

**MINUTES OF THE MEETING OF
THE INDIANA STATE ETHICS COMMISSION
August 10, 2017**

I. Call to Order

A regular meeting of the State Ethics Commission (“Commission”) was called to order at 10:00 a.m. Members present included James N. Clevenger, Chairperson; Bob Jamison; Daryl Yost; Priscilla Keith (arrived late), and Peter Nugent. Staff present included Lori Torres, Inspector General; Jennifer Cooper, Ethics Director; Stephanie Mullaney, Compliance Officer/Staff Attorney; Tiffany Mulligan, Chief Legal Counsel; Matthew Savage, Staff Attorney; Mark Mitchell, Special Agent; Amy Johnson, Special Agent; Darrell Boehmer, Director of Field Investigations; and Celeste Croft, Legal Assistant, Office of Inspector General.

Others present were Adrienne Brune, Attorney E7, State Department of Health; Deana Smith, Attorney E7, State Department of Health; Rachel Russell, Legal Affairs, State Department of Health; Hilari Sautbine, Attorney E7, State Department of Health; Kathleen Mills, Ethics Officer/Attorney, Department of Environmental Management; Mark Tidd, Prequalification & Permits Director, Department of Transportation; Alison Maloof, Chief Legal Counsel, Department of Transportation; Shawn Williams, Project Supervisor for Fort Wayne District, Department of Transportation; Joe Hoage, General Counsel, Bureau of Motor Vehicles; Lori Schein, Deputy General Counsel, Bureau of Motor Vehicles; Elyssa Campodonico-Barr, Chief of Staff/Ethics Officer, Bureau of Motor Vehicles; Sarah Kamhi, Deputy General Counsel, Economic Development Corporation; Lamica Simmons, Human Resources Assistant, Economic Development Corporation; Tammera Glickman, Assistant General Counsel, Department of Administration; Chelsea Smith, Administrative Law Judge, Department of Homeland Security; Justin Guedel, Staff Attorney, Department of Homeland Security; and David Fleischhacker, Employee Relations Attorney, State Personnel Department.

II. Adoption of Agenda and Approval of Minutes

Commissioner Yost moved to adopt the Agenda and Commissioner Nugent seconded the motion which passed (4-0). Commissioner Yost moved to approve the Minutes of the June 22, 2017 Commission Meeting and Commissioner Jamison seconded the motion which passed (4-0).

III. Inspector General’s Report

Inspector General Lori Torres first provided recognition for a job well done to all agency ethics officers. Inspector General Torres then discussed the Office of Inspector General’s three key performance indicators, which included the number of informal advisory opinions requested; the average number of days it took the Office of Inspector General to provide requestors with informal advisory opinions; and the number of recommendations made by the Office of Inspector General to improve integrity and reduce waste, inefficiency, and fraud. Inspector General Torres further

expanded, stating that there were 101 informal advisory opinions requested in Quarter 2, a 31% increase over Quarter 1, wherein 77 informal advisory opinions were requested. Inspector General Torres went on to state that in 2016, a total of 318 informal advisory opinions were issued.

In addition, Inspector General Torres stated that the Office of Inspector General had, as of July 31, 2017, 31 open investigations, and further, that the Office received 70 requests to investigate in Quarter 2, as opposed the 60 it received in Quarter 1.

Inspector General Torres also discussed the upcoming 2017 Legal & Ethics Conference, currently set for Tuesday, November 14, 2017 at 1:00 p.m. and to be held at in the Government Center South Conference Rooms. The Conference is expected to last a half day.

The next item discussed was the 2017 statewide biennial ethics training that is expected to be launched in Quarter 3. Back in 2015, 76 agencies consisting of 34,166 state employees, special state appointees, and state officers completed the training.

Lastly, Inspector General Torres provided fiscal year 2018 budget information, stating that the Office of Inspector General had a \$1,147,059.00 budget and that the State Ethics Commission had a \$12,543.00 budget.

IV. Request for Formal Advisory Opinion

**17-I-11 Lori Schein, Deputy General Counsel
Elyssa Campodonico-Barr, Chief of Staff/Ethics Officer
Joe Hoage, General Counsel
Indiana Bureau of Motor Vehicles**

Lori Schein recently accepted the position of Deputy General Counsel for the Indiana Bureau of Motor Vehicles (BMV). Ms. Schein started working in this position on April 10, 2017. As Deputy General Counsel, Ms. Schein supervises a staff attorney, a court order specialist, and an administrative assistant. Ms. Schein's duties as Deputy General Counsel include responsibility for all forms of litigation filed by or against the BMV, including any administrative appeals taken by customers who are dissatisfied with a decision that has affected their driving privileges. She also serves as the liaison between the BMV and the Attorney General's Office on all tort claims and court orders issued that are contrary to law, responds to third party discovery requests and questions from courts, and provides legal advice to the Credentials and Records Departments. On occasion, Ms. Schein will represent the BMV in matters before an Administrative Law Judge (ALJ), although this responsibility is primarily delegated to the staff attorney she supervises.

