

**MINUTES OF THE MEETING OF
THE INDIANA STATE ETHICS COMMISSION
December 12, 2019**

I. Call to Order

A regular meeting of the State Ethics Commission (“Commission”) was called to order at 10:00 a.m. Commission members present included Katherine Noel, Chairperson; Corinne Finnerty; Sue Anne Gilroy; and Kenneth G. Todd (arrived at 10:10 A.M.). Staff present included Jennifer Cooper, State Ethics Director; Luba Gore, Staff Attorney; and Nathan Baker, Legal Assistant, Office of Inspector General.

Others present were S. Kyleen Welling, Chief of Staff/Chief Operating Officer, Indiana Housing and Community Development Authority; Tammera Glickman, Deputy General Counsel, Indiana Department of Administration; Beth Green, General Counsel, Department of Workforce Development; James Brewer, former employee of the Indiana State Department of Health; David Johnson, Chief Counsel, Office of Attorney General; Mattheus Mitchel, Compliance and Ethics Specialist, Department of Revenue; Amber Nicole Ying, Special Counsel – Compliance and Ethics, Department of Revenue; Deana Smith, Ethics Officer, Indiana State Department of Health; Latosha Higgins, Managing Attorney and Ethics Officer, Family and Social Services Administration; Megan Rhea, former employee of the Family and Social Services Administration; and Chris Serak, Ethics Officer, Indiana Department of Transportation.

II. Adoption of Agenda and Approval of Minutes

Commissioner Gilroy moved to adopt the Agenda and Commissioner Finnerty seconded the motion which passed (3-0).

Commissioner Finnerty moved to approve the Minutes of the November 14, 2019 Commission Meeting and Commissioner Gilroy seconded the motion which passed (3-0).

**III. Consideration of Indiana Housing and Community Development Authority
Waiver of Post-Employment Restrictions for Erika Young**

S. Kyleen Welling, Housing and Community Development Authority Ethics Officer, presented the proposed Waiver of Post-Employment Restrictions in this matter to the Commission for their approval.

Commissioner Finnerty moved to approve the Waiver, and Commissioner Gilroy seconded the motion which passed (3-0).

IV. Request for Formal Advisory Opinion

2019-FAO-022

James Brewer, Former Director of Emergency Preparedness Division
Indiana State Department of Health

James Brewer is a former state employee who previously served as the Director of the Division of Emergency Preparedness (the Division) for the Indiana State Department of Health (ISDH). Mr. Brewer had worked for ISDH since 2013 and served in this latest position from March 2019 - September 2019. His last day of state employment was September 27, 2019.

Mr. Brewer is interested in employment with a local health department or healthcare coalition. The Division provides sub-recipient agreements to ninety-three local health departments and ten healthcare coalitions in the State. These agreements are funded from cooperative agreements made by the Centers for Disease Control and Prevention (CDC) and the Assistant Secretary for Preparedness and Response (ASPR), respectively.

The sub-recipient program with local health departments and healthcare coalitions are both administered by the District and Local Readiness Director, a subordinate position to the Division Director. As the Division Director, Mr. Brewer supervised the District and Local Readiness Director.

The local health department agreements are non-competitive. No application is required, and a level amount is provided to each department. Mr. Brewer estimates that approximately eighty of the ninety-three departments entered into an agreement for the July 1, 2019 to June 30, 2020 period. An additional funding source, called the Cities Readiness Initiative, provides extra funding for twenty-six local health departments that the CDC specifically identified. This additional funding is also non-competitive and based on a mathematical formula (base + population). ISDH originally implemented this approach for funding several years ago, modeled after the way the CDC allocates these same funds to states.

The Healthcare Coalition agreements also are non-competitive. No application is required, and the funding was based on the same mathematical formula (base + population), modeled after how the ASPR allocates these funds to states.

