

**MINUTES OF THE MEETING OF  
THE INDIANA STATE ETHICS COMMISSION  
May 10, 2018**

**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 James Clevenger, Chairperson; Corinne Finnerty; Sue Anne Gilroy; Priscilla Keith (arrived at 10:04 a.m.); and Katherine Noel. Staff present included Jennifer Cooper, Ethics Director; Tiffany Mulligan, Chief Legal Counsel; Kelly Elliott, Staff Attorney; and Cynthia Scruggs, Director of Administration, Office of Inspector General.

Others present were Kyle Gaddis, Deputy General Counsel, Economic Development Corporation; Manda Clevenger, Attorney E7, State Department of Health; Timothy Hawkins, Program Director E7, Family & Social Services Administration; Chris Kiefer, Chief of Staff, Department of Transportation; Wade Fulford, Deputy General Counsel, Department of Insurance; Cathleen Nine-Altevogt, Attorney/Ethics Officer; Stephen Robertson, Commissioner, Department of Insurance; Chelsea Smith, Administrative Law Judge, Department of Homeland Security; Ryan Edwards, Region 3 Itinerant Counselor, Family & Social Services Administration; Erin Quiring, Broad Band Executive, Family & Social Services Administration; Stephanie Mullaney, Deputy Attorney General, Attorney General’s Office; Matthew Savage, Deputy General Counsel, Department of Workforce Development; Rachel Russell, Ethics Officer/Deputy General Counsel, Department of Child Services; Deana Smith, Attorney, State Department of Health; Beth Green, General Counsel, Department of Workforce Development; Latosha Higgins, Managing Attorney/Ethics Officer, Family & Social Services Administration; Mark Tidd, Ethics Officer/Special Advisor, Department of Transportation; Sylvia Watson, General Counsel, State Library; Jared Prentice, Compliance Director, Department of Revenue; and Michelle Stanley, Legal Specialist, State Board of Accounts.

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

Commissioner Noel moved to adopt the Agenda and Commissioner Gilroy seconded the motion which passed (4-0). Commissioner Gilroy moved to approve the Minutes of the April 12, 2018 Commission Meeting and Commissioner Noel seconded the motion which passed (4-0).

**III. Consideration of Post-Employment Waiver  
**For Kevin Hetrick, Former Co-Project Manager**  
**Presented by Chris Kiefer, Chief of Staff**  
**Mark Tidd, Prequalification Director/Ethics Officer**  
**Indiana Department of Transportation****

Both the Prequalification Director/Ethics Officer, Mark Tidd, and the Chief of Staff, Christ Kiefer, presented a post-employment waiver on Kevin Hetrick’s behalf. Mr. Hetrick previously served as

a Co-Project Manager for the Department's I-69 Section Project Team where he screened and reduced alternatives from 14 to 5 from October 1, 2014 through July, 2015, but was not involved in substantial decision-making regarding policies, rules, or contracts. Mr. Hetrick came before the Commission to obtain permission to waive the particular matter restrictions of the post-employment rule as it related to his current position with Clark Dietz, Inc., an engineering consulting firm. At Clark Dietz, Inc., Mr. Hetrick manages roadway and bridge design projects and employees involved with same as well as construction inspection employees, which created the potential for Mr. Hetrick to be directly involved with future and/or current multiple statewide contracts between the Department and Clark Dietz, Inc. The Commission believed that Mr. Hetrick thoroughly understood the related ethics rules and how they applied to the contractual obligations and business relationship between the State and Clark Dietz, Inc. After the Commission discussed the matter, Commissioner Noel moved to approve the Post-Employment Restrictions Waiver and Commissioner Gilroy seconded the motion which passed (5-0).

**IV. Consideration of Post-Employment Restrictions Waiver  
For Wade Fulford, Deputy General Counsel  
Presented by Stephen Robertson, Commissioner (via telephone)  
Cathleen Nine-Altevogt, Attorney/Ethics Officer  
Indiana Department of Insurance**

Attorney/Ethics Officer, Cathleen Nine-Altevogt, and Commissioner Stephen Robertson presented a post-employment waiver on Wade Fulford's behalf. Mr. Fulford currently serves as Deputy General Counsel for the Department. Mr. Fulford came before the Commission to obtain permission to waive the cooling off period of the post-employment rule as it related to his potential employment with Lewis Wagner, a law firm. At Lewis Wagner, Mr. Fulford would serve as Senior Counsel in the areas of healthcare, medical malpractice, tort law, insurance defense, and mediation services, which creates the potential for Mr. Fulford to be directly involved with the Patients' Compensation Fund, an excess medical malpractice fund, that he defended cases against for the Department from 2012 through 2018. During that time, Mr. Fulford had no authority over the contracting process, but he did assign and oversee cases in which Lewis Wagner defended the Patients' Compensation Fund. The Commission believed that Mr. Fulford thoroughly understood the related ethics rule and how it applied to the relationships amongst the State, the Department, the Patients' Compensation Fund, and Lewis Wagner. After the Commission discussed the matter, Commissioner Noel moved to approve the Post-Employment Restrictions Waiver and Commissioner Gilroy seconded the motion which passed (5-0).

**V. Request for Formal Advisory Opinion**

**2018-FAO-0011 Ryan Edwards, Region 3 Itinerant Counselor, Indiana Vocational  
Rehabilitation  
Latosha Higgins, Managing Attorney/Ethics Officer  
Family & Social Services Administration**

Ryan Edwards is a state employee currently serving as an Itinerant Vocational Rehabilitation (VR) Counselor with the Family and Social Services Administration (FSSA). Latosha Higgins is the Ethics Officer for FSSA.

