

**MINUTES OF THE MEETING OF  
THE INDIANA STATE ETHICS COMMISSION  
May 9, 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 Corinne Finnerty, Sue Anne Gilroy, Priscilla Keith and Katherine Noel. Staff present included Jennifer Cooper, Ethics Director; Lori Torres, Inspector General; Tiffany Mulligan, Chief Legal Counsel; Kelly Elliott, Staff Attorney; Heidi Adair, Staff Attorney; and Cindy Scruggs, Director of Administration, Office of Inspector General.

Others present were Jeffery M. Brown, IDEM; James French, IDEM; Debera Backhus, former DNR employee; Lora Phillippe, INDOT; Chris Serak, INDOT; Chris Kulik, ISDH; Erika Steuerwald, ISDH; Deana Smith, ISDH; Beth Green, DWD; Elizabeth Gamboa, DNR; Mattheus Mitchel, DOR; Amber Nicole Ying, DOR; Tamera Glickman, IDOA; and Jared Prentice, DOR.

**II. Adoption of Agenda and Approval of Minutes**

Commissioner Gilroy moved to approve the Minutes of the April 11, 2019 Commission Meeting and Commissioner Keith seconded the motion which passed (4-0).

**III. Request for Formal Advisory Opinion: Conflicts of Interest**

**2019-FAO-009 Jeffery Matthew Brown, Confined Feeding Operations  
Compliance Inspector  
James Michael French, Interim Ethics Officer  
Indiana Department of Environmental Management**

Jeffery (Matt) Brown is a Confined Feeding Operation (CFO) Compliance Inspector with the Indiana Department of Environmental Management (IDEM). Mr. Brown is responsible for conducting field inspections and providing technical and regulatory guidance to staff, the section supervisor and external entities. His essential duties are to interpret laws, regulations and guidelines within an area of assignment and develop and coordinate programs and work plans for the CFO Compliance Section. When necessary, he develops and modifies existing state programs to adapt to changes in federal or state legislation-mandated policy. He also acts as the program expert for the CFO Compliance Section and conducts field inspections in an assigned geographical area and large dairy operations.

Mr. Brown asserts that he is not involved in any contracting for IDEM and that he does not make any regulatory or licensing decisions for IDEM. He provides that his IDEM position does not involve participating in any decisions regarding the sale of harvested or standing crops to CFOs nor does it involve his participation in any decisions regarding the sale of calves/cattle to individuals who own or are associated with CFOs.

In addition to working for IDEM, Mr. Brown owns and operates a small cattle operation and harvests hay for livestock consumption in an Indiana county. Mr. Brown is seeking a formal advisory opinion from the Commission to determine if it would be a conflict of interests for him to sell either a harvested standing crop of hay to a permitted CFO or sell calves or cattle to individuals who own or are associated with a permitted CFO.

The advisory opinion stated the following analysis:

Mr. Brown's request for a formal advisory opinion invokes consideration of the provisions of the Code pertaining to Conflicts of Interests, Excess Compensation for Sale or Lease, Use of State Property, Ghost Employment and Benefitting from and Divulging Confidential Information. The application of each provision to Mr. Brown is analyzed below.

*A. Outside employment*

An outside employment or professional activity opportunity creates a conflict of interests under IC 4-2-6-5.5 if it results in the employee: 1) receiving compensation of substantial value if the responsibilities of the employment are inherently incompatible with the responsibilities of public office or require the employee's recusal from matters so central or critical to the performance of his official duties that his ability to perform them would be materially impaired; 2) disclosing confidential information that was gained in the course of state employment; or 3) using or attempting to use his official position to secure unwarranted privileges or exemptions of substantial value that are not properly available to similarly situated individuals outside state government.

IDEM's Ethics Officer, James Michael French, provides that Mr. Brown has an assigned region in which he is responsible for inspecting CFOs. His farming operation is not in this region, and he does not intend to sell his crops or livestock to CFOs within this region. Mr. Brown will also not be required to disclose any confidential information that he has access to as a state employee for his prospective business.

Based on the information provided, the Commission finds that Mr. Brown's outside commercial venture in selling crops and/or livestock is not inherently incompatible with his IDEM responsibilities nor would it require his recusal from matters central or critical to the performance of his official state duties that his ability to perform them would be materially impaired; however, he should not inspect the same CFOs to which he sells crops or livestock. The Commission advised Mr. French to ensure that procedures are in place to screen Mr. Brown from inspecting any of the CFOs to which he has or will sell crops or livestock.

