

**MINUTES OF THE MEETING OF
THE INDIANA STATE ETHICS COMMISSION
May 13, 2021**

I. Call to Order

A regular meeting of the State Ethics Commission (“Commission”) was called to order at 10:04 a.m. The meeting was held virtually using Microsoft Teams. Commission members present were Katherine Noel, chair; Sue Anne Gilroy; Kenneth Todd; and Rafael Sanchez (arrived at 10:09 a.m.). Staff present included David Cook, Inspector General; Tiffany Mulligan, Chief Legal Counsel, Office of Inspector General; Jennifer Cooper, State Ethics Director; Mark Mitchell, Director of Investigations, Office of Inspector General; Luba Gore, Staff Attorney, Office of Inspector General; Cindy Scruggs, Administrative Director, Office of Inspector General; Mike Lepper, Investigator, Office of Inspector General; and Nathan Baker, Legal Assistant, Office of Inspector General.

Others present were: Deana Smith, Ethics Officer, Indiana State Department of Health; Tamera Glickman, Deputy General Counsel, Indiana Department of Administration; Sylvia Watson, General Counsel and Ethics Officer, Indiana State Library; Amber Nicole Ying, Special Counsel/Director, Compliance and Ethics and Ethics Officer, Department of Revenue; Rachel Russell, Ethics Officer, Department of Child Services; Ed Feigenbaum, Indiana Legislative Insight; Bruno Pigott, Commissioner, Indiana Department of Environmental Management; Alex Van Gorp, Staff Attorney, Indiana Department of Health; Jessica Keyes, Ethics Officer, Family and Social Services Administration; Kathleen Mills, Ethics Office, Indiana Department of Environmental Management; Whitney Fritz, Staff Attorney, Department of Child Services; Mattheus Mitchel, Compliance and Ethics Specialist, Department of Revenue; Kristi Shute, Deputy General Counsel and Ethics Officer, Indiana Department of Homeland Security; David Johnson, Ethics Officer, Indiana Attorney General’s Office; Brittny Downing, Associate Director of Administrative Services, Family and Social Services Administration; Jody Kress, Executive Director, Indiana Natural Resources Foundation; Samantha E. DeWester, General Counsel and Ethics Officer, Department of Natural Resources; John Howard, Senior Environmental Manager, Indiana Department of Environmental Management; Justin Paicely, Deputy General Counsel, Department of Natural Resources; and, Rebecca McClain, Staff Attorney, Department of Natural Resources.

II. Adoption of Agenda and Approval of Minutes

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

Commissioner Todd moved to approve the Minutes of the April 15, 2021 Commission Meeting and Commissioner Gilroy seconded the motion which passed (3-0).

III. Consideration of Waiver of Post-Employment Restrictions for John Howard

Bruno Pigott, Commissioner of the Indiana Department of Environmental Management; and Kathleen Mills, Ethics Officer of the Indiana Department of Environmental Management, presented the proposed Waiver of Post-Employment Restrictions in this matter to the Commission for their approval.

Commissioner Gilroy moved to approve the Waiver, and Commissioner Todd seconded the motion which passed (4-0).

IV. Request for Formal Advisory Opinion

2021-FAO-005

Jody Kress, Executive Director, Indiana Natural Resources Foundation
Samantha E. DeWester, General Counsel and Ethics Officer
Indiana Department of Natural Resources

Samantha DeWester is the General Counsel and Ethics Officer for the Indiana Department of Natural Resources (DNR). She requested a formal advisory opinion on behalf of the Indiana Natural Resources Foundation (Foundation).

The Foundation is a quasi-governmental entity tasked with aiding and supporting DNR in its mission. The Foundation's mission is to celebrate and preserve Indiana's natural legacy by raising funds to support the DNR and its programs.

Under IC 14-12-1-4 the Indiana General Assembly created the Foundation as a public body corporate and politic (a not-for-profit section 115 corporation) to acquire real and personal property to be donated to DNR.

According to its [website](#), the Foundation "work[s] diligently with the [DNR] to identify the greatest conservation needs, adventurous outdoor education opportunities and new ways to introduce Hoosiers to nature by providing exciting outdoor recreation opportunities."

Ms. DeWester provides that the Foundation would like to conduct an auction to support its annual fund. The auction would be comprised of experiences on DNR properties and include DNR staff in functions they typically perform, as well as a few more unique experiences.