Ms. Schein also works on a part-time basis as the Zionsville Town (the Town) Prosecutor, which is an annually appointed position she has held since 2005. Her salary is \$220 per month, and the position requires approximately three hours of work per month. As the Town Prosecutor, Ms. Schein handles all local ordinance violations, including traffic matters such as speeding and failure to stop, as well as dog bites and property related violations. She does not handle state infractions

or misdemeanors. As part of her duties, she attends traffic court in the Town one night per month to conduct bench trials on citations. Ms. Schein has an InCite account that she uses to view and authorize electronic filings from her home computer. None of her duties as Prosecutor are performed while on state time, and she does not use any state property for the purposes of her work as Prosecutor.

Ms. Schein's job as Prosecutor does not require the testimony or affidavit of BMV personnel. To date, Ms. Schein has not been involved in any decision that has affected the Town while she has been at BMV. She has not been contacted by any Town personnel, but it is possible that the Town may contact BMV with questions about licenses or other records or submit orders for interpretation. It is also possible that an individual may contact BMV with a series of issues in their driving record or ability to obtain a license, with one of the underlying convictions being a ticketed offense while driving in the Town.

BMV's Ethics Officer, Elyssa Campodonico-Barr determined that an ethics screen is appropriate to avoid any violation of the Code of Ethics or even the appearance of any impropriety. The ethics screen was implemented by BMV on June 26, 2017 and requires Ms. Schein to refer matters she encounters at BMV that involve the Town to Joe Hoage, BMV General Counsel. When contacted by any employee or representative of the Town on any matter related to the BMV, the screen requires Ms. Schein to immediately provide that she is unable to assist them with their issue and refer them to Mr. Hoage. Further, to the extent she is contacted by an individual seeking assistance with a driving record or licensing status, whereupon it is discovered there is an underlying conviction on the person's driving record that indicates a violation of a Town driving ordinance, Ms. Schein will immediately inform all parties that she is unable to assist and will refer the matter to Mr. Hoage.

Ms. Schein requested a formal advisory opinion from the Commission to determine if her employment with the Town would create any conflicts of interests for her under the Code of Ethics.

The advisory opinion stated the following analysis:

A. Outside employment

An outside employment or professional activity 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 her official duties that 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 her official position to secure unwarranted privileges or exemptions of substantial value that are not properly available to similarly situated individuals outside state government.

Based on the information provided, Ms. Schein is responsible for all forms of litigation filed by or against the BMV including any administrative appeals. As Town Prosecutor,

Ms. Schein handles all local ordinance violations, as well as dog bites and property related violations. As Town Prosecutor she does not require the testimony or affidavit of BMV personnel for any of the cases she oversees. It is possible that the Town may contact BMV about licenses and records or submit orders for interpretation. It is also possible that an individual may contact BMV with a series of issues in their driving record or ability to obtain a license, with one of the underlying convictions or infractions being a ticketed offense while driving in the Town.

According to the screen provided by BMV's Ethics Officer, Ms. Schein would be required to refer any Town-related matters that may come before her as BMV Deputy General Counsel to BMV's General Counsel, Joe Hoage. Specifically, Ms. Schein would need to inform any Town employees or representatives who contact her about a BMV-related matter that she is unable to assist them and refer them to Mr. Hoage for assistance. In addition, if Ms. Schein is contacted by any individual seeking assistance with a driving record or licensing status, whereupon it is discovered there is an underlying conviction on the person's driving record that indicates a violation of a Town ordinance, she will need to inform all parties that she is unable to assist and refer the matter to Mr. Hoage.

The Commission finds that Ms. Schein's responsibilities as Town Prosecutor do not appear to be incompatible with her responsibilities as Deputy General Counsel for BMV. It appears that the potential interactions identified in the screen would be infrequent and unlikely to require her recusal from matters so central or critical to the performance of her official duties that the ability to perform them would be materially impaired.

Further, Ms. Schein provides that her job as Town Prosecutor will not require disclosure of confidential information gained through state employment and she does not intend to use her BMV position to secure unwarranted privileges or exemptions that are of substantial value and not properly available to individuals outside of state government.

Accordingly, the Commission finds that Ms. Schein's outside employment as Town Prosecutor would not create a conflict of interests for her under this rule as long as she complies with the BMV screen implemented by Ms. Campodonico-Barr.

B. Conflict of interests - decisions and votes

IC 4-2-6-9 prohibits Ms. Schein from participating in any decision or vote, or matter relating to that decision or vote, if the employee has knowledge that any of the following has a financial interest in the outcome of the matter:

- (1) The state employee;
- (2) A member of the immediate family of the state employee;
- (3) A business organization in which the state employee is serving as an officer, a director, a member, a trustee, a partner, or an employee; or

- (4) Any person or organization with whom the state employee is negotiating or has an arrangement concerning prospective employment.