As a VR Counselor with FSSA, Mr. Edwards works with participants with disabilities that are looking to gain employment. He performs a variety of duties, including working directly with consumers in the form of his own caseload. He also assists with training new employees and filling in for supervisors when needed. When working with clients, he helps them develop job goals for employment. He uses a variety of tools to help them come up with a plan for employment. In addition, he assists in identifying any services the client needs, while also providing counseling and guidance. When a service has been identified as needed, he provides the client with an informed choice so that the client can select the best vendor for their needs.

Mr. Edwards is interested in transitioning from state employment to a private company called Portals (the Company). He provides that he has not negotiated any contracts with the Company and that he does not make contract decisions at FSSA. According to Ms. Higgins, FSSA does not have a contract with the Company, but the Company is included on a list of providers from which his clients can choose. Mr. Edwards' clients can select a provider through informed choice for different services that they provide. Specifically, when it is determined that a client is in need of a service, they are given choices of providers from which to select.

The clients may ask questions about the different providers, but Mr. Edwards, as a VR Counselor, does not make the selection for the client. The client must make the selection on his or her own. Mr. Edwards has had clients in previous years that have selected the Company, but Mr. Edwards has not referred a client to the Company in over a year due to not having any clients that needed the service the Company provides.

Mr. Edwards has signed off as a supervisor on authorizations and claims that have been generated by VR counselors, including himself. Ms. Higgins provided that in this role Mr. Edwards has very limited discretion in approving an authorization or signing off on a claim for services. So long as the individual is receiving needed services as identified on their individualized employment plan, an authorization is approved. Likewise, as long as the services authorized were actually delivered to the individual, the claim is approved. Mr. Edwards provides that FSSA does not regulate or license the Company.

If Mr. Edwards accepts a position with the Company, he would be working in a department that deals with Medicaid programs. He will assist with overseeing home modifications for the elderly. Specifically the program is intended to assist Medicaid recipients in getting an accessible bathroom when needed.

Mr. Edwards requested an informal advisory opinion from the Office of Inspector General on April 13, 2018. The informal advisory opinion raised concerns regarding Mr. Edwards' approvals of referrals to the Company and his position as a supervisor with possible discretionary authority over the administration of a contract. Mr. Edwards is now seeking a Formal Advisory Opinion to determine if the post-employment rule's cooling off period would apply to him or if he can accept the position with the Company immediately after leaving state employment.

Mr. Edwards' post-employment opportunity with the Company implicates the provisions of the Code pertaining to confidential information, conflicts of interests, and post-employment. The application of each provision to Mr. Edwards' prospective post-employment opportunity with the Company is analyzed below.

*A. Confidential Information*

IC 4-2-6-6 prohibits Mr. Edwards 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.

Mr. Edwards confirmed that he would not be required to utilize any confidential information in his potential employment with the Company. So long as any compensation Mr. Edwards receives does not result from confidential information, his potential employment with the Company would not violate IC 4-2-6-6.

*B. Conflict of Interests*

IC 4-2-6-9(a)(1) prohibits Mr. Edwards from participating in any decision or vote, or matter related to that decision or vote, if he has a financial interest in the outcome of the matter. Similarly, IC 4-2-6-9(a)(4) prohibits him from participating in any decision or vote, or matter related to that decision or vote, in which a person or organization with whom he 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."

Ms. Higgins provides that Mr. Edwards discussed the possibility of a potential opportunity informally with the owner of the Company, whom he knows on a personal level. She explained that no formal interview has taken place, and Mr. Edwards wanted to ensure that he was in full compliance with all of the ethics rules before pursuing a specific opportunity with the Company.

Once employment negotiations begin, Mr. Edwards would be prohibited from participating in any decision or vote, or matter related to a decision or vote, in which the Company would have a financial interest in the outcome of the matter.

Ms. Higgins provides that as a VR Counselor, Mr. Edwards does not have the discretion to choose a certain provider, such as the Company, for a consumer or encourage a consumer to choose one provider over another. Mr. Edwards only advises consumers on options based on the type of services needed and location, and the consumer chooses the provider. Further, when approving authorizations and claims for services, Mr. Edwards is approving that the service is necessary (based on their individualized plan) when approving authorizations and that the services were delivered when approving claims; in either situation he is not approving any particular provider for the services – the consumer makes that decision.

Accordingly, it does not appear that Mr. Edwards has a potential conflict of interests at this time. Mr. Edwards must ensure that he does not participate in any decision or vote, or matters relating to any such decision or vote, in which the Company would have a financial interest in the outcome of the matter for the remainder of his state employment. Further, if he identifies a potential conflict of interests, he must follow the requirements in IC 4-2-6-9(b) to avoid violating this rule.

*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 Mr. Edwards from accepting employment from an employer for 365 days from the date that he leaves state employment under various circumstances.

First, Mr. Edwards 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. Higgins provided that Mr. Edwards does not anticipate engaging in any lobbying activities in his prospective employment as a consultant with the Company. To the extent that Mr. Edwards does not engage in executive branch lobbying for one year after leaving state employment, his intended employment with the Company would not violate this provision of the post-employment rule.

Second, Mr. Edwards 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.

Based on the information provided by Ms. Higgins, the Company does not have a contract with FSSA. Accordingly, the Commission finds that Mr. Edwards did not negotiate or administer a contract with the Company on behalf of FSSA, and he is not prohibited under this provision from accepting employment with the Company immediately upon leaving state employment.

