Nuechterlein: Well I have to say just this is a real head scratcher for me. And I have to say my five years on the Commission I can't recall a time and my colleagues here might help me remember when there's been a request such as this from a person who seeks to continue the representation of the same interest in which he was elected to serve his fellow Hoosiers as Attorney General. Do you recall a case like this? I mean how would the conflict be defined when the interest remain the same under a contract. That's what I'm scratching my head about.

Clevenger: I'm not sure you can answer.

Nuechterlein: Anybody wish to speak to that?

Carrasco: Madam Chair.

Nuechterlein: Where, you know, where is the conflict and I understand the various strict reading of the statute and you know we'll get to that on a particular matter but just as a beginning question does . . . the revolving door statute, conflict of interest statutes generally if you were coming trying to represent the tobacco companies it would be an easy decision. You know when it seeks to, you know, protect that public trust so that state officials aren't cycling out and coming back in on you know the dark side of the people that they you know the opposite interest of what they're represented but we don't have that situation presented here.

Carrasco: Madam Chair, as you indicated this truly is a unique circumstance. And the initial question or the threshold question that you pose is well posed in this particular scenario. As you know the traditional way of thinking or the post employment rule is for an entity to then turn around and work on competing interest or the other side of the table if you will. With respect to ethics, one of the issues for your determination here today is to consider the definition of a person. When you're talking about the particular matter restriction, the particular matter restriction applies to the assisting a person (inaudible) particular matter. That term person is defined to include governmental entity. This situation presents an opportunity for you to review your interpretation of governmental entity whether that includes the state of Indiana someone who comes back to work for the state of Indiana or what governmental entity in the term person means.

Nuechterlein: Is that a practice to any ones knowledge that you know when people leave state government to come back in a special short-term specific contract to continue working on the litigation duties in which they had expertise. Does that happen?

Carrasco: Certainly I can speak to the fact that people can come back to the state and contract with the state. I think the distinction in this situation is that we're looking at a particular matter but point of it. Coming back to the state on a contractual basis once you've left is one thing but coming back to the state and working on the same particular matter is where the analysis is here. And really leads us to what your determination of is this the same particular matter that former Attorney General Carter would be working on.

Nuechterlein: But I guess my question is is if there's not a conflict presented do we get to particular matter, that's my question.

Carrasco: Certainly people can come back and contract with the state.

Nuechterlein: Is there a history of people coming back contracting with the state to you know bringing back their expertise and you know . . . because I don't see how the state is at a detriment in this request.

Carrasco: There definitely is history of people coming back to work for the state so that the state can take advantage of their knowledge and expertise on a contractual basis. I will pose it further and say that we get to particular matter in this situation and that's really the crux of the issue here. What is the particular matter that former Attorney General Carter would be working on in his contractual capacity with the state? Is it going to be the same thing or is it going to be something different? Perhaps I'm not articulating the distinction (inaudible).

Nuechterlein: I think the . . . do people come back and contract with the state . . . they're representing the same interest and I think that's what would be happening here bring your expertise or knowledge of the tobacco litigation that continue to bear in the best interest of the state of Indiana. You're not on the other side.

Carter: That's right. And Madam Chairman I . . . in thinking about this who might, you know, have a problem with this. I frankly couldn't envision anybody interested in the state of Indiana that would have an issue with this. One of my concerns was that the stakes are pretty high here. What can happen if the state does not fair well in this arbitration proceeding (inaudible) future payments to the state of Indiana from the tobacco settlement agreement can be severely diminished potentially eliminated. So we're talking about risks of hundreds of billions of dollars. So I actually believe those who are the opponents of the state of Indiana are the ones who might have any incentive to raise an issue through the process about not only the substantive positions that the state is taking but if there's something that was involved in the process of presenting that and that could include the proper selection of a representative to work on behalf of the state and I didn't think that was prudent to allow that possibility to occur.