The definition of “financial interest” in IC 4-2-6-1(a)(11) includes, in part, “an interest arising from employment”.

Ms. Schein provided that it is possible that the Town would contact BMV about licenses and records or submit orders for interpretation. It is also possible that an individual may contact BMV with a series of issues in their driving record or ability to obtain a license, with one of the underlying convictions or infractions being a ticketed offense while driving in the Town.

Accordingly, the Commission finds that Ms. Schein would have a potential conflict of interests if she participates in any matter related to a decision or vote that could financially impact the Town. Specifically, if the Town is considered a business organization with which she is employed and it has a financial interest in any decisions or votes Ms. Schein would make or participate in as Deputy General Counsel, she could have a potential conflict of interests under this rule. Likewise, if the Town has a financial interest in a decision or vote she could make or participate in while she was negotiating employment with the Town (she is appointed on an annual basis), she would also have a potential conflict of interests under this rule.

IC 4-2-6-9(b) requires that an employee who identifies a potential conflict of interests notify their ethics officer and appointing authority and seek an advisory opinion from the Commission or file a written disclosure statement.

To ensure that Ms. Schein does not participate in any decisions or votes in which the Town of Zionsville would have a financial interest, BMV has developed a screening process whereby Ms. Schein is required to refer all matters she encounters at BMV that involve the Town to Joe Hoage, BMV General Counsel. When contacted by any employee or representative of the Town on any matter related to the BMV, the screen requires Ms. Schein to immediately provide that she is unable to assist them with their issue and refer them to Mr. Hoage. Further, to the extent she is contacted by an individual seeking assistance with a driving record or licensing status, whereupon it is discovered there is an underlying conviction on the person’s driving record that indicates a violation of a Town driving ordinance, Ms. Schein will immediately provide to all parties that she is unable to assist and will refer the matter to Mr. Hoage.

In the event that the Town is a “business organization” under IC 4-2-6-9(3), the Commission finds this screening policy to be satisfactory to prevent Ms. Schein from having a conflict of interests in violation of IC 4-2-6-9.

C. Confidential information

Ms. Schein 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. Schein 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 or an entity, such as the Town. 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. Schein has access to such confidential information in her position as BMV’s Deputy General Counsel, she would be prohibited not only from divulging that information but from ever using it to benefit any person, including the Town, in any manner.

D. Use of state property and Ghost employment

42 IAC 1-5-12 prohibits Ms. Schein 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 Ms. Schein 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. Schein observes these provisions regarding her employment as Town Prosecutor such outside professional activity would not violate these ethics laws.

The Commission finds that Ms. Schein’s outside employment as Town Prosecutor would not create a conflict of interests for her under the Code of Ethics.

Commissioner Nugent moved to approve the Commission’s findings and Commissioner Yost seconded the motion which passed (4-1).

V. Consideration of Post-Employment Waiver

**For Shawn Williams, Project Supervisor for Fort Wayne District
Presented by Alison Maloof, Chief Legal Counsel
Mark Tidd, Prequalification & Permits Director/Ethics Officer
Indiana Department of Transportation**

Shawn Williams presented his post-employment waiver requesting advice and permission to work for E&B Paving, Inc., a highway construction company, who recently offered him a position as a Sales/Project Manager in Kokomo, Indiana. Mr. Williams has been employed with the Indiana Department of Transportation for almost 17 years, but has been in his current role as a Project Supervisor for the past nine to ten years. Chairman Clevenger questioned Mr. Williams about whether he understood the ethics rules as they related to the business relationship between E&B Paving, Inc. and the State and the particular matter restriction of the post-employment rule.

Mr. Williams explained that E& B Paving, Inc. understood the particular matter restriction and would abide by the ethics rules, as E&B Paving, Inc. did not want to risk losing its highway construction contract with the State, as it is fifty percent of their current business. After the Commission discussed the matter, Commissioner Yost moved to approve the Post-Employment Waiver and Commissioner Jamison seconded the motion which passed (5-0).

VI. Consideration of Agreed Settlement

**In the Matter of Amanda Alvey/Case Number 2016-08-0170
Stephanie Mullaney, Compliance Officer/Staff Attorney
Office of Inspector General**

Stephanie Mullaney presented a brief review of the case regarding the allegations against Amanda Alvey that brought her before the Commission today. Thereafter, Ms. Mullaney requested that the Commission approve the Agreed Settlement, which fined Ms. Alvey \$2,000.00 for her ethics violations to be paid within thirty days. After the Commission discussed the matter, Commissioner Yost moved to approve the Agreed Settlement and Commissioner Keith seconded the motion which passed (5-0).

VII. Director's Report

Ethics Director, Jennifer Cooper, stated that 53 informal advisory opinions had been requested and issued since the last State Ethics Commission meeting of June 22, 2017.

VIII. Adjournment

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

The public meeting adjourned at 10:39 a.m.