The agreements themselves, for both local health departments and healthcare coalitions, had specific deliverables and scope of work that the District and Local Readiness Director and staff developed based on the current cooperative agreement from the CDC and ASPR that provides the direction and requirements for the overall award.

As the Director, Mr. Brewer's main role and relationship to these contracts was to act as the supervisor for the District and Local Readiness Director. His role included the signing off on Requests for Contracts (RFCs) - a procedural step for ISDH Finance to electronically create contract agreements. The Program Administrator, Division Director, Assistant Commissioner and Chief of Staff are all required to sign off on RFCs. Mr. Brewer asserts that his role did not include the negotiation or administration of any of these specific contracts.

Should Mr. Brewer obtain employment at a local health department or healthcare coalition, he writes that he will not be serving as a lobbyist. He has no confidential information relevant to this matter or application. He was never in a position that made any regulatory or licensing decisions. He further did not substantially participate in any of the twelve matters listed as particular matters in IC 4-2-6-11 (a)(1) as it applies to his former position at ISDH with the local health departments or healthcare coalitions.

Mr. Brewer is seeking the Commission's opinion regarding the application of the post-employment rule to a potential position with a local health department or health coalition that received funding from his Division while he was serving as the Division Director.

The analysis stated the following:

A. Confidential Information

IC 4-2-6-6 prohibits Mr. Brewer from accepting any compensation from any employment, transaction or investment that was entered into or made as a result of material information of a confidential nature. So long as any compensation Mr. Brewer receives does not result from his disclosure of confidential information, his potential post-employment opportunities would not violate IC 4-2-6-6.

B. Post-Employment

IC 4-2-6-11 consists of two separate limitations: a "cooling off" period and a "particular matter" restriction. The first prohibition, commonly referred to as the cooling off or revolving door period, prevents Mr. Brewer from accepting employment from an employer for 365 days from the date that he leaves state employment under various circumstances.

In terms of the cooling off restrictions, Mr. Brewer is prohibited from accepting employment as a lobbyist for the entirety of the cooling off period. A lobbyist is defined as an individual who seeks to influence decision making of an agency and who is registered as an executive branch lobbyist under the rules adopted by the Indiana Department of Administration.

Mr. Brewer provides that he would not be in a position to engage in lobbying activities if he were to secure the type of employment he is seeking at a local health department or a healthcare coalition. To the extent that Mr. Brewer does not engage in executive branch lobbying for one year after leaving state employment, the Commission finds that a post-employment opportunity with a local health department or a healthcare coalition would not violate this provision of the post-employment rule.

Further, the cooling off restrictions prohibit Mr. Brewer from accepting employment for 365 days from the last day of his state employment from an employer for whom he made a regulatory or licensing decision that directly applied to the employer or its parent or subsidiary.

The Commission finds that Mr. Brewer has not made any regulatory or licensing decisions that applied to local health departments or healthcare coalitions during his state employment.

In addition, Mr. Brewer is prohibited from accepting employment for 365 days from the last day of his state employment from an employer with whom 1) he engaged in the negotiation or administration of a contract on behalf of a state agency and 2) was in a position to make a discretionary decision affecting the outcome of the negotiation or nature of the administration of the contract.

As Division Director, Mr. Brewer supervised the Division staff responsible for administering the sub-recipient contracts to local health departments and healthcare coalitions. ISDH District and Local Readiness Director and staff were responsible for administering these contracts. As the Director's supervisor, Mr. Brewer was in a position to make discretionary decisions regarding deliverables and scope of work.

Accordingly, the Commission finds that Mr. Brewer was involved in the administration of the funding contracts to the local health departments and that he was in a position to make discretionary decisions affecting the nature of the administration of these contracts.

Therefore, Mr. Brewer would be subject to the one-year cooling off period. In the absence of a waiver of the post-employment restrictions from ISDH, he would not be able to work for any local health departments or healthcare coalitions who entered into any of these agreements while the Division was under Mr. Brewer's supervision until September 27, 2020.