Third, Mr. Edwards is prohibited 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.

Based on the information provided, FSSA does not regulate or license the Company. Accordingly, the Commission finds that this provision does not apply to Mr. Edwards, and he is not prohibited under this provision from accepting employment with the Company immediately upon leaving state employment.

Fourth, Mr. Edwards is prohibited from accepting employment from an employer if the circumstances surrounding the hire suggest the employer's purpose is to influence him in his official capacity as a state employee. The information provided does not suggest that the Company has extended an offer of employment to Mr. Edwards in an attempt to influence him in his capacity as a state employee.

Finally, Mr. Edwards 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.

Mr. Edwards has not identified any particular matters. The Commission finds that Mr. Edwards must ensure compliance with the particular matter restriction and refrain from assisting or representing any person on any of the particular matters listed above that he may have personally and substantially worked on during his state employment.

Subject to the foregoing analysis and the application of the one-year restriction regarding executive branch lobbying, the Commission finds that Mr. Edwards' potential post-employment opportunity with the Company would not violate 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 (5-0).

## **VI. Request for Formal Advisory Opinion**

**2018-FAO-0012 Timothy Hawkins, Program Director E7  
Latosha Higgins, Managing Attorney/Ethics Officer  
Family & Social Services Administration**

Latosha Higgins, Ethics Officer for the Indiana Family and Social Services Administration (FSSA), is requesting a Formal Advisory Opinion on behalf of Timothy Hawkins.

Mr. Hawkins began working for FSSA as a contractor through Knowledges Services in March 2017 in the Office of Medicaid Policy and Planning (OMPP). OMPP oversees the administration of Indiana Health Coverage Programs (IHCP), which include Medicaid, the Children's Health Insurance Program (CHIP) and the Healthy Indiana Plan (HIP). Mr. Hawkins became an FSSA employee in February 2017. His duties include ensuring that Medicaid reimbursement rates and payments are established and implemented in accordance with the State Plan, as well as state and federal laws and regulations. The purpose of his position is to effectively manage the Medicaid

and CHIP state plan amendment process ensuring compliance with all IHCP programs, the Code of Federal Regulations, Indiana Code, and Centers for Medicare and Medicaid Services (CMS) requirements. He collaborates with FSSA and CMS staff to ensure amendments are submitted timely and tracks pending state plan amendments to ensure compliance with CMS deadlines. He also maintains the OMPP Civil Rights Plan and provides assistance to the OMPP Government Affairs Analyst and Manager of State Plans and Projects, among other duties.

On April 24, 2018, Mr. Hawkins notified Ms. Higgins that he applied for a consultant position with Public Consulting Group (PCG) on April 6, 2018. He completed a phone interview on April 10, 2018 and an in person interview on April 25, 2018. Ms. Higgins reviewed the post-employment restrictions with Mr. Hawkins. Additionally, his supervisor has put in place an internal screen so that Mr. Hawkins does not have any involvement with matters related to PCG.

PCG is a for profit company providing management consulting and technology services to public sector education, health, human services, and other government. The company is headquartered in Boston, Massachusetts with offices in the United States, Canada, England and Poland. FSSA currently has contracts with PCG-Indiana, Inc. through the Division of Aging and Division of Disability and Rehabilitative Services. These PCG contracts are administered at the division level by the respective divisions. Mr. Hawkins does not have any involvement with these contracts.

Mr. Hawkins has neither engaged in the negotiation or administration of any contract between the FSSA and PCG. Further, Mr. Hawkins was not in a position to make any discretionary decisions affecting the outcome of the negotiation or administration of any contract with PCG. Mr. Hawkins' only involvement with matters related to PCG was in 2017 for three months when he assisted a team of two FSSA employees reviewing the FSSA Home and Community Based Services Statewide Transition Plan for grammar and structure while working as a contractor to FSSA through Knowledges Services. He has not worked on any matters related to any contract with PCG since that time. Furthermore, his supervisor is currently screening him by not assigning any Home and Community Based Services Statewide Transition Plan work to him.

Mr. Hawkins' role as a consultant with PCG would include tasks on a variety of consulting and operational projects; including travel to client sites for meetings, observations, focus groups, and data collection. He would be expected to complete a wide range of work assignments that may include data collection, quantitative analysis, report design, report drafting, and preparation of various materials for client presentations.

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

Given that FSSA believes Mr. Hawkins would not use confidential information in his potential employment with PCG; that he did not make any regulatory or licensing decisions that directly related to PCG who is not regulated by FSSA; that as an employee he did not personally or substantially work on any matter identified as a particular matter under IC 4-2-6-11; that there is

no evidence that PCG offered him the position to influence him in his capacity as an FSSA employee; and that he has not participated in any decision vote or other matter related to such decision or vote in which he, by virtue of his employment negotiations with PCG, or PCG would have any financial interest, FSSA believes Mr. Hawkins's prospective employment is permissible under Indiana's ethics laws and that he should be able to accept a position with PCG immediately upon leaving employment.

Mr. Hawkins' post-employment opportunity with PCG implicates the provisions of the Code pertaining to confidential information, conflicts of interests, and post-employment. The application of each provision to Mr. Hawkins' prospective post-employment opportunity with PCG is analyzed below.

*A. Confidential Information*

IC 4-2-6-6 prohibits Mr. Hawkins 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. Mr. Hawkins confirmed that he would not utilize confidential information in his potential employment with PCG. So long as any compensation Mr. Hawkins receives does not result from confidential information, his potential employment with PCG would not appear to violate IC 4-2-6-6.

