

**MINUTES OF THE MEETING OF
THE INDIANA STATE ETHICS COMMISSION
January 21, 2021**

I. Call to Order

A regular meeting of the State Ethics Commission (“Commission”) was called to order at 10:00 a.m. The meeting was held virtually using Microsoft Teams. Commission members present were Katherine Noel, chair; Corinne Finnerty; Sue Anne Gilroy; Rafael Sanchez; and Kenneth Todd. Staff present included Tiffany Mulligan, Interim Inspector General and Chief Legal Counsel, Office of Inspector General; Jennifer Cooper, State Ethics Director; Kelly Elliott, Staff Attorney, Office of Inspector General; Luba Gore, Staff Attorney, Office of Inspector General; Cindy Scruggs, Administrative Director, Office of Inspector General; and Nathan Baker, Legal Assistant, Office of Inspector General.

Others present were: Deana Smith, Ethics Officer, Indiana State Department of Health; Tamera Glickman, Deputy General Counsel, Indiana Department of Administration; Sylvia Watson, General Counsel and Ethics Officer, Indiana State Library; Latosha N. Higgins, Managing Attorney/Ethics Officer, Family and Social Services Administration; Mattheus Mitchel, Compliance & Ethics Specialist, Indiana Department of Revenue; Beth Green, General Counsel & Ethics Officer, Indiana Department of Workforce Development; Ted Cotterill, General Counsel, Management Performance Hub; Jessica Allen, Executive Secretary and Ethics Officer, Alcohol & Tobacco Commission; Kristi Shute, Deputy General Counsel and Ethics Officer, Indiana Department of Homeland Security; Amy Owens, Staff Attorney, Indiana Department of Health; Whitney Fritz, Staff Attorney, Department of Child Services; Amber Nicole Ying, Special Counsel/Director, Compliance and Ethics and Ethics Officer, Department of Revenue; Heather Kennedy, Chief Legal Counsel, Indiana Department of Transportation; Christopher B. Serak, Prequalification Director and Ethics Officer; Indiana Department of Transportation; Noah Jackson, General Counsel & Ethics Officer, Indiana Horse Racing Commission; Cyndi Carrasco, Deputy General Counsel & Ethics Officer, Office of the Governor; Jessica Barnes, Director of Racing & Breed Development, Indiana Horse Racing Commission; Jerry Sheward, M.D., DMHA/FSSA Superintendent and CMO of the NeuroDiagnostic Institute; Autumn James, Staff Attorney, FSSA OGC; and Tony Toomer, Opioid Treatment Program Manager, FSSA.

II. Adoption of Amended Agenda and Approval of Minutes

Commissioner Gilroy moved to adopt the Amended Agenda (removing the withdrawn Post-Employment Waiver) and Commissioner Todd seconded the motion which passed (5-0).

Commissioner Sanchez moved to approve the Minutes of the December 10, 2020 Commission Meeting and Commissioner Finnerty seconded the motion which passed (5-0).

III. Consideration of Waiver of Post-Employment Restrictions for Britni Saunders

Cynthia Carrasco, Deputy General Counsel for the Office of the Governor, presented the proposed Waiver of Post-Employment Restrictions in this matter to the Commission for their approval.

Commissioner Sanchez moved to approve the Waiver, and Commissioner Gilroy seconded the motion which passed (5-0).

IV. Consideration of Indiana Department of Transportation Waiver of Post-Employment Restrictions for Anthony McClellan

WITHDRAWN

V. Request for Formal Advisory Opinion

2021-FAO-001

Jessica Barnes, Standardbred Breed Development Director

Noah Jackson, General Counsel and Ethics Officer

Indiana Horse Racing Commission

Noah Jackson is the General Counsel and Ethics Officer for the Indiana Horse Racing Commission (IHRC). He is requesting a formal advisory opinion on behalf of IHRC employee Jessica Barnes. Ms. Barnes serves as Standardbred Breed Development Director and has been employed with the IHRC for over twenty years.

Ms. Barnes' husband, Brian Barnes, trains and races horses at the county fairs throughout Indiana. Mr. Barnes has been training horses for many years and is well known and well respected in the Indiana Standardbred industry. Recently, Mr. Barnes has had health setbacks that have resulted in significant medical bills. The Indiana Standardbred Association (ISA) has inquired about the appropriateness of offering a donation to Mr. Barnes given that his spouse is an employee of the IHRC.