Finally, Mr. Brewer is subject to the post-employment rule's "particular matter" prohibition in his prospective post-employment. This restriction prevents him from representing or assisting a person on any of the following twelve matters if he personally and substantially participated in the matter as a state employee: 1) an application, 2) a business transaction, 3) a claim, 4) a contract, 5) a determination, 6) an enforcement proceeding, 7) an investigation, 8) a judicial proceeding, 9) a lawsuit, 10) a license, 11) an economic development project or 12) a public works project. The particular matter restriction is not limited to 365 days but instead extends for the entire life of the matter at issue, which may be indefinite.

In this instance, Mr. Brewer would be prohibited from representing or assisting a local health department or a healthcare coalition, as well as any other person, in a particular matter in which he personally and substantially participated as a state employee.

The Commission finds that Mr. Brewer's participation in the funding contracts provided to local health departments and healthcare coalitions during his tenure as Division Director was personal and substantial. Accordingly, absent a waiver of this restriction from ISDH, he would not be able to represent or assist any person on these contracts, for the life of the contracts. He could, however, work on new contracts.

The Commission further finds that Mr. Brewer must ensure compliance with the particular matter restrictions and refrain from assisting or representing any person on any other particular matters that he may have been personally and substantially involved in during his state employment.

Commissioner Finnerty moved to approve the Commission's findings, and Commissioner Gilroy seconded the motion which passed (4-0).

V. Request for Formal Advisory Opinion

2019-FAO-023

Megan Rhea, Former Financial Analyst

Latosha Higgins, Ethics Officer

Family and Social Services Administration

Latosha Higgins is the Ethics Officer for the Indiana Family and Social Services Administration (FSSA). Ms. Higgins is requesting an advisory opinion on behalf of Megan Rhea, former Financial Analyst in the Bureau of Childcare/Office of Early Childcare and Out-of-School Learning (Bureau) within FSSA.

Ms. Rhea left state employment on June 26, 2019. Prior to leaving state employment, Ms. Rhea had held a variety of positions with FSSA. She started with FSSA as a Human Services Consultant in 2013 and then transitioned to a Program Director in 2017. In 2018, she transitioned to the role of a Financial Analyst. Ms. Rhea is currently employed as a Volunteer Manager at Outreach Indiana, an organization that assists homeless youth.

Ms. Rhea is interested in pursuing a temporary, part-time contract position with The Consultant Consortium, Inc. (TCC), a contractor with FSSA. In the position with TCC, Ms. Rhea would provide training to TCC employees on how to input data into TCC's software systems. She would work two hours a week for five days to provide such training for a total of 10 hours. Although Ms. Rhea would be teaching the TCC employees how to use software she used while employed by FSSA, she would not be required to work on any matters that she worked on while with FSSA.

TCC is a software solutions company that currently has two contracts with FSSA. TCC is an Indiana company that provides information technology consulting services nationwide. During her employment with FSSA, Ms. Rhea was responsible for performing the administrative function of preparing and submitting the Request for Contract Preparation (RCP) for TCC contracts to FSSA's contracting team. This included incorporating information she received from FSSA's Division of Family Resources, Bureau of Childcare Operations Director regarding the terms of the contract negotiated and approved by the Bureau. Ms. Rhea was responsible for creating RCPs once FSSA's Division of Family Resources, Bureau of Childcare negotiated and approved a contract's specifics, such as the rate, term, line items, scope of work, etc.

Ms. Higgins provides that Ms. Rhea was not involved in the contract negotiation. Rather, she would make sure that the content of the RCP matched the budget and dates that the Bureau Director previously had approved before she sent the RCP to FSSA's contracting team to begin the process of creating the contract. If in completing the RCP, Ms. Rhea noticed a discrepancy, she would notify the Operations Director of her findings, and the Operations Director and Bureau Director would decide the appropriate course of action. If there were any changes to the RCP or contract documents, the Operations Director and Bureau Director

made those decisions. In completing the RCP, Ms. Rhea would occasionally contact TCC to relay information. Once she completed the RCP, the Operations Director reviewed the RCP and documentation before Ms. Rhea sent the form and any additional information to the contracting team.