*B. Conflicts of Interests*

IC 4-2-6-9(a)(1) prohibits Mr. Hawkins from participating in any decision or vote, or matter related to any such decision or vote, if he has a financial interest in the outcome of the matter. Similarly, IC 4-2-6-9(a)(4) prohibits Mr. Hawkins from participating in any decision or vote, or matter related to any such decision or vote, in which a person or organization with whom he 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, as Mr. Hawkins completed a phone interview on April 10, 2018 and an in-person interview on April 25, 2018. Accordingly, a conflict of interests would arise for Mr. Hawkins if he participates in a decision or vote, or matter related to such decision or vote, in which PCG would have a financial interest in the outcome.

Ms. Higgins provides that Mr. Hawkins' normal job responsibilities with FSSA do not include participating in decisions or votes, or matters related to such decisions or votes, in which PCG would have a financial interest in the outcome. PCG-Indiana Inc. has contracts with FSSA through the Division of Aging and Division of Disability and Rehabilitative Services. These PCG contracts are administered at the division level by the respective divisions, and Mr. Hawkins does not have any involvement in these contracts.



Mr. Hawkins informed Ms. Higgins of the employment opportunity with PCG, and Mr. Hawkins' supervisor has implemented an internal screen to ensure that Mr. Hawkins does not have any involvement with matters related to PCG as a precautionary measure.

The Commission finds that Mr. Hawkins does not have a potential conflict of interests at this time. However, Mr. Hawkins must continue to ensure he does not participate in any decisions or votes, or matters relating to any such decisions or votes, in which PCG has a financial interest in the outcome of the matter for the remainder of his state employment. Further, if he identifies a potential conflict of interests, he must follow the requirements in IC 4-2-6-9(b).

### *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 Mr. Hawkins from accepting employment from an employer for 365 days from the date that he 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 and therefore includes a client or customer of a self-employed individual.

First, Mr. Hawkins 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). The information provided by Ms. Higgins indicates that Mr. Hawkins understands this restriction and has agreed to abide by the one-year restriction regarding registering as an executive branch lobbyist.

Mr. Hawkins does not anticipate engaging in any lobbying activities in his prospective employment with PCG. To the extent that Mr. Hawkins does not engage in executive branch lobbying for one year after leaving state employment, his intended employment with PCG would not violate this provision of the post-employment rule.

Second, Mr. Hawkins 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. Based on the information provided, Mr. Hawkins neither engaged in the negotiation or administration of any contract between the State and PCG, nor was he in a position to make a discretionary decision affecting the outcome of the negotiation or administration of any contract with PCG.

Accordingly, the Commission further finds that Mr. Hawkins is not prohibited under this provision from accepting employment with PCG immediately upon leaving state employment.

Third, Mr. Hawkins is prohibited 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.

This provision does not apply to Mr. Hawkins' role with FSSA, as PCG is not regulated by FSSA and Mr. Hawkins did not make any regulatory or licensing decisions that directly applied to PCG as a state employee. Accordingly, he is not prohibited under this provision from accepting employment with PCG immediately upon leaving state employment.

Fourth, Mr. Hawkins is prohibited from accepting employment from an employer if the circumstances surrounding the hire suggest the employer's purpose is to influence him in his official capacity as a state employee. The information presented to the Commission does not suggest that the offer of employment from PCG would be extended to Mr. Hawkins in an attempt to influence him in his capacity as a state employee. Accordingly, the Commission finds that this restriction would not apply to his intended employment opportunity with PCG.

Finally, Mr. Hawkins 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.

Mr. Hawkins has not identified any particular matters. The Commission finds that Mr. Hawkins must ensure compliance with the particular matter restriction and refrain from assisting or representing any person on any of the particular matters listed above that he may have personally and substantially worked on during his state employment.

Subject to the foregoing analysis and the application of the one-year restriction regarding executive branch lobbying, the Commission finds that Mr. Hawkins' potential post-employment opportunity with PCG would not violate the post-employment restrictions found in IC 4- 2-6-11.

Commissioner Gilroy moved to approve the Commission's findings, and Commissioner Noel seconded the motion which passed (5-0).

## **VII. Request for Formal Advisory Opinion**

**2018-FAO-0014 Erin Quiring, Assistant Deputy Director, Quality Improvement  
Latosha Higgins, Managing Attorney/Ethics Officer**

## **Family & Social Services Administration**

Erin Quiring is a state employee with the Indiana Family and Social Services Administration (FSSA). Latosha Higgins serves as FSSA's Managing Attorney and Ethics Officer and has submitted a Formal Advisory Opinion request on behalf of Ms. Quiring.

Ms. Quiring joined the Division of Mental Health and Addiction (DMHA) within FSSA in December of 2012 as a Provider & Community Liaison. In July of 2015, Ms. Quiring was promoted to the position of Assistant Deputy Director for Quality Improvement. In that role, she is responsible for managing the team that conducts audits and reviews complaints regarding DMHA's certified community mental health centers (CMHCs), licensed private mental health institutions, and certified addiction service providers. Ms. Quiring oversees a contract with Intecare, Inc. (Intecare), a nonprofit healthcare management service that conducts annual consumer satisfaction surveys of consumers of mental health and addiction services provided by DMHA certified entities. Her responsibilities include processing Intecare's claims under the contract.

