

**MINUTES OF THE MEETING OF
THE INDIANA STATE ETHICS COMMISSION
September 14, 2023**

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 were Katherine Noel, Chair; Corinne Finnerty; Rafael Sanchez; and John Krauss. Office of Inspector General (OIG) staff present included David Cook, Inspector General; Tiffany Mulligan, Chief of Staff and Chief Legal Counsel; Sean Gorman, State Ethics Director; Doreen Clark, Staff Attorney; Mike Lepper, Special Agent; Jason Fajt, Special Agent; and Nathan Baker, Legal Assistant.

Others present were Mattheus Mitchell, Compliance and Ethics Specialist, Indiana Department of Revenue; Beth Green, General Counsel, Indiana Department of Workforce Development; Tammera Glickman, Deputy General Counsel, Indiana Department of Administration; Bart Herriman, Commissioner, Natural Resources Commission; Elizabeth Gamboa, Ethics Officer, Natural Resources Commission; Chris Serak, Ethics Officer, Indiana Department of Transportation; Josh Brandle, Legal Analyst, Indiana Department of Revenue; Matthew Gerber, Ethics Officer, Indiana Family and Social Services Administration; Jillean Battle, Chief Deputy Treasurer, Indiana Office of the Treasurer; and David Bausman, General Counsel, Department of Natural Resources.

II. Adoption of Agenda and Approval of Minutes

Commissioner Krauss moved to adopt the agenda, Commissioner Sanchez seconded the motion, and the Commission passed the agenda (4-0).

Commissioner Sanchez moved to approve the Minutes of the August 10, 2023, Commission Meeting, and Commissioner Finnerty seconded the motion, which passed (4-0).

III. Request for Formal Advisory Opinion

2023-FAO-007

Bart Herriman, Commission Member

Elizabeth Gamboa, Ethics Officer

Indiana Natural Resources Commission

Bart Herriman is a special state appointee, appointed by the Governor of Indiana to serve on the Natural Resources Commission (NRC). The NRC serves as the ultimate authority for the Indiana Department of Natural Resources (DNR).

Pursuant to IC 4-21.5-3 and 312 IAC 3-1, an administrative law judge (ALJ) employed by the NRC conducts evidentiary hearings and issues non-final orders in matters before the NRC. Parties to such hearings may object to the non-final order issued by the ALJ, invoking a process whereby

parties' objections are set for discussion at a public meeting conducted by the NRC's Administrative Orders and Procedures Act (AOPA) Committee (Committee). The Committee is comprised of three NRC Commissioners, one of which is currently Mr. Herriman.

Upon review of materials for an AOPA Committee meeting set for August 9, 2023, Mr. Herriman discovered that an attorney employed by the law firm (Firm) at which Mr. Herriman is a partner had entered an appearance in a case before the AOPA Committee. Mr. Herriman ceased his review of the case materials and notified the AOPA Committee, the NRC and the NRC's ethics officer, Elizabeth Gamboa. Mr. Herriman recused himself from participating in the August 9, 2023, AOPA Committee meeting.

On August 10, 2023, Mr. Herriman filed a disclosure statement with the Commission outlining the potential conflict of interests. The disclosure statement describes the implementation of a screen established by Ms. Gamboa. In further accordance with the requirements of a disclosure statement outlined in IC 4-2-6-9 (b)(2), Mr. Herriman and Ms. Gamboa signed the disclosure statement and provided it to the NRC's appointing authority, Bryan Poynter.

Pursuant to the screening plan documented in the disclosure statement, Mr. Herriman will require all attorneys at the Firm to report any potential conflicts that could arise as it pertains to his role as a special state appointee. Mr. Herriman will notify the NRC's Hearings Division staff by email of any matters involving the Firm's attorneys that could potentially come before the AOPA Committee. Upon the scheduling of a hearing before the AOPA Committee, NRC's Hearings Division will notify the AOPA Committee of any potential conflicts, and Mr. Herriman will recuse himself from participating in any matters before the AOPA Committee involving cases in which a conflict has been identified.

Mr. Herriman is seeking the Commission's FAO regarding the sufficiency of his disclosure statement and screening plan under the Code.

Mr. Herriman's request for a FAO invokes consideration of the provisions of the Code pertaining to conflicts of interests in decisions and votes. The application of this provision to Mr. Herriman's circumstances is analyzed below.

Conflict of interests - decisions and votes

IC 4-2-6-9 (a)(1) prohibits Mr. Herriman 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. Similarly, IC 4-2-6-9(a)(3) prohibits Mr. Herriman from participating in any decision or vote, or matter relating to that decision or vote, if a business organization in which he serves as an officer, director, member, trustee, partner or employee has a financial interest in the matter.