Ms. DeWester provides that, while the primary goal of this effort is to raise funds, it is also to promote DNR properties and activities throughout the State of Indiana. Ideally, the Foundation would like to hold the auction again in the future and look to change the experiences. The Foundation would like to encourage people to experience the DNR in ways that create memorable experiences that keep them coming back year after year.

Ms. DeWester provides the following examples of experiences that would be "routine":

1. Weekend for up to eight people at the Covered Bridge Retreat.
2. Weekend/Week in a State Park Inn or Cabin.
3. Two side-by-side campsites for the 2024 Eclipse when Indiana is in totality.

4. Private Party for twenty to thirty at Pokagon Toboggan (held on a day separate from regular hours of operation, likely on a Wednesday or Thursday).

The following are examples of experiences that are more “unique”:

1. Candlelight dinner for up to twelve people in the Mill at Spring Mill State Park.
2. Lake James wine cruise at Pokagon State Park.
3. Guided hikes at various locations for up to eight to ten people across different DNR properties.
4. Guided kayak trip for eight to ten people (Patoka Lake, Chain O’lakes, O’Bannon Woods).
5. Guided lake history tour for six to eight people at a reservoir property.

Ms. DeWester seeks a formal opinion as to whether staffing these activities would be an appropriate use of DNR staff and resources. Ms. DeWester feels this would be considered official state business because the Foundation is a quasi-governmental entity tasked with aiding and supporting DNR in its mission.

The analysis stated the following:

Ms. DeWester’s request for a formal advisory opinion invokes consideration of the provisions of the Code pertaining to Use of State Property and Ghost Employment. The application of each provision to DNR employees is analyzed below.

IC 4-2-6-17 (42 IAC 1-5-12) prohibits a state officer, employee or special state appointee from using state materials, funds, property, personnel, facilities or equipment for purposes other than official state business unless the use is expressly permitted by a general written agency, departmental or institutional policy or regulation that the Commission has approved.

Likewise, 42 IAC 1-5-13, the ghost employment rule, prohibits a state officer, employee or special state appointee from engaging in, or directing others to engage in, work other than the performance of official duties during working hours, except as permitted by general written agency, departmental or institutional policy or regulation.

Accordingly, if DNR is paying its employees to facilitate these activities, DNR would need to determine whether such work would be considered part of their official duties.

Based on the information provided, the Foundation was created to accept donations of personal and real property to DNR. The Foundation is attempting to solicit increased donations by hosting a proposed auction whereby donors would bid on various experiences that would occur in DNR-operated parks and recreational areas. In order to facilitate these activities, DNR employees would utilize state facilities/property to host these experiences.

The Commission finds that hosting these experiences for the Foundation would be official state business. The Foundation was expressly created by the General Assembly to support the DNR, and these experiences are being created to raise funds to support the DNR. Accordingly, the Commission finds it is permissible for the Foundation to use state resources including DNR staff,

within the scope of their normal day-to-day activities, and DNR property to provide these experiences to donors.

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

V. Request for Formal Advisory Opinion

2021-FAO-006

Brittney Downing, Associate Director of Administrative Services
Jessica Keyes, Staff Attorney and Ethics Officer
Indiana Family and Social Services Administration

Jessica Keyes is the Ethics Officer for the Indiana Family and Social Services Administration (FSSA). Ms. Keyes is requesting an advisory opinion on behalf of Brittney Downing, Associate Director of Administrative Services with FSSA's Vocational Rehabilitation (VR) services program.

In her role, Ms. Downing oversees the case management system, Aware, which has thirteen interconnected interfaces. Ms. Downing also assists with business process writing, federal reporting, fiscal budgeting and data analysis.

Ms. Downing plans to move out of state on or about May 16, 2021, and she cannot remain in state employment in her current role. Public Consulting Group, Inc. (PCG) approached Ms. Downing's supervisor regarding an opportunity for employment after learning that Ms. Downing was relocating, and Ms. Downing's supervisor advised her of the opportunity. Ms. Downing then reached out to a contact she knew with PCG through a launch meeting regarding the opportunity on or about March 18, 2021, and formally sent her resume to PCG on March 26, 2021. Ms. Downing interviewed with PCG on March 31, 2021. PCG offered Ms. Downing the role of consultant on or about April 13, 2021.