Under IC 4-35-7-12, money that is collected from casinos is known as Adjusted Gross Receipts (AGR). AGR funds are distributed to various equine welfare and promotion organizations known as "Horsemen's Associations." IHRC Commissioners determine whether a Horsemen's Association will receive AGR funds. IHRC staff members also participate in this decision by making recommendations regarding whether a Horsemen's Association will receive AGR funds. Ms. Barnes, in her role with IHRC, has not been and is not responsible for making recommendations regarding which of the Horsemen's Associations will receive AGR funds.

ISA is a Horsemen's Association that receives AGR funds, and part of ISA's AGR funding is set aside as a sort of "disaster relief" type fund for its members and Indiana Standardbred horsemen. ISA wants to donate a portion of its AGR funds to Mr. Barnes. ISA has assured IHRC that the donation amount would be consistent with the amount that is donated to any other member receiving assistance from the fund.

Mr. Jackson requested an informal advisory opinion from the Office of Inspector General (OIG) regarding whether Mr. Barnes could accept the donation from ISA. The informal advisory opinion determined that ISA's relationship with IHRC likely qualifies as a business relationship for purposes of the gifts and donor restrictions rules, 42 IAC 1-5-1 and 42 IAC 1-5-2, and that Mr. Barnes would therefore be prohibited from accepting the donation in light of Ms. Barnes' employment with IHRC.

The informal advisory opinion also determined that an exception to the gifts rule may be applicable to this circumstance. The exception outlined in subsection (b)(5) permits state employees *or their spouses* to accept gifts, favors, services, entertainment, food or drinks from a person with whom the employee has an ongoing social relationship, so long as the gifts or other items of value are not deducted as a business expense and the gift giver is not seeking to influence an action by an employee or special state appointee in that person's official capacity.

Mr. Jackson is seeking a formal advisory opinion from the Commission to determine whether the exception to the gifts rule set forth in 42 IAC 1-5-1(b)(5) would be applicable and whether it would be appropriate for Mr. Barnes to accept the donation under his specific circumstances.

The analysis stated the following:

The gifts rule prohibits state employees *or their spouses* from knowingly soliciting or accepting any gift, favor, service, entertainment, food, drink, travel expenses or registration fees from:

- 1) a person who has a business relationship with the employee's agency; or
- 2) a person who is seeking to influence an action by the employee in her official capacity.

The donor restrictions rule mirrors the gifts rule and prohibits those with a business relationship with a state employee's agency from offering a gift in that same circumstance.

In order for the gifts rule to apply, the "person," defined in IC 4-2-6-1(a)(13), from whom the gift is being accepted or solicited must either have a "business relationship" with the employee's agency or must be seeking to influence an action by the employee in her official capacity. "Business relationship" is defined in IC 4-2-6-1(a)(5) to include the dealings of a person with an agency seeking, obtaining, establishing, maintaining or implementing a license or permit requiring the exercise of an agency's judgment or discretion.

The Commission finds that ISA has a business relationship with IHRC by virtue of ISA's receipt of AGR funds from IHRC. Although there may not be a contract between IHRC and ISA, the transmittal of AGR funds in accordance with IC 4-35-7-12 creates a financial relationship akin to a grant.

Accordingly, Mr. Barnes would be prohibited under the gifts rule from accepting the donation from ISA because he is the spouse of an IHRC employee unless an exception to the rule applies or if IHRC waives application of the rule in accordance with 42 IAC 1-5-1(c) and (d).

The Commission finds that one exception to the gifts rule is applicable to this circumstance. The exception outlined in subsection (b)(5) permits state employees or their spouses to accept gifts, favors, services, entertainment, food or drinks from a person with whom the employee has an

ongoing social relationship, so long as the gifts or other items of value are not deducted as a business expense and the gift giver is not seeking to influence an action by an employee or special state appointee in that person's official capacity.

Mr. Jackson provides that Mr. Barnes has been training horses for many years and is well known and well respected in the Indiana Standardbred industry and in ISA itself. He has been an active member of ISA since he began training horses at eighteen years of age. The members of ISA are his colleagues and many of the members are also his friends.

Thus, the Commission finds that an ongoing social relationship exists between ISA and Mr. Barnes. Further, so long as ISA does not deduct the donation as a business expense and ISA is not seeking to influence Ms. Barnes' in her official capacity, the gifts rule would not prohibit Mr. Barnes from accepting the donation for his medical expenses. The Commission requested that IHRC obtain a written statement from ISA confirming that the donation will not be written off as a business expense before Mr. Barnes accepts the donation.