IC 4-2-6-9(b) requires that a special state appointee who identifies a potential conflict of interests notify his or her Ethics Officer and Appointing Authority in writing and either seek an advisory opinion from the Commission or file a written disclosure statement with the Commission.

In this case, Mr. Herriman has both notified the NRC's ethics officer and appointing authority and has filed a written disclosure statement.

The Commission does not address whether a potential conflict of interests exists under this rule such that it would require Mr. Herriman's disclosure, recusal and screen from AOPA Committee matters in which parties are represented by attorneys from Mr. Herriman's Firm.

The Commission finds that the screen established under the written disclosure statement filed by Mr. Herriman is sufficient to address any potential conflict of interests between Mr. Herriman's Firm and Mr. Herriman's role as a special state appointee, should such potential conflicts arise. The Commission further commends Mr. Herriman for his actions in identifying a potential concern under the Code and for taking immediate steps to address any appearance of impropriety in the performance of his duties on the AOPA Committee.

The Commission suggests that, in addition to recusing himself from participation in AOPA Committee hearings involving parties represented by attorneys employed at Mr. Herriman's Firm, Mr. Herriman may consider physically removing himself from attendance at such a hearing if practicable.

The Commission notes that, irrespective of the applicability of the Code and measures that the Code may require, as a licensed attorney in the State of Indiana, Mr. Herriman remains subject to the requirements outlined in the Indiana Rules of Professional Conduct. The Commission advises Mr. Herriman that the Indiana Supreme Court Disciplinary Commission offers ethics opinions to active attorneys in good standing regarding the Indiana Rules of Professional Conduct.

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

IV. Request for Formal Advisory Opinion

2023-FAO-008

Ashley Taylor, former state employee
Indiana Department of Transportation

Ashley Taylor is a former state employee, serving from June 2018 to August 2022 as an Environmental Manager 2 for the Indiana Department of Transportation (INDOT) and as the North Region Environmental Biologist for the Indiana Department of Natural Resources (DNR).

Ms. Taylor left state employment on August 18, 2022. She is currently employed as an environmental specialist at Lochmueller Group (Lochmueller), a consulting firm.

As part of Ms. Taylor's previous job duties at DNR, she reviewed early coordination letters regarding various local and state projects. This process included her recommendations regarding minimizing impact to the environment based on the nature of the proposed project. For example, she provided recommendations specific to a bridge replacement project to allow wildlife passage and to minimize impact to the waterway.

Ms. Taylor's recommendations were included as part of the formal environmental response (ER) letter, which is included as part of a project's National Environmental Policy Act (NEPA) environmental documentation. The recommendations that Ms. Taylor provided were derived from a list of standard recommendations by project type. Such recommendations become commitments on a proposed project. Although Ms. Taylor provided the recommendations via DNR's ER letter, most (but not necessarily all) recommendations are covered by the Indiana Department of Transportation's (INDOT) standard specifications and have been identified by INDOT as commitments that shall not be included as part of the NEPA document.

Ms. Taylor also reviewed Construction in a Floodway (CIF) permit applications in her role at DNR.

Ms. Taylor has identified a particular project that she worked on at DNR (INDOT Des. No. 1700025), involving U.S. 41 in Lake County (U.S. 41 Project), which serves as the basis for this FAO request. At her previous role at DNR, she reviewed the ER letter and provided the "Fish & Wildlife Comments" section of the ER letter as part of the early coordination process for the U.S. 41 Project.

Lochmueller was not initially involved in this project but is currently working to enter into a contract for the project. Ms. Taylor notes that the recommendations she provided via the DNR's ER letter are not legally binding, and only conditions listed on an approved CIF permit are legally binding. Ms. Taylor provides that she did not review the CIF permit application for the U.S. 41 Project, and she does not believe an application for one has been submitted yet.

Ms. Taylor asks whether her review of the U.S. 41 Project's ER letter and the provision of Fish & Wildlife recommendations for the DNR's ER letter constitutes personal and substantial participation in the public works project such that the post-employment rule's particular matter restriction would prohibit her potential involvement in the U.S. 41 Project on behalf of Lochmueller.

Ms. Taylor's request for a formal advisory opinion invokes consideration of the provisions of the Code pertaining to Post-employment and Confidential Information. The application of each provision to Ms. Taylor's circumstances is analyzed below.

A. Post-employment

IC 4-2-6-11 consists of two separate limitations: a "cooling off" period and a "particular matter" restriction.