The opportunities and projects on which PCG would like Ms. Downing to work include the following:

- Supporting the development of a new quality assurance program for a state VR agency client;
- Comprehensive Statewide Needs Assessment (CSNA) report development for three current state VR agency clients;
- Provider services rate setting for a VR state agency client;
- Supporting business development efforts with VR state agencies; and
- Maintaining market visibility with national associations and conferences.

None of these projects involve Indiana programs. PCG advised they have no current need to assign Ms. Downing to any Indiana related projects or initiatives.

PCG assists mostly public sector services relating to health, education and human services relating to performance and processes. PCG has thirty-eight locations with approximately one thousand open contracts and works with all fifty states and international providers. PCG contracts with Indiana and FSSA, and presently, there are thirty-three total active contracts between the State and PCG.

PCG contracted with FSSA's Division of Disability and Rehabilitative Services (DDRS) to develop and implement a VR Claims payment system for vendors to submit claims via the web and provide fiscal services to those vendors by making timely payments for the services provided to VR program participants. Another FSSA employee administers the PCG claims contract for FSSA's VR Program. Ms. Downing oversees the Aware contract, which is a case management system. Aware is a separate contract, but some interfaces of Aware work with PCG and claims processing. The State also contracts with PCG through DDRS for PCG to provide pre-employment transition services. Ms. Downing did not oversee, manage, procure or have other involvement with this pre-employment transition services contract.

Ms. Downing has been involved in approximately thirty telephone calls regarding Aware's Claims Payment System processes, issues and information gathering for projects. Ms. Downing participated in those calls as the subject matter expert for the interconnected case management interfaces, and many calls included all interface stakeholders. Ms. Downing did not lead or organize these calls. Another employee has always been the liaison with PCG regarding the claims processing system, and Ms. Downing does not have contracting responsibility for FSSA. Ms. Downing also has not made a regulatory or licensing decision that directly applied to PCG or to a parent or subsidiary of PCG through her current role with FSSA's VR Program.

FSSA's VR Program has applied for a grant project with PCG that would begin in October 2021. Ms. Downing was not a key point of contact for the PCG grant application. Several stakeholders, both internal and external, and state employees gathered and prepared information for the grant application submission. Participants included people from at least seven teams or groups. Ms. Downing's responsibilities were limited to pulling data and participating in no more than two telephone calls regarding the grant. The grant will not be awarded until July or August 2021.

Ms. Downing's employment with PCG is not contingent upon her working on the grant project if FSSA's VR Program is awarded the grant, but she is interested in a determination regarding whether she would be able to work on the grant if FSSA's VR Program is a grant recipient.

If she accepts the role of consultant with PCG, she is not aware of any intentions for her to work on any projects or contracts with FSSA. Rather, Ms. Downing will be analyzing data regarding substance abuse for PCG, and although she may assess information and data for states with contracts with PCG, she does not believe that she would be analyzing data for Indiana or submitting claims to Indiana. To Ms. Downing's best information and belief, no executive branch lobbying is associated with the role of consultant, nor is that the business of PCG.

Ms. Downing understands that she may not participate in any decision or vote, or matter relating to any decision or vote, for FSSA related to PCG due to her negotiations concerning prospective employment. Ms. Downing filed a disclosure form on April 22, 2021, screening Ms. Downing from participating in any votes, decisions or other matters where PCG may have a financial interest. Ms. Downing also understands that she may not benefit from or divulge confidential information except as permitted by law.

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

The analysis stated the following:

Ms. Keyes' request for a formal advisory opinion invokes consideration of the provisions of the Code pertaining to Confidential Information, Conflicts of Interests and Post-employment. The application of each provision to Ms. Downing is analyzed below.

A. Confidential Information

IC 4-2-6-6 prohibits Ms. Downing 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. Downing receives does not result from confidential information, her potential employment with PCG would not violate IC 4-2-6-6.

B. Conflict of Interests

IC 4-2-6-9(a)(1) prohibits Ms. Downing from participating in any decision or vote, or matter related to that decision or vote, if she has a financial interest in the outcome of the matter. Similarly, IC 4-2-6-9(a)(4) prohibits her from participating in any decision or vote, or matter related to that decision or vote, in which a person or organization with whom she is negotiating or has an arrangement concerning prospective employment has a financial interest in the outcome of the matter. The definition of financial interest in IC 4-2-6-1(a)(11) includes, "an interest arising from employment or prospective employment for which negotiations have begun."