Mr. Brown must also ensure that he does not use his position at IDEM to secure any advantages for CFOs or anyone else that would not be available to similar individuals.

So long as he does not sell to CFOs that he inspects as part of his IDEM duties, Mr. Brown would not have a conflict of interests under this rule and his outside commercial venture would not violate IC 4-2-6-5.5.

*B. Excess Compensation for Sale or Lease*

IC 4-2-6-7 prohibits a state employee from accepting compensation for the sale or lease of any property or service that substantially exceeds that which he or she would charge in the ordinary course of business or from any person who has a business relationship with the agency in which the individual is employed.

Business relationship is defined, in part, as the dealing of a person with an agency seeking, obtaining, establishing, maintaining, or implementing a license or permit requiring the exercise of judgment or discretion by the agency. In this case, it appears that the CFOs to which Mr. Brown would like to sell crops and/or livestock have a business relationship with IDEM since they are permitted by IDEM.

The Commission finds that Mr. Brown would need to ensure that he does not sell any crops and/or livestock to a CFO at a price that substantially exceeds what he would charge in the ordinary course of business.

*C. Conflict of interests - decisions and votes*

IC 4-2-6-9 (a)(1) prohibits Mr. Brown from participating in any decision or vote, or matter relating to that decision or vote, if he has a financial interest in the outcome of the matter. Financial interest is defined to include an interest in a purchase, sale, lease, contract, option, or other transaction between an agency and any person or an interest involving property or services.

This prohibition extends beyond merely the decision or vote on the matter to encompass any participation in that decision or vote. In addition, the rule requires a state employee who recognizes a potential conflict of interests to notify his agency's appointing authority and ethics officer in writing and either (1) seek a formal advisory opinion from the State Ethics Commission or (2) file a written disclosure form with the OIG.

Mr. Brown asserts that he does not participate in any decisions regarding the sale of crops and cattle/calves to CFOs or individuals associated with CFOs in the course of his official state business; however, he is involved in conducting inspections of CFOs and his findings could lead to fines or other penalties for the CFOs if they are found to be noncompliant with applicable regulations. If he were to participate in decisions, or matters related to such decisions, concerning CFOs to whom he may sell his livestock or crops, it is possible that he could have a financial interest in the outcome of such decisions.

Accordingly, the Commission finds that he has an identified potential conflict of interests and he must ensure he meets the remaining disclosure and notification requirements in IC 4-2-6-9(b). He has already requested a formal advisory opinion and disclosed the potential conflict to the Commission, but he must also notify IDEM's appointing

authority of the potential conflict and work with his Ethics Officer to ensure he is screened from all participation in the matters in which he would have a financial interest.

*D. Conflict of interests – contracts*

Pursuant to IC 4-2-6-10.5, a state employee may not knowingly have a financial interest in a contract made by an agency. This prohibition however does not apply to an employee that does not participate in or have contracting responsibility for any of the activities of the contracting agency, provided certain statutory criteria are met.

Mr. Brown does not have contracting responsibility for IDEM. Further, Mr. Brown provides that none of the compensation he would receive from the sale of his crops or livestock to CFOs would be derived from any state contracts.

Accordingly, the Commission finds that he does not have a financial interest in a state contract at this time and this rule does not apply.

*E. Confidential information*

Mr. Brown is prohibited under 42 IAC 1-5-10 and 42 IAC 1-5-11 from benefitting from, permitting any other person to benefit from, or divulging information of a confidential nature except as permitted or required by law. Similarly, IC 4-2-6-6 prohibits Mr. Brown from accepting any compensation from any employment, transaction, or investment which is entered into or made as a result of material information of a confidential nature. The term “person” is defined in IC 4-2-6-1(a)(13) to encompass both an individual and a corporation, such as a CFO. In addition, the definition of “information of a confidential nature” is set forth in IC 4-2-6-1(a)(12).

To the extent Mr. Brown is exposed to or has access to such confidential information in his position with IDEM, he would be prohibited not only from divulging that information but from ever using it to benefit any person, including any CFO, in any manner.