1. The "cooling off" period

The first prohibition, commonly referred to as the cooling off or revolving door period, prevents Ms. Taylor from accepting employment from an employer for 365 days from the date that she left state employment under various circumstances.

As it has been more than 365 days since she left state employment, Ms. Taylor is no longer subject to the provisions of the cooling off period under the Code's post-employment rule.

2. The particular matter restriction

The second prohibition under the post-employment rule, commonly referred to as the "particular matter" restriction, prevents a former state employee from working on the twelve types of matters listed in IC 4-2-6-11(a) if he/she personally and substantially participated in the matter as a state employee. These matters are 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*.

Ms. Taylor's participation in the U.S. 41 Project was limited to reviewing the ER letter and authoring the "Fish & Wildlife Comments" section of the ER letter. Ms. Taylor did not have wide discretion in choosing the recommendations listed in the Fish & Wildlife Comments of the ER letter, as they are drawn from a list of recommendations that DNR maintains, and which are determined by project type. The recommendations included in DNR's ER letter are not binding. If a project moves forward and a CIF permit is deemed necessary, DNR would look to recommendations provided in the ER letter to include as conditions in a CIF permit; however, Ms. Taylor did not participate in the review of a CIF permit for the U.S. 41 Project prior to leaving state employment.

The Commission finds that the U.S. 41 Project in Lake County is a public works project subject to the particular matter restriction of the Code's post-employment rule. The Commission further finds that Ms. Taylor personally participated in the U.S. 41 Project by reviewing and providing content for DNR's ER letter during the early coordination process.

Although Ms. Taylor's participation in the early coordination process for the U.S. 41 Project was personal, the Commission finds that it was not substantial; therefore, the Code does not prohibit Ms. Taylor from assisting Lochmueller or any other person with the U.S. 41 Project in her post-state employment activities.

B. Confidential information

IC 4-2-6-6 prohibits Ms. Taylor from accepting any compensation from any employment, transaction or investment that 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 Lochmueller. In addition, the definition of "information of a confidential nature" is set forth in IC 4-2-6-1(a)(12).

To the extent Ms. Taylor has acquired such confidential information obtained in her role at DNR or INDOT, she is prohibited not only from divulging that information, but from ever using it to benefit any person, including Lochmueller, in any manner.

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

V. **Request for Formal Advisory Opinion**

2023-FAO-009

Amy Borland, former state employee

Indiana Department of Natural Resources

Amy Borland is a former state employee, having previously served in the Indiana Department of Natural Resources' (DNR) Division of Historic Preservation and Archaeology (DHPA) from January 2001 to April of 2023. In her role at DNR, Ms. Borland was responsible for the planning, implementing and execution of the Indiana Historic Sites and Structures Inventory.

During her tenure at DNR, Ms. Borland started the planning for a Marion County survey that DNR planned for 2025. Prior to leaving state employment, she worked for approximately three months on preliminary mapping of current historic districts in Marion County's Center Township and noted areas where further investigation would be necessary to identify new historic districts. She did not progress to the point of identifying proposed new historic districts.

After Ms. Borland's preliminary work on Marion County's Center Township survey, but prior to leaving state employment, the Indiana Department of Transportation (INDOT) approached DNR about funding and coordinating a potential 2024-2026 Marion County survey project (Project), identifying existing and new historic districts in Marion County. Ms. Borland did no further work on Marion County historic district mapping at DNR following INDOT's proposal.

After leaving state employment Ms. Borland started employment in April of 2023 for Gray & Pape (Firm), a cultural resources management firm. She is employed as an architectural historian/principal investigator.

The Firm is likely to bid on the Project. This public works project will be offered for bid by the INDOT in October of 2023. The Project involves the completion of planning, surveying and recording of historic resources in six Marion County townships, including Center Township. The Project will involve considerable interaction with DHPA. If the Firm bids and is selected for the Project, it will provide one qualified professional at DHPA for the duration of the Project to plan, oversee, review and approve records. The Firm and its qualified professional would identify potential historic districts in the six Marion County townships for DHPA review and approval and will coordinate extensively with INDOT and DHPA.

Ms. Borland, as the sole architectural historian in the Firm working in Marion County, would play a key role in the Project if the Firm is selected.

Ms. Borland requested the Commission’s Formal Advisory Opinion on the application of the Code to her potential role at the Firm as it relates to the Project.

Ms. Borland’s request for a formal advisory opinion invokes consideration of the provisions of the Code pertaining to Post-employment and Confidential Information. The application of each provision to Ms. Borland’s circumstances is analyzed below.