Ms. Quiring also works part-time for C2H, a non-for-profit organization that provides consumers community resources to address their basic needs, including information regarding mental health and addiction treatment facilities such as the CMHCs, licensed private mental health institutions and certified addiction services providers that Ms. Quiring's team audits. C2H is a member of the Indiana 2-1-1 Partnership (IN211), an independent nonprofit organization that convenes all 2-1-1 centers in Indiana around various topics that impact the 2-1-1 system in Indiana. IN211 contracts with state agencies for state-wide projects. IN211 contracts for the following three different divisions in FSSA: Supplemental Nutrition Assistance Program through the Division of Family Resources; the Adult Protective Services reporting hotline through the Division of Aging; and the Open Beds project through DMHA. IN211 also has a contract with the Indiana State Department of Health. C2H has a business relationship with IN211 wherein C2H is reimbursed for providing services related to the aforementioned contracts. Ms. Quiring's compensation is not directly billed to any FSSA contract or other state contract to her knowledge. Rather the source of her compensation is C2H's general operating funds.

Ms. Quiring worked for C2H from February of 2005 to February of 2007. She returned to C2H in October of 2010 and worked full-time at C2H until she began employment with FSSA. Since December of 2012, Ms. Quiring has worked part-time as a supervisor and hiring specialist. She currently serves as a supervisor an average of one day per week and as needed when the C2H is hiring. When serving as a supervisor, Ms. Quiring ensures Information and Referral Specialists (I&R Specialists) are receiving breaks. She also answers questions related to the calls I&R Specialists receive. Occasionally, she may take a call when the agency is short-staffed, there is a call in Spanish, or when a caller requests to speak to a supervisor.

When she takes a call, her duties include serving as the point of contact for individuals calling for information about available resources for their various needs. She uses a database at C2H to provide information about resources to callers. She provides only basic information to callers. Additionally, she adheres to C2H policies and procedures, which may include a script depending on the type of call.

There is the potential that in performing her duties as a supervisor and hiring specialist for C2H that Ms. Quiring may receive a call regarding a resource that includes the CMHCs, licensed private mental health institutions and certified addiction services providers that her FSSA team audits. In that circumstance, Ms. Quiring would be required to provide the appropriate information to the individual. However, Ms. Quiring has no discretion in selecting the resources that she provides to callers. Rather the information provided is based on the location of the caller. For example, when a caller requests resources, Ms. Quiring gathers information including the zip code for the caller. She enters the information into the database and the database populates the available resources. Ms. Quiring is required to provide the information populated by the database, unless the consumer requests a resource outside of their area.

In the past Ms. Quiring has also provided updated DMHA provider information to the 211 Database. Aside from providing this information to the 211 Database, she has no other interaction or involvement with C2H or the IN211 in her position at FSSA.

FSSA believes that Ms. Quiring's part-time employment with C2H does not conflict with her duties at FSSA. Ms. Higgins also provides that, in her role as Assistant Deputy Director for Quality Improvement, Ms. Quiring is not in a position to participate in decisions or votes or other matters related to a decision or vote where C2H would have a financial interest.

Given that Ms. Quiring's part-time employer C2H has a business relationship where it receives payments from a contractor with multiple contracts with the State, and Ms. Quiring's position as supervisor and hiring specialist may include providing services related to those contracts, Ms. Quiring seeks a formal advisory opinion regarding whether she may continue her part-time employment without violating IC 4-2-6-10.5 and its prohibitions against an employee knowingly having a financial interest in a contract made by a state agency, unless the employee does not have contracting responsibilities and files a written disclosure. Ms. Quiring also seek a formal opinion on the applicability of IC 35-44.1-1-4, which prohibits certain public servants from having a pecuniary interest in or deriving a profit from a contract with the public servant's agency, to her circumstances.

The Commission does not provide advice regarding past conduct; therefore, it cannot advise whether Ms. Quiring's outside employment with C2H was in compliance with the Code of Ethics prior to seeking this opinion. Accordingly, this opinion only addresses Ms. Quiring's outside employment with C2H going forward.

#### *A. Outside employment*

An outside employment or professional activity opportunity creates a conflict of interests under IC 4-2-6-5.5(a) if it results in the employee: 1) receiving compensation of substantial value when 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 or her official duties that his or her 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 or her official position to secure unwarranted privileges or exemptions of substantial value that are not properly available to similarly situated individuals outside state government.

The Commission generally defers to an agency's Ethics Officer regarding outside employment opportunities since it views them as being in the best position to determine whether a conflict of interests might exist between an employee's state duties and an outside employment opportunity.

Ms. Higgins, FSSA's Ethics Officer, provides that Ms. Quiring's part-time employment as a supervisor for C2H is not incompatible with her FSSA duties, nor does it require recusal from her official responsibilities. Besides providing DMHA provider information to the 211 Database, she has no other interaction or involvement with C2H or the IN211 in her position at FSSA. While there is a potential that Ms. Quiring, while serving in her role as supervisor for C2H, may receive a call regarding a resource that includes the CMHCs, licensed private mental health institutions and certified addiction services providers that her FSSA team audits, Ms. Quiring has no discretion in selecting the resources that she provides to callers. Rather the information provided is based on the location of the caller; the caller's zip code is entered into the database and the database populates the available resources.

The Commission confirmed that Ms. Quiring understands that she is prohibited from disclosing confidential information she gained from FSSA in her position with C2H and that she must not use or attempt to use her official position to secure unwarranted privileges or exemptions of substantial value that are not properly available to similarly situated individuals outside state government.

Accordingly, the Commission finds that Ms. Quiring's outside employment with C2H would not violate IC 4-2-6-5.5.