*F. Use of state property and Ghost employment*

42 IAC 1-5-12 prohibits Mr. Brown from using state property for any purpose other than for official state business unless the use is expressly permitted by a general written agency, departmental, or institutional policy or regulation that has been approved by the Commission. Likewise, 42 IAC 1-5-13 prohibits Mr. Brown 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.

The Commission confirmed that Mr. Brown would be conducting his commercial activity during non-working hours and that he would not use any state property to conduct his outside activities. To the extent that Mr. Brown observes these provisions, his outside activities would not violate these ethics laws.

The Commission found that Mr. Brown's outside commercial activities in selling crops and livestock to CFOs would not create a conflict of interests under the Code of Ethics so long as IDEM screens him from inspecting any CFOs to which he would sell his products.

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

**IV. Request for Formal Advisory Opinion: Post-Employment Restrictions  
2019-FAO-010 Debera Backhus, Former Special Projects Coordinator, Lake  
Michigan Coastal Program  
Department of Natural Resources**

Debera Backhus is a former employee of the Indiana Department of Natural Resources (DNR) Division of Nature Preserves, Lake Michigan Coastal Program (LMCP). Ms. Backhus served as the Special Projects Coordinator for the LMCP from July 31, 2017 to October 19, 2018. In that capacity, she served as project manager for several projects. Two of those projects included negotiating a contract extension or developing and negotiating subcontracts and then administering and overseeing the contract work.

Ms. Backhus also supervised the LMCP's Outreach and Education Assistant and served as a team member of the Lake Michigan Lake-wide Action and Management Plan (LAMP), working closely with IDEM's LAMP Coordinator housed in IDEM's Northwest Indiana Office. As part of this work, she served as the interface to many Northwest Indiana environmental organizations by attending the regular monthly meetings. As a related responsibility, she also served as coordinator for completion and EPA/NOAA approval of Indiana's Coastal Nonpoint Pollution Control.

A smaller and intermittent part of Ms. Backhus' job was to provide support to other LMCP program efforts, including the grant program. Ms. Backhus provides that the LMCP's grant program is a bit different from many grant programs in that it encourages potential grant applicants to reach out to and work with the grants staff and technical staff to discuss their project ideas; ask questions to ensure that projects they submit are eligible, consistent with needs in the LMCP area and are not duplicative; and otherwise seek feedback to strengthen their grant proposals. This approach helps the grant program achieve an overall goal to fund high quality, viable, sustainable projects that advance the LMCP's mission.

Accordingly, all LMCP staff in the Chesterton office, including Ms. Backhus, served as technical resources to the decision-making bodies and grants staff to answer questions and provide technical perspective on all grant applications submitted at the pre-proposal level and full proposal level. At the pre-proposal level all staff read all pre-proposals and then attended the LMCP Grants Committee meeting to provide technical support as needed and answer questions based on one's areas of expertise. The Grants Committee, which is composed largely of appointees on the Coastal Advisory Board, then voted on which proposals should be

recommended to the full LMCP Coastal Advisory Board for their approval and voted to move the recommended pre-proposals to the full proposal level.

At the full proposal level a similar process was in place where technical staff read the proposals and attended the Technical Advisory Board meeting (an appointed group of DNR employees/leaders from different DNR Divisions). This board ranked, discussed and voted on which proposals should be recommended for funding. The grants program staff then compiled and assessed this list of recommendations and presented the recommendations to the Director of DNR for final decisions and approval before sending the final approved project list to NOAA for their review. The technical staff's role in this process was limited to being technical resources in the process. As described above, the technical staff, including Ms. Backhus, had no direct voting or decision-making role.

Specifically, Ms. Backhus provides that her role in the grants process during her tenure with DNR was limited to 1) talking to any potential applicants who reached out to her for assistance (only one of the fifteen or so applicants sought her advice and feedback); 2) reading all of the pre-proposals submitted and serving as a technical resource to the grants staff, particularly the Grants Assistant, and to the Grants Committee during their pre-proposal review meeting; and 3) reading all full proposals submitted and serving as a technical resource for the Technical Advisory Board during their full proposal review meeting. Ms. Backhus provided the Commission with supporting materials for her request, including the cover page and a grants process diagram that outlines the process and refers to the decision-making bodies involved throughout the process. She also provided a link to the entire current Grant Pre-Proposal Guidance for additional details.