Carrasco: And as former Attorney General Carter indicates there's no problem with coming back to work on a contract (inaudible) so that the state could take advantage of his past expertise knowledge.

Nuechterlein: Yes.

Carrasco: Really the crux of the matter here is the work that he would be engaging on in furtherance of that contract. Would it be the same matter that he was personally and substantially working on during his tenure here with the state?

Nuechterlein: But I guess my question is does a statute contemplate a former state elected official or employee from coming back to continue to represent the interest that he or she represented or worked on (inaudible) expertise and while employed by the state. That's my question. You know where is . . . where is the conflict of interest here?

Carrasco: And that really is the question that's posed before you. Would he be working on the same particular matter as I've laid out in this analysis to you? Was his . . . what is the particular matter? Are we talking about the master settlement agreement as a whole or are we talking about this brand new arbitration that is . . . it's my understanding does not yet . . . the panel has not yet been formed or commenced.

Carter: That's right. And the national arbitration proceeding has no authority with respect to administration of the master settlement agreement. That agreement will continue to be in place or will be other enforcement issues related to that but national arbitration is not controlling (inaudible) that outcome will have an impact on the 2003 matters.

Carrasco: And I want to make a clarification that the reason we're looking at the post employment particular matter restriction here is different in this situation. I think that you pose as to can a state official come back and represent the interest of the state. I think this situation is more narrowly defined in that you go a step further and yes it can represent the interest of the state but is it going to be with respect to a particular matter that the former state worker or official was involved with while they were at the state.

Nuechterlein: But my question still comes back to does the legislature . . . the statute encompass one coming back to continue to represent in an area of expertise? You know the statute clearly contemplates people going to the other side and coming back and wanting to you know privately . . . get private gain from . . .

Clevenger: Well the statute implies the employer somebody other than the state.

Nuechterlein: Yes, someone other than the state, yes. And that's where I'm, you know, without even . . . without yet getting to the particular matter. What would the conflict of interest be presenting in this situation when the interest represented remain the same as when General Carter was the elected Attorney General? Where is there a conflict? That's my question. That's what . . .

Clevenger: We don't have to draft an opinion on that . . . we have to find the distinction about the particular matter. But I don't disagree with you. From a . . . I know from a local perspective on a county level, a city level constantly you know counsel is hired to extent you know into other terms because they have been working on a particular matter and it only makes sense that they because of their knowledge and experience would better represent cities, towns, counties whatever the case might be. And it's the same thing here. I don't disagree with you. I just . . .

Nuechterlein: So does the statute apply?

Clevenger: I mean I guess the question is if you look at the statute you have to . . . for you to get (inaudible) you have to say that the employer under the statute implies that it's other than . . .

Nuechterlein: Outside . . .

Clevenger: Other than the state.

Nuechterlein: Employer other than the state of Indiana. And that I just . . .

Carter: Madam Chair.

Nuechterlein: Yes, can you speak to that?

Carter: For somebody in my position is that there isn't anything on the record or in the materials that provide that. For a logical maybe uncontested view that this relates to matters where people are not working in the state's interest but barring that how can somebody be assured without going through the formal proceeding. And frankly you probably have a number of employees who don't have the benefit of some of the specifics that I have had.

Nuechterlein: Well and too it's a matter where you were charged with interpreting the state ethics laws and I guess I am inquiring as to what the legislature contemplated when you know when they said from an employer, you know barred from employment from an employer did that contemplate the state of Indiana. So bringing an employee . . . a former state official, elected official in your situation with your expertise contacts, background, back to continue to represent the same interest as you did when you were the elected Attorney General. And just my general knowledge on conflict of interest statutes suggest that that's not a conflict. Talk to me Mr. Clevenger.

Clevenger: I don't disagree with anything you say.

Carrasco: To get to the analysis if I understand the analysis of whether we even get to . . .

Nuechterlein: Does employer include the state of Indiana.