In this case, employment negotiations have already begun. Accordingly, Ms. Downing would be prohibited from participating in any decision or vote, or matter related to a decision or vote, in which she, by virtue of her employment negotiations with PCG, or PCG would have a financial interest in the outcome of the matter.

Based on the information provided, it appears that a potential conflict of interests was identified. IC 4-2-6-9(b) requires that a state employee who identifies a potential conflict of interests notify her agency's appointing authority and ethics officer and either (1) seek a formal advisory opinion from the Commission; or (2) file a written disclosure form with the Office of Inspector General (OIG).

Ms. Downing, with Ms. Keyes' assistance, filed the disclosure form with the OIG on April 22, 2021. The disclosure included the notification to FSSA's appointing authority, Dr. Jennifer Sullivan, and included a description of the screen that FSSA implemented to ensure that Ms. Downing does not participate in any votes, decisions or other matters in which PCG may have a financial interest.

Accordingly, the disclosure requirements under IC 4-2-6-9(b) have been satisfied; however, Ms. Downing must ensure she continues to refrain from participating in any decisions or votes, or matters relating to any such decisions or votes, in which she or PCG has a financial interest in the outcome of the matter for the remainder of her state employment.

C. 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. Downing from accepting employment from an employer for 365 days from the date that she leaves state employment under various circumstances.

First, Ms. Downing 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.

Based on the information provided, Ms. Downing would not be engaging in any lobbying activities in her prospective employment with PCG. To the extent that Ms. Downing does not engage in executive branch lobbying for one year after leaving state employment, her intended employment with PCG would not violate this provision of the post-employment rule.

Second, Ms. Downing 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.

PCG has an active contract with FSSA's VR Program, of which Ms. Downing is a part. She has overseen the case management system that has interfaces with PCG through the Claims Repayment System and has been a participant on calls on which all interface stakeholders were included; however, her involvement in these discussions was as an Aware subject matter expert, and she had no involvement in the contract creation, execution or administration of PCG's contract. Instead, a different FSSA employee handles the contract.

Accordingly, the Commission finds that Ms. Downing would not be subject to the cooling off restriction for her role in interacting with PCG through calls regarding the case management system she oversees as part of FSSA's VR Program's claims processing system because she was not involved in the negotiation or administration of PCG's contract with FSSA.

Third, Ms. Downing 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. Keyes provides that Ms. Downing has not made any regulatory or licensing decisions in her position with FSSA that directly applied to PCG or to a parent or subsidiary of PCG in her role with FSSA's VR Program. Accordingly, the Commission finds that this provision of the cooling off restriction would not apply to her prospective position with PCG.

Fourth, Ms. Downing 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. The information presented to the Commission does not suggest that PCG has extended an offer of employment to Ms. Downing in an attempt to influence her in her capacity as a state employee. Accordingly, the Commission finds that this restriction would not apply to her intended employment opportunity with PCG.

Finally, Ms. Downing 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. Downing would be prohibited from representing or assisting PCG, as well as any other person, in a particular matter in which she personally and substantially participated as a state employee.

Ms. Keyes provides that FSSA's VR Program has applied for a grant project with PCG that would begin in October 2021. Ms. Downing was not a key point of contact for the PCG grant application, but she was a member of a group of stakeholders, including state employees from a number of different groups/teams, who gathered and prepared information for the grant application. Ms. Downing's participation in this process was limited to pulling data and participating in no more than two telephone calls regarding the grant.

Based on the information provided by Ms. Keyes, the Commission finds that Ms. Downing's participation in the application was not personal and substantial. Accordingly, the particular matter restriction would not apply to Ms. Downing and she would be permitted to participate in the grant application and the potential resulting grant project for her new employer.

Ms. Downing should also keep in mind that she is prohibited from assisting PCG or any other person on any of the other particular matters listed above on which she may have personally and substantially worked during her state employment regardless of whether it involves PCG.

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

VI. Director's Report

State Ethics Director, Jen Cooper, stated that OIG staff has issued 20 informal advisory opinions since the previous last meeting. The majority of these requests dealt with questions concerning conflicts of interests, use of state property, ghost employment, outside employment, post-employment and gifts.

Director Cooper continued that this summer's Auditor & Investigator Conference is set for June 23rd and June 24th. It will be a virtual conference and will feature several presentations, including segments from Attorney General Todd Rokita and Auditor of State Tera Klutz.

VII. Adjournment

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

The public meeting adjourned at 10:46 a.m.