The City of Gary's Green Urbanism and Environmental Affairs Department recently asked Ms. Backhus if she would be interested in helping them as a private consultant (Backhus Consulting LLC) on a long list of environmental projects that would need attention while one of their current employees is on temporary maternity leave. Ms. Backhus had previously worked with the City of Gary (the City) as a consultant on Green Infrastructure projects from late 2015 to early 2017, prior to being hired as the LMCP Special Projects Coordinator.

Ms. Backhus provides that although she was involved in some contracts as a DNR employee, she was not involved in any contracts with the City while she was with DNR. The LMCP Grants Specialist is the staff member that deals with contracting for all grants. Ms. Backhus also notes that she was not involved in any regulatory or licensing decision involving the City, and she is not aware of LMCP having any regulatory or licensing authority. She also notes that she does not plan on doing any executive branch lobbying if she performs work for the City.

According to Ms. Backhus, one of the many projects the Director of the Department conveyed as a possible element of the consulting scope of work was a project (the Project) funded in part by a LMCP grant in which Ms. Backhus participated during her employment with DNR. As described above, as a technical staff member, Ms. Backhus served as a technical resource for the Grants Committee (September/October 2017), Technical Advisory Board (January 2017) and Grants Program staff when the Project was evaluated by these decision-making bodies who discussed, ranked and voted on all pre- and full proposals submitted in late 2017.

Ms. Backhus is seeking a Formal Advisory Opinion to determine whether her limited technical resource input involvement in the overall grant selection process rises to the level of “personal and substantial participation” in the Project and prevents her from working with the City in implementing some elements of this particular project.

The advisory opinion stated the following analysis:

Ms. Backhus’ post-employment opportunity with the City implicates the provisions of the Code pertaining to confidential information and post-employment. The application of each provision to Ms. Backhus’ prospective post-employment is analyzed below.

*A. Confidential Information*

IC 4-2-6-6 prohibits Ms. Backhus 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. Based on the information provided, it does not appear that Ms. Backhus would utilize confidential information in her consultant work with the City. So long as any compensation Ms. Backhus receives does not result from confidential information, her post-employment opportunity with the City 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. Backhus from accepting employment from an employer for 365 days from the date that she leaves state employment under various circumstances. Employer is defined in IC 4-2-6-1(a)(10) as any person from whom a state employee receives compensation.

First, Ms. Backhus 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 (IDOA).

Ms. Backhus has indicated that she does not plan on engaging in any executive branch lobbying as part of her work for the City. To the extent that Ms. Backhus does not engage in executive branch lobbying for one year after leaving state employment, she would not violate this provision of the post-employment rule.

Second, Ms. Backhus 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 or grant 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 or grant. Ms. Backhus provides that she was

not involved in any agreements, contracts or grants between the City and the State during her tenure at DNR except as otherwise outlined herein. The Commission has considered a grant to be a contract for the purposes of this rule.

The Commission finds that Ms. Backhus has never participated in the negotiation or administration of a contract or grant with the City during the course of her state employment. Accordingly, this provision would not apply to Ms. Backhus' post-employment opportunity with the City.

Third, Ms. Backhus 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. Backhus provides that she was not involved in any regulatory or licensing decisions that applied to the City while with DNR. The Commission finds that Ms. Backhus has never made a regulatory or licensing decision that directly applied to the City during the course of her state employment. Accordingly, this provision would not apply to Ms. Backhus' post-employment opportunity with the City.

Fourth, Ms. Backhus 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. Backhus is a former state employee; thus any future employer cannot influence her in her official capacity as a state employee.

Finally, Ms. Backhus 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. Backhus would be prohibited from representing or assisting the City, as well as any other person, in a particular matter in which she personally and substantially participated as a state employee. The "personal and substantial" standard is one the Commission applies on a case-by-case basis.

Based on the information provided, Ms. Backhus had some limited involvement in the LMCP grant through which the Project was funded; however, she was not involved in ranking proposals or in making funding decisions. She and all of the LMCP staff in the Chesterton office merely provided technical resources to the decision-making bodies and grants staff to answer questions and provide technical perspective on the viability and quality of projects proposed in all grant applications. She estimates she spent less than



five percent of her time on the proposals for this particular grant during the relevant grant cycle.