Carrasco: I think it would take the Commission interpretation of the term person's specifically governmental entity to include everyone other than the state of Indiana.

Nuechterlein: Yeah, from an employer, yeah, or that employer.

Clevenger: (Inaudible) purpose of doing that is because I suppose there could be some scenario (inaudible).

Nuechterlein: (inaudible) okay I see where you're going.

Clevenger: But I'm saying under these circumstances that's the best hat we've got to hang our hats on.

Nuechterlein: Okay. So we're looking at Indiana Code 4-2-6-11(c) a former state official may not represent or assist a person and it's revolving is that person include the state of Indiana.

Carrasco: Right. The term person is defined to include a governmental entity. Should you choose you can certainly interpret governmental entity as it is included in the definition of the term person to exclude the state of Indiana.

Nuechterlein: Okay.

Carrasco: And as you indicated we wouldn't get to the particular matter analysis.

Nuechterlein: Because of what (inaudible).

Clevenger: I would not want to exclude all governmental entities only the state because if I could see the (inaudible) city government.

Nuechterlein: Yes. But again your expertise as Marshall County attorney right . . . I mean it's a frequent occurrence that people's terms end and the litigation continues and . . .

Clevenger: But it's never been in a county level but like the city level for instance every time there's a new mayor if there's litigation, it's ongoing, it's a common practice at least in our area for rather than new city attorney who has no information about whatever it is and there's a court hearing three weeks into the new term, you just add the former city attorney just keep going and finish the case under a special contract. It happens all the time. And I don't see any conflict in that.

Nuechterlein: Which is I think analogous to the presentation here just on . . .

Clevenger: Exactly right.

Nuechterlein: Just on a larger you know higher state (inaudible).

Clevenger: From a policy perspective we're much better off from having the former Attorney General's who got some knowledge and experience in this thing to follow through on it then we wouldn't need to hire probably anybody else in the state.

Carrasco: To get to the point we can certainly do it by interpreting that term governmental agency as including anything other than the state of Indiana.

Clevenger: And in these circumstances I so move.

Nuechterlein: Good. Okay. So that the language in the statute . . . what is it?

Carrasco: The term person.

Nuechterlein: The term person.

Carrasco: Which includes government agency.

Nuechterlein: Okay, yes.

Carrasco: Does not include the state of Indiana.

Nuechterlein: Okay. The term person which includes governmental agency does not include the state of Indiana for purposes of interpreting the one year or the restriction under the Indiana Code 4-2-6-11.

Clevenger: And knowing (inaudible) have to make this distinction that you're hung up on (inaudible) I don't think it matters.

Nuechterlein: Yeah. That's I think and (inaudible) to the language of the statute. Mr. Jamison, would you like to comment.

Jamison: I second it.

Nuechterlein: General Carter.

Carter: No.

Nuechterlein: Does anyone wish to comment further? If not, I'll call for the question, all those in favor of the motion as stated signify by saying aye (3-0). Opposed, the motion carries. Thank you.

Carter: Thank you very much.

Clevenger: Good luck to you.

Nuechterlein: Yeah, good luck. Get us lots of money.

Carrasco: I will forward a copy of this to you next week.

Carter: Thank you. Like I said that will be helpful cause we never know in this . . .

Carrasco: Certainly.

Carter: New proceeding when that might . . . might be relevant.

Carrasco: Absolutely.

Nuechterlein: And that might give . . .

Clevenger: (inaudible) we have to do some work because the proposed opinion is then modified to some degree so.

Carter: I thought you might be trying to work in a charge to get some extra funds to Marshall County or (inaudible) university.

(laughter.)

Carter: Okay. Thank you.

Nuechterlein: Thank you very much. So you'll draft that.

Carrasco: (inaudible).

Nuechterlein: That's great.

Director's Report

Nuechterlein: Next item is the Director's Report.