Ms. Rhea recalls that in or around 2016-2017, she worked with two or three colleagues to review claims submitted by TCC on two or three occasions. Such reviews included: (1) requesting information to conduct an initial desk review; (2) reviewing at least ten claims submitted by TCC; and (3) conducting an on-site review at TCC's place of business. During the onsite review, she would ensure that TCC was maintaining and exchanging documentation securely. She also reviewed the documentation to see if TCC was submitting claims in accordance with the contract terms. She would collect the data and submit it to the Operations Director who would review the data and issue a letter either requesting clarification and/or additional information or noting the completion of the review. Ms. Rhea performed these tasks until she transitioned to the role of a Financial Analyst in 2018. As a Financial Analyst she was no longer responsible for preparing RCPs for the Bureau. Ms. Rhea did not make any licensing or regulatory decisions regarding TCC in any of her positions with FSSA.

Ms. Higgins provides that Ms. Rhea knows and understands that Indiana's ethics laws will continue to apply to her as a private sector employee. She understands and agrees not to divulge confidential information of FSSA during her post-employment endeavors. Furthermore, Ms. Rhea understands and agrees to abide by the one-year restriction regarding registering as an executive branch lobbyist.

FSSA is seeking the Commission's opinion regarding the application of any of the rules in the Code to Ms. Rhea's post-employment opportunity with TCC.

The analysis stated the following:

A. Confidential Information

IC 4-2-6-6 prohibits Ms. Rhea from accepting any compensation from any employment, transaction or investment that was entered into or made as a result of material information of a confidential nature. So long as any compensation Ms. Rhea receives does not result from confidential information, her potential employment with TCC would not violate IC 4-2-6-6.

B. Post-Employment

IC 4-2-6-11 consists of two separate limitations: a "cooling off" period and a "particular matter" restriction. The first prohibition, commonly referred to as the cooling off or revolving door period, prevents Ms. Rhea from accepting employment from an employer for 365 days from the date that she leaves state employment under various circumstances.

First, Ms. Rhea is prohibited from accepting employment as a lobbyist for the entirety of the cooling off period. A lobbyist is defined as an individual who seeks to influence decision making

of an agency and who is registered as an executive branch lobbyist under the rules adopted by the Indiana Department of Administration.

Ms. Higgins provides that Ms. Rhea would not be required to engage in any lobbying activities in her prospective employment with TCC. To the extent that Ms. Rhea does not engage in executive branch lobbying for one year after leaving state employment, the Commission finds that her intended employment with TCC would not violate this provision of the post-employment rule.

Second, Ms. Rhea is prohibited from accepting employment for 365 days from the last day of her state employment from an employer with whom 1) she engaged in the negotiation or administration of a contract on behalf of a state agency and 2) was in a position to make a discretionary decision affecting the outcome of the negotiation or nature of the administration of the contract.

As it relates to TCC's contracts with FSSA, Ms. Rhea was responsible for performing the administrative function of preparing and submitting the RCPs. She prepared these RCPs for FSSA's contracting team so that they could begin the process of creating the contract. Ms. Rhea also worked with colleagues to review claims by TCC on two to three occasions to ensure that TCC was maintaining and exchanging documentation securely and submitting claims in accordance with the contract terms.

Ms. Higgins provides that Ms. Rhea created the RCPs after the Bureau negotiated and approved the contract's specifics, such as the rate, term, line items, scope of work, etc. According to Ms. Higgins, Ms. Rhea did not make any decisions or make any recommendations as to what information was included in the RCP; rather the Operations Director for the Bureau and the Bureau Director provided all of the information and made the decisions on any needed changes to the RCP or related contract documents. The Operations Director also reviewed the RCP and related documents before Ms. Rhea sent the form and any additional information to the contracting team.