*B. Conflict of interests-decisions and votes*

IC 4-2-6-9 (a)(1) prohibits Ms. Quiring from participating in any decision or vote, or matter relating to that decision or vote, if she has a financial interest in the outcome of the matter. Similarly, IC 4-2-6-9(a)(3) prohibits Ms. Quiring from participating in any decision or vote, or matter relating to that decision or vote, if a business organization in which she is serving as an employee has a financial interest in the matter. The definition of "financial interest" in IC 4-2-6-1(a)(11) includes, in part, "an interest arising from employment."

Ms. Quiring currently works as an Assistant Deputy Director for Quality Improvement for FSSA and is seeking to maintain her outside employment with C2H. Accordingly, she would be prohibited from participating in any decisions or votes, or matter relating to those decisions or votes, in which C2H would have a financial interest in the outcome.

Ms. Higgins provides that Ms. Quiring is not in a position at FSSA to participate in any decisions or votes, or matters related to a decision or vote, in which C2H would have a

financial interest in the outcome. Accordingly, the Commission finds that a potential conflict of interests does not currently exist for Ms. Quiring.

If Ms. Quiring's circumstances change and a potential conflict of interests is identified in the future, she must follow the disclosure requirements in IC 4-2-6-9(b), including notifying her appointing authority and seeking an advisory opinion from or filing a written disclosure statement with the Commission.

*C. 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 any state agency. The Code defines "financial interest" to include an interest arising from employment. The Commission has interpreted this rule to apply when a state employee derives compensation from a contract between a state agency and a third party. This prohibition however does not apply to an employee that does not participate in or have official responsibility for any of the activities of the contracting agency, provided certain statutory criteria are met.

Ms. Quiring's part-time outside employer, C2H, has a business relationship with IN211 through which C2H is reimbursed for providing services related to the contracts that IN211 has with FSSA. However, Ms. Higgins provides that Ms. Quiring's compensation is not directly billed to any FSSA contract or other state contract. The source of her compensation is C2H's general operating funds.

Accordingly, the Commission finds that Ms. Quiring would not have a financial interest in a state contract through her position at C2H and would not be in violation of this rule.

*D. Criminal conflict of interests statute*

In the Formal Advisory Opinion request, Ms. Higgins also asked whether IC 35-44.1-1-4, which prohibits certain public servants from having a pecuniary interest in or deriving a profit from a contract with the public servant's agency, would apply to Ms. Quiring's circumstances.

IC 35-44.1-1-4, is the criminal statute that prohibits any public servant from knowingly or intentionally having a pecuniary interest in or deriving a profit from a contract/purchase connected with an action by the agency served by the public servant. The statute contains certain exceptions in subsection (c). One of these exceptions applies to an individual who obtains written approval from the Commission that the individual will not or does not have a conflict of interests in connection with a contract or purchase under IC 4-2-6 and IC 35-44.1-1-4.

The Commission confirmed with Ms. Higgins that Ms. Quiring does not have a pecuniary interest in any contracts with the agency she serves (FSSA), as the salary she receives for her part-time employment at C2H is not derived from any FSSA or other state contracts.

Accordingly, this opinion serves as written approval from the Commission that Ms. Quiring does not have a conflict of interests in connection with a contract or purchase under IC 4-2-6 and IC 35-44.1-1-4.

*E. Confidential information*

Ms. Quiring 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 Ms. Quiring 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. 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. Quiring is exposed to or has access to such confidential information in her position with FSSA, she would be prohibited not only from divulging that information, but from ever using it to benefit any person, including her outside employer, in any manner.

*F. Use of state property and Ghost employment*

IC 4-2-6-17 prohibits Ms. Quiring 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. Likewise, 42 IAC 1-5-13 prohibits Ms. Quiring 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.

To the extent that Ms. Quiring observes these provisions in her employment with FSSA, such outside professional activity would not violate these ethics laws.

Subject to the foregoing analysis, the Commission finds that Ms. Quiring’s outside employment would not be contrary to the Code of Ethics

Commissioner Noel moved to approve the Commission’s findings, and Commissioner Keith seconded the motion which passed (5-0).

**VIII. Request for Formal Advisory Opinion**

**2018-FAO-0015 Melissa Carroll, Program Director 1, Projects for Assistance in Transition from Homelessness  
Latosha Higgins, Managing Attorney/Ethics Officer  
Family & Social Services Administration**

Melissa Carroll is a state employee with the Indiana Family and Social Services Administration (FSSA). Latosha Higgins serves as FSSA's Managing Attorney and Ethics Officer and has submitted a Formal Advisory Opinion request on behalf of Ms. Carroll.

Ms. Carroll joined the Division of Mental Health and Addiction (DMHA) within FSSA in November 2013. In February 2018, Ms. Carroll was promoted to the position of Program Manager for Projects for Assistance in Transition from Homelessness (PATH). PATH is a federal grant program that allows funding to be distributed for homeless outreach teams at selected local, public, or not-for-profit organizations. These teams are responsible for outreach to individuals who have Serious Mental Illness and/or substance use disorder and who are chronically homeless or at imminent risk of becoming homeless.

Under the PATH program, DMHA contracts with the following 13 Community Mental Health Center ("CMHC") providers: Adult & Child, Aurora, Centerstone, Health & Hospital, Hamilton Center, LifeSpring, Meridian, MHA of Vigo County, Oaklawn, Park Center, Porter-Starke, Swanson and Wabash. Each CMHC has homeless outreach workers that go out into the community to engage, assess and enroll potential consumers into the PATH program. The CMHCs submit their claims monthly with deliverables. These deliverables are supportive documents provided by the CMHC as proof of services provided and salaries paid to PATH staff. Ms. Carroll's duties include reviewing claims submissions for reimbursement services provided, responding to CMHC questions regarding PATH, providing education and conducting annual quality assurance site visits. Ms. Carroll's recommendations regarding the payment of claims are subject to two levels of review by DMHA Deputy Directors. Pursuant to the Health Insurance Portability and Accountability Act, the claims that Ms. Carroll reviews do not include individual names of consumers.