Carrasco: Well Commissioners we have various items to report for you. Some of which include, some resolution to public hearings or final reports. We have to report that Robert Fried the former employee of the Board of Animal Health whom you imposed a \$1,000 fine for post employment (inaudible) fine has been paid.

Nuechterlein: Great.

Carrasco: Mr. Hickey if you will remember is an employee with the War Memorial.

Nuechterlein: I remember him.

Carrasco: You issued a sanction, imposing a . . . the final report imposing a sanction of two weeks suspension. Director Goodwin from the Indiana War Memorial has reported that suspension will take effect April 10th through the 23rd.

Nuechterlein: Okay. That's within the time limit that we said.

Carrasco: It's consistent. The next item we have to report is a matter that was pending from last month with respect to the Local Emergency Planning Committee members. At that meeting, as you may remember you asked us to communicate with the Department of Homeland Security and asked that they disseminate information to the local emergency planning committees since the questions were coming up fairly frequently. We've been in contact with them. They have agreed and I have sent out information to local emergency planning committees to hopefully give more guidance to people who want to engage in outside type of work.

We also have a number of formal advisory opinions to report since last month's meeting. We had 21 informal opinions and being December of course gifts was at the top of the list.

Finally we do have one more item to report to you or request a vote, if you will, from you it is with respect to a change in the meeting date for May. In May the National Association of Inspectors General, Indianapolis is going to be hosting the conference for the National Association of Inspectors General. And of course you are invited to attend that. However, we . . . our office is charged with hosting the conference. So the dates of the conference fall in that Thursday of the Commission's scheduled meeting.

Keith: Okay.

Carrasco: So we wondered if you'd be willing to move your meeting a week up or move your meeting a week later.

Nuechterlein: What's the current date?

Carrasco: The date is 5-13. You could do May 6th or May 20th.

Nuechterlein: Well the 6th would work better for me.

Carrasco: And if you would like to make the decision now or if you would like to maybe take . . . check your calendars and get back with us some time by next month.

Jamison: We can get back to you?

Carrasco: Next month if you'd like.

Jamison: Okay.

Carrasco: Absolutely, we have some time.

Jamison: All right. I'll have to check my calendar.

Carrasco: Okay. So we'll leave that for an item next month. Check your calendars hopefully May 6th or May 20th will work. Also keep the 13th penciled in, we'll have the Association of Inspectors General conference as well and of course you are invited to that. We'll be sending more information to you.

Nuechterlein: Good.

Carrasco: With that my report is concluded. I you'd like to move on with the public hearing or take a break whatever you want.

Jamison: I'd like to take a break.

Nuechterlein: Yeah, let's take a ten minute break.

(Break 11:42 a.m.)

(Reconvened at 11:52 a.m.)

Public Hearing

In the Matter of Angela Cypress
Case Number 2008-08-0210

Nuechterlein: Okay, we'll come back into session for the public hearing in the Matter of Angela Cypress, Case Number 2008-08-0210. And Miss Amanda Schaeffer is before us today. Do you have something to tell us?

Schaeffer: Yes. We would like to ask for a continuance in this case. We are in the process of pursuing a settlement with Miss Cypress.

Nuechterlein: Is that okay with everyone?

Clevenger: It's fine.

Nuechterlein: Okay. Do we need to have a motion?

Carrasco: Yes.

Nuechterlein: Okay. I'll so move.

Keith: I'll second.

Nuechterlein: Okay. All those in favor signify by saying aye (4-0). Opposed, okay. So you'll just let us know what happens.

Schaeffer: Thank you.

Nuechterlein: Okay. So now we need to return or is there anything further?

Carrasco: No.

Nuechterlein: We're adjourned.

Keith: Do you need a motion?

Nuechterlein: Yes.

Keith: Madam Chairman, I'll make a motion to adjourn.

Nuechterlein: I'll second it. All those in favor signify by saying aye (4-0). We are in adjournment.

Regular meeting adjourned at 11:53 a.m.