A. Post-employment

IC 4-2-6-11 consists of two separate limitations: a “cooling off” period and a “particular matter” restriction.

1. The “cooling off” period

The first prohibition, commonly referred to as the cooling off or revolving door period, prevents Ms. Borland from accepting employment from an employer for 365 days from the date that she left state employment under various circumstances.

The Commission notes that Ms. Borland left state employment in April of 2023 and began work at the Firm that same month.

As Ms. Borland had already accepted employment at the Firm within the 365-day cooling-off period, the Commission declines to retroactively analyze the applicability of this provision of the post-employment rule.

2. The particular matter restriction

The second prohibition under the post-employment rule, commonly referred to as the “particular matter” restriction, prevents a former state employee from working on the twelve types of matters listed in IC 4-2-6-11(a) if he/she personally and substantially participated in the matter as a state employee. These matters are 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*.

The Project is a public works project, and therefore a particular matter, as contemplated by the Code’s post-employment rule. As such, Ms. Borland would be prohibited from assisting the Firm or any other party on the Project in her post-state employment activities if she personally and substantially worked on the same particular matter as a state employee.

Ms. Borland provides that her participation in the preliminary work leading up to the Project was limited to the initial mapping of current historic districts in Marion County, Center Township and

noting areas where further investigation would be necessary to identify new historic districts. Ms. Borland worked on the Marion County, Center Township mapping for approximately three months during her state employment and did not work any further on the matter following INDOT's proposal to DNR to fund and coordinate the Project. The Project's scope extends beyond Center Township to include other townships in Marion County.

The Commission finds that the Marion County survey work that Ms. Borland performed at DHPA is a part of the same particular matter as the Project. The expansion of the scope of the Marion County mapping to include additional townships and INDOT's assumption of funding and project coordination duties do not change the matter's character; therefore, the Marion County survey work is part of the same particular matter as the Project under the Code's post-employment rule.

The Commission further finds that Ms. Borland's work on the Project as a state employee was both personal and substantial; therefore, she is prohibited from assisting the Firm or any other person with the Project, unless the Commission were to approve a waiver granted by DNR's Appointing Authority pursuant to IC 4-2-6-11(g). The Commission further notes that unless a waiver is issued and approved by the Commission, Ms. Borland is prohibited from assisting the Firm or any other person with the Project in her post-state employment activities for the entire life of the Project.

B. Confidential information

IC 4-2-6-6 prohibits Ms. Borland from accepting any compensation from any employment, transaction or investment that 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 the Firm. In addition, the definition of "information of a confidential nature" is set forth in IC 4-2-6-1(a)(12).

The Commission notes that if Ms. Borland has acquired such confidential information obtained in her role at DHPA, she is prohibited not only from divulging that information but from ever using it to benefit any person, including the Firm, in any manner.

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

VI. Ethics Director's Report

State Ethics Director Sean Gorman provided the following information to the State Ethics Commission:

INFORMAL ADVISORY OPINIONS:

20 IAOs have been issued since the August 10, 2023 meeting, involving primarily the same issues that we often see: Post employment and moonlighting in outside employment or professional activities. We received a few gifts rule questions as well.

OUTREACH:

OIG provided ethics presentations to the Indiana Commission on the Social Status of Black Males. The Ethics Officer for the Indiana Civil Rights Commission, under which that Board exists, reached out and asked for information to be presented to the Commission members at their regular meeting in particular regarding conflicts of interests in contracts as they were preparing to release a grant opportunity. This Board has a handful of dedicated positions for Indiana lawmakers, to whom we have previously determined are not subject to the Code of Ethics even in their dual roles.

OIG also provided a general ethics presentation to the Indiana State Public Retirement Systems' (INPRS) agency wide meeting. Received positive feedback.

We conducted our third ethics officer roundtable event on August 22, 2023.

OIG provided an ethics presentation to all staff in two sessions for the agencies within the Lieutenant Governor's office: Indiana State Department of Agriculture (ISDA), Indiana Housing and Community Development Authority (IHCDA), and the Indiana Office of Community and Rural Affairs (OCRA). Lt. Governor Crouch has announced her candidacy for governor, and we were asked to focus specifically on the rule regarding political activity.

Should the Commission have any suggestions for further outreach possibilities, please let me know as I think it is a critical part of my role to assist in increasing awareness of the Code of Ethics and to get people to thinking about how it may apply to them and to stress the availability of resources the OIG can offer.

VII. Adjournment

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

The public meeting adjourned at 11:08 a.m.