Ms. Carroll also works part-time (every other Friday, Saturday and Sunday) as an information and referral specialist (I&R Specialist) for C2H, a non-for-profit organization that provides consumers community resources to address their basic needs, including information regarding mental health and addiction treatment facilities, such as the CMHCs, licensed private mental health institutions and certified addiction services providers that Ms. Carroll's team audits. C2H is a member of the Indiana 2-1-1 Partnership (IN211), an independent nonprofit organization that convenes all 2-1-1 centers in Indiana around various topics that impact the 2-1-1 system in Indiana. IN211 contracts with state agencies for state-wide projects. IN211 contracts for the following programs through three different divisions in FSSA: Supplemental Nutrition Assistance Program through the Division of Family Resources; the Adult Protective Services reporting hotline through the Division of Aging; and the Open Beds project through DMHA. IN211 also has a contract with the Indiana State Department of Health. C2H has a business relationship with IN211 wherein C2H is reimbursed for providing services related to the aforementioned contracts. Ms. Carroll's compensation is not directly billed to any FSSA contract or other state contract to her knowledge. Rather the source of her compensation is C2H's general operating funds. Ms. Carroll provides that per Marilyn Cummins, Accounting & Human Resources Manager for C2H, I&R Specialists are not paid directly from any state contract.

Ms. Carroll's duties as an I&R Specialist at C2H include serving as the point of contact for individuals calling for information about available resources for their various needs. She uses a



database at C2H to provide information about resources to callers. She does not have any input or control over which resources are included in the database. As an I&R Specialist she is required to provide only basic information to callers. Additionally, she generally adheres to a script and is subject to quality assurances review to ensure that she is adhering to C2H policies and procedures.

C2H places I&R Specialists in specific groups that allow them to have access to certain type of calls from individuals requesting assistance. The groups include: Crisis calls (i.e. suicide hotline), Open Beds, the Energy Assistance Program, and Vermont211. Open Beds is the only group Ms. Carroll currently is not in. Although Ms. Carroll has been briefed about the Open Beds project, she has not received any training through C2H. Therefore, she is not permitted to handle calls regarding inquiries about the Open Beds project at this time.

Open beds is a DMHA program used to help address the opioid crisis. It is another resource for anyone looking for treatment for an opioid addiction. The purpose of the program is to be able to see available beds at selected locations in real time. The program is administered by the DMHA addictions team. Ms. Carroll is not a member of the DMHA addiction team. The PATH program is separate and distinct from Open Beds. Furthermore, Ms. Carroll's duties at FSSA do not include any involvement with the Open Beds project.

There is the potential that in performing her duties as an I&R Specialist for C2H that Ms. Carroll may receive a call requesting a resource that includes the CMHCs that she oversees for the PATH program. In which instance, Ms. Carroll would be required to provide the appropriate information to the individual. However, Ms. Carroll has no discretion in selecting the resources that she provides to callers. Rather the information provided is based on the location of the caller. For example, when a caller requests resources, Ms. Carroll gathers information including the zip code for the caller. She enters the information into the database and the database populates the available resources. Ms. Carroll is required to provide the information populated by the database, unless the consumer requests a resource outside of their area.

FSSA believes that Ms. Carroll's part-time employment with C2H does not conflict with her duties at FSSA. Ms. Higgins also provides that, in her role as the Program Director, Ms. Carroll is not in a position to participate in any decisions or votes or other matters related to a decision or vote where C2H would have a financial interest.

Given that Ms. Carroll's part-time employer C2H has a business relationship where it receives payments from a contractor with multiple contracts with the State, and Ms. Carroll's position as an I&R Specialist may include providing services related to those contracts, Ms. Carroll seeks a formal advisory opinion regarding whether she may continue her part-time employment without violating IC 4-2-6-10.5 and its prohibitions against an employee knowingly having a financial interest in a contract made by a state agency, unless the employee does not have contracting responsibilities and files a written disclosure. Ms. Carroll also seek a formal opinion on the applicability of IC 35-44.1-1-4, which prohibits certain public servants from having a pecuniary interest in or deriving a profit from a contract with the public servant's agency, to her circumstances.

The Commission cannot provide advice regarding past conduct; therefore, it cannot advise whether Ms. Carroll's outside employment with C2H was in compliance with the Code of Ethics prior to seeking this opinion. Accordingly, this opinion only addresses Ms. Carroll's outside employment with C2H going forward.

#### *G. Outside employment*

An outside employment or professional activity opportunity creates a conflict of interests under IC 4-2-6-5.5(a) if it results in the employee: 1) receiving compensation of substantial value when 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 or her official duties that his or her 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 or her official position to secure unwarranted privileges or exemptions of substantial value that are not properly available to similarly situated individuals outside state government.

The Commission generally defers to an agency's Ethics Officer regarding outside employment opportunities since it views them as being in the best position to determine whether a conflict of interests might exist between an employee's state duties and an outside employment opportunity.