In terms of her participation on the team that reviewed TCC's claims, Ms. Rhea submitted the data she collected during these reviews to the Operations Director. Ms. Rhea and Ms. Higgins provide that there was no subjectivity required in this process. Ms. Rhea did not have to use any discretion nor did she make any recommendations during this process. She was one of a group of individuals who collected specified data and passed it along to the Operations Director for any further review or action required.

The Commission finds that Ms. Rhea was involved in aspects of the negotiation and administration of TCC's contracts with FSSA; however, she was not in a position to make any discretionary decisions affecting the outcome of the negotiation or nature of the administration of these contracts. Accordingly, the Commission finds that Ms. Rhea would not be subject to the cooling off restriction for her role in interacting with TCC as a FSSA employee, and she may accept employment with TCC immediately.

Third, Ms. Rhea is prohibited from accepting employment for 365 days from the last day of her state employment from an employer for whom she made a regulatory or licensing decision that directly applied to the employer or its parent or subsidiary.

Ms. Higgins provides that Ms. Rhea did not make any regulatory or licensing decisions in her positions with FSSA that directly applied to TCC. Accordingly, the Commission finds that Ms. Rhea has never made any regulatory or licensing decisions that applied to TCC as a state employee, and she is not prohibited under this provision from accepting employment with TCC immediately.

Fourth, Ms. Rhea is prohibited from accepting employment from an employer if the circumstances surrounding the hire suggest the employer's purpose is to influence her in her official capacity as a state employee. Ms. Rhea has already left state employment. Accordingly, the Commission finds that this restriction would not apply to her intended employment opportunity with TCC.

Finally, Ms. Rhea is subject to the post-employment rule's "particular matter" prohibition in her prospective post-employment. This restriction prevents her from representing or assisting a person on any of the following twelve matters if she personally and substantially participated in the matter as a state employee: 1) an application, 2) a business transaction, 3) a claim, 4) a contract, 5) a determination, 6) an enforcement proceeding, 7) an investigation, 8) a judicial proceeding, 9) a lawsuit, 10) a license, 11) an economic development project or 12) a public works project. The particular matter restriction is not limited to 365 days but instead extends for the entire life of the matter at issue, which may be indefinite.

In this instance, Ms. Rhea would be prohibited from representing or assisting TCC, as well as any other person, in a particular matter in which she personally and substantially participated as a state employee.

Ms. Higgins provides that although Ms. Rhea would be teaching TCC employees how to use software she used while employed by FSSA, she would not be required to work on any matters that she worked on as a state employee.

The Commission finds that Ms. Rhea must ensure compliance with the particular matter restrictions and refrain from assisting or representing any person on any other particular matters that she may have been personally and substantially involved in during her state employment.

Commissioner Todd moved to approve the Commission's findings, and Commissioner Gilroy seconded the motion which passed (4-0).

VI. Director's Report

State Ethics Director, Jen Cooper, stated that since the last Commission meeting, the Office of Inspector General had issued 28 informal advisory opinions on the subjects of post-employment restrictions, conflicts of interests, outside employment, and gifts.

She further advised the deadline for completing the Ethics Training was November 21, 2019 and that approximately 97.5% of required personnel have completed the training as of today. All training should be complete by the end of the year.

Director Cooper also indicated that the Financial Disclosure Statement filing period of Calendar Year 2019 would begin on January 2, 2020. Finally, Director Cooper introduced new OIG Staff Attorney Luba Gore to the Commissioners. She began at OIG in November 2019.

VII. Adjournment

Commissioner Finnerty moved to adjourn the public meeting of the State Ethics Commission and Commissioner Gilroy seconded the motion, which passed (4-0).

The public meeting adjourned at 10:37 a.m.