Accordingly, the Commission finds that Ms. Backhus' involvement in the Project as a state employee did not rise to the level of being "personal and substantial" for purposes of the particular matter restriction, and she would be permitted to work on the Project for the City as a consultant.

The Commission finds that Ms. Backhus' post-employment opportunity with the City would not violate any of the post-employment restrictions found in IC 4-2-6-11.

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: Post-Employment Restrictions  
2019-FAO-011    Lora Phillippe, Project Manager  
Christopher Serak, Ethics Officer/Prequalification Director  
Indiana Department of Transportation**

Christopher Serak is the Ethics Officer for the Indiana Department of Transportation (INDOT). Mr. Serak is requesting an advisory opinion on behalf Lora Phillippe, Project Manager for INDOT's Vincennes District.

Ms. Phillippe is responsible for ensuring federal funds awarded to Local Public Agency (LPA) projects are utilized consistent with federal guidelines. Once federal funds are awarded by INDOT or an authorized Metropolitan Planning Organization (MPO), Ms. Phillippe is required to ensure that the LPA uses the money in a manner that complies with Federal Highway Administration standards; specifically, the requirements provided in INDOT's Local Public Agency Project Development Process Guidance Document for Local Federal-Aid Projects. Ms. Phillippe is also charged with ensuring that funds awarded for each phase of project development are utilized in the fiscal year awarded.

A flow chart outlining the development process for LPA projects is attached to the request as Exhibit A. Ms. Phillippe's role is to ensure that each step listed in the Project Development Process (PDP) flow chart is completed by the LPA. She is not responsible for the actual delivery of these steps and plays no part in their development or implementation.

According to Mr. Serak, Ms. Phillippe's duties are formulaic and do not involve day-to-day project management. Her obligations are executed early in the life of a project. Ms. Phillippe's responsibilities remain constant across assigned projects and do not change based on project-specific conditions. As illustrated in Exhibit A, Ms. Phillippe's duties are confined to ensuring the LPA completes a check-list of required steps.

Mr. Serak provides that Ms. Phillippe's duties do not include or otherwise relate to contract negotiation, scoping, design or delivery. Her responsibilities do not involve negotiating,

determining or implementing change orders, and she has no discretionary authority with regard to establishing the nature or value of contracts. In fact, Ms. Phillippe's duties have no relationship to the specific nature and value of the contracts she helps administer. Ms. Phillippe does not make regulatory or licensing decisions and has no discretionary authority in that regard. All compliance decisions made by Ms. Phillippe are administrative in nature and based on clearly defined dictates enacted by the Federal Highway Administration and set forth in INDOT's Local Public Agency Project Development Process Guidance Document for Local Federal-Aid Projects.

Mr. Serak and Ms. Phillippe are seeking a formal advisory opinion to determine if Ms. Phillippe's participation in assigned LPA projects is "personal and substantial" for the purposes of IC 4-2-6-11(c), and in turn, whether the particular matter restriction prevents her from assisting future employers with LPA projects she participated in as a project manager for INDOT.

After the Commission discussed the matter, Commissioner Keith moved to table this matter and not issue a Formal Advisory Opinion until such time as the requestor produced additional information on a specific employment opportunity. Commissioner Gilroy seconded the motion which passed (4-0).

**VI. Consideration of the Agreed Settlement  
In the Matter of Jada Mocaby/Case Number 2018-08-0233  
Heidi Adair, Staff Attorney  
Office of Inspector General**

Heidi Adair presented the proposed Agreed Settlement in this matter to the Commission for their approval.

Commissioner Gilroy moved to approve the Agreed Settlement and Commissioner Keith seconded the motion which passed (4-0).

**VII. Director's Report**

State Ethics Director, Jen Cooper, stated that the number of informal advisory opinions issued by the Office of Inspector General since the last meeting was 20, the majority of which covered the ethics rules on post-employment, outside employment, conflicts of interests and gifts. Ms. Cooper also reported that there had been legislative action taken in response to the Formal Advisory Opinion the Commission issued in April (2019-FAO-004) pertaining to communications by state officers. Ms. Cooper provided a handout to the Commissioners, which is also available on the OIG website, explaining the changes.

**VIII. Adjournment**

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

The public meeting adjourned at 10:44 a.m.