Ms. Higgins, FSSA's Ethics Officer, provides that Ms. Carroll's part-time employment as an I&R Specialist for C2H is not incompatible with her FSSA duties, nor does it require recusal from her official responsibilities. The PATH program she oversees is separate and distinct from the Open Beds program through DMHA, and she has no interaction or involvement with C2H or the IN211 in her position at FSSA. While there is a potential that Ms. Carroll, while serving in her role as I&R Specialist for C2H, may receive a call regarding a resource that includes the CMHCs that she oversees for the PATH program, Ms. Carroll has no discretion in selecting the resources that she provides to callers. Rather the information provided is based on the location of the caller; the caller's zip code is entered into the database and the database populates the available resources.

The Commission confirmed that Ms. Carroll understands that she is prohibited from disclosing confidential information she gained from FSSA in her position with C2H and that she must not use or attempt to use her official position to secure unwarranted privileges or exemptions of substantial value that are not properly available to similarly situated individuals outside state government.

Accordingly, the Commission finds that Ms. Carroll's outside employment with C2H would not violate IC 4-2-6-5.5.

#### *H. Conflict of interests-decisions and votes*

IC 4-2-6-9 (a)(1) prohibits Ms. Carroll from participating in any decision or vote, or matter relating to that decision or vote, if she has a financial interest in the outcome of the matter.

Similarly, IC 4-2-6-9(a)(3) prohibits Ms. Carroll from participating in any decision or vote, or matter relating to that decision or vote, if a business organization in which she is serving as an employee has a financial interest in the matter. The definition of “financial interest” in IC 4-2-6-1(a)(11) includes, in part, “an interest arising from employment”.

Ms. Carroll currently works as a Program Director for the PATH program and is seeking to maintain her outside employment with C2H. Accordingly, she would be prohibited from participating in any decisions or votes, or matter relating to those decisions or votes, in which C2H would have a financial interest in the outcome.

Ms. Higgins provides that Ms. Carroll is not in a position at FSSA to participate in any decisions or votes, or matters related to a decision or vote, in which C2H would have a financial interest in the outcome. Accordingly, the Commission finds that a potential conflict of interests does not currently exist for Ms. Carroll.

If Ms. Carroll’s circumstances change and a potential conflict of interests is identified in the future, she must follow the disclosure requirements in IC 4-2-6-9(b), including notifying her appointing authority and seeking an advisory opinion from or filing a written disclosure statement with the Commission.

*I. 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 any state agency. The Code defines “financial interest” to include an interest arising from employment. The Commission has interpreted this rule to apply when a state employee derives compensation from a contract between a state agency and a third party. This prohibition however does not apply to an employee that does not participate in or have official responsibility for any of the activities of the contracting agency, provided certain statutory criteria are met.

Ms. Carroll’s part-time outside employer, C2H, has a business relationship with IN211 through which C2H is reimbursed for providing services related to the contracts that IN211 has with FSSA. However, Ms. Higgins provides that Ms. Carroll’s compensation is not directly billed to any FSSA contract or other state contract. The source of her compensation is C2H’s general operating funds.

Accordingly, the Commission finds that Ms. Carroll would not have a financial interest in a state contract through her position at C2H and would not be in violation of this rule.

*J. Criminal conflict of interests statute*

In the Formal Advisory Opinion request, Ms. Higgins also asked whether IC 35-44.1-1-4, which prohibits certain public servants from having a pecuniary interest in or deriving a profit from a contract with the public servant’s agency, would apply to Ms. Carroll’s circumstances.

IC 35-44.1-1-4 is the criminal statute that prohibits any public servant from knowingly or intentionally having a pecuniary interest in or deriving a profit from a contract/purchase connected with an action by the agency served by the public servant. The statute contains certain exceptions in subsection (c). One of these exceptions applies to an individual who obtains written approval from the Commission that the individual will not or does not have a conflict of interests in connection with a contract or purchase under IC 4-2-6 and IC 35-44.1-1-4.

The Commission confirmed with Ms. Higgins that Ms. Carroll does not have a pecuniary interest in any contracts with the agency she serves (FSSA), as the salary she receives for her part-time employment at C2H is not derived from any FSSA or other state contracts.

Accordingly, this opinion serves as written approval from the Commission that Ms. Carroll does not have a conflict of interests in connection with a contract or purchase under IC 4-2-6 and IC 35-44.1-1-4.

*K. Confidential information*

Ms. Carroll 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 Ms. Carroll 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. 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. Carroll is exposed to or has access to such confidential information in her position with FSSA, she would be prohibited not only from divulging that information but from ever using it to benefit any person, including her outside employer, in any manner.

*L. Use of state property and Ghost employment*

IC 4-2-6-17 prohibits Ms. Carroll 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. Likewise, 42 IAC 1-5-13 prohibits Ms. Carroll 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.

To the extent that Ms. Carroll observes these provisions in her employment with FSSA, such outside professional activity would not violate these ethics laws.

Subject to the foregoing analysis, the Commission finds that Ms. Carroll’s outside employment would not be contrary to the Code of Ethics.

Commissioner Noel moved to approve the Commission's findings, and Commissioner Keith seconded the motion which passed (5-0).

**IX. 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 35, which covered post-employment restrictions, conflicts of interests, and outside employment.

Ms. Cooper also announced the upcoming 2018 Auditor & Investigator Conference, set to take place on June 5, 2018, which would include speakers from the State Examiner's Office, the Indiana State Police, and the Office of Inspector General.

**X. Adjournment**

Commissioner Noel moved to adjourn the public meeting of the State Ethics Commission and Commissioner Gilroy seconded the motion, which passed (5-0).

The public meeting adjourned at 10:50 a.m.