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

2021-FAO-002

Dr. Jerry Sheward, Chief Medical Officer, Indiana Psychiatric Hospital Network
Latosha N. Higgins, Managing Attorney and Ethics Officer
Family and Social Services Administration

Latosha Higgins is the Ethics Officer for the Indiana Family and Social Services Administration (FSSA). Ms. Higgins is requesting an advisory opinion on behalf of Dr. Jerry Sheward, Superintendent and Chief Medical Officer of the NeuroDiagnostic Institute (NDI) and Chief Medical Officer of the Indiana State Psychiatric Hospital Network.

Dr. Sheward's role with the State of Indiana began in 2016 as FSSA's Chief Medical Officer, and it primarily focused on design, construction and activation of the NDI with a secondary focus on State Psychiatric Hospital Network integration as chair of the medical directors committee. Dr. Sheward is also the executive sponsor of the Cerner electronic medical record project for the State psychiatric hospitals. In July of 2019, Dr. Sheward's primary role expanded to Superintendent and Chief Medical Officer of NDI.

Dr. Sheward recently interviewed for and was offered the position of Medical Director for USHealthVest's new free-standing psychiatric hospital in Plainfield, Indiana. USHealthVest is a behavioral healthcare company headquartered in New York. The company also has psychiatric hospitals in Chicago, Atlanta and Seattle. The hospital's Indiana licensure application is currently pending with FSSA's Division of Mental Health and Addiction (DMHA).

Dr. Sheward's role as Medical Director with USHealthVest would include direct psychiatric services to patients, supervision of various nurse practitioners, preparation and monitoring of

compliance with Joint Commission and Centers for Medicare and Medicaid Services regulations and external relationship building within the healthcare environment.

Dr. Sheward advised Ms. Higgins that there are no particular matters that he substantially or personally participated in during his tenure at FSSA that would preclude him from providing services to USHealthVest after leaving state employment. Furthermore, Dr. Sheward has not had any interactions with USHealthVest in his official capacity at FSSA. Dr. Sheward has not engaged in the negotiation or administration of any contract between the State and USHealthVest, nor was he in a position to make a discretionary decision affecting the outcome of the negotiation or administration of any contract with USHealthVest. If he is permitted to pursue this employment opportunity, he does not plan to take part in any discussions or negotiations between FSSA/DMHA and USHealthVest. Dr. Sheward's only function would be as a care provider.

Dr. Sheward 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 FSSA information during his post-employment endeavors. Furthermore, Dr. Sheward understands and agrees to abide by the one-year cooling off restriction regarding registering as an executive branch lobbyist.

FSSA is seeking the Commission's opinion regarding the application of any of the rules in the Code to Dr. Sheward's post-employment opportunity with USHealthVest.

The analysis stated the following:

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

A. Confidential Information

IC 4-2-6-6 prohibits Dr. Sheward from accepting any compensation from any employment, transaction or investment that was entered into or made as a result of material information of a confidential nature. So long as any compensation Dr. Sheward receives does not result from confidential information, his potential employment with USHealthVest would not violate IC 4-2-6-6.

B. Conflict of Interests

IC 4-2-6-9(a)(1) prohibits Dr. Sheward 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."

IC 4-2-6-9(b) requires that a state employee who identifies a potential conflict of interests notify his agency's appointing authority and ethics officer in writing and either (1) seek a formal advisory opinion from the Commission; or (2) file a written disclosure form with the Office of Inspector General.

Based on the information provided, Dr. Sheward has interviewed for and been offered a position with USHealthVest. Accordingly, employment negotiations have begun, and Dr. Sheward is prohibited from participating in any decision or vote, or matter related to a decision or vote, in which he, by virtue of his employment negotiations with USHealthVest, would have a financial interest in the outcome of the matter.

Ms. Higgins provides that Dr. Sheward has not had any interactions with USHealthVest in his official state capacity and has never been involved in any contracting or regulatory/licensing decisions involving USHealthVest.

Accordingly, the Commission finds that Dr. Sheward does not have an identified potential conflict of interests at this time. However, if a potential conflict of interests is identified during the remainder of his state employment, Dr. Sheward must meet all of the disclosure and notification requirements in IC 4-2-6-9(b). Mere recusal from matters that could create a potential conflict of interests would not be enough to satisfy the requirements.

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 Dr. Sheward from accepting employment from an employer for 365 days from the date that he leaves state employment under various circumstances.

First, Dr. Sheward 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.

Ms. Higgins provides that Dr. Sheward understands he is prohibited from engaging in any lobbying activities in his prospective employment with USHealthVest. To the extent that Dr. Sheward does not engage in executive branch lobbying for one year after leaving state employment, the Commission finds that his intended employment with USHealthVest would not violate this provision of the post-employment rule.

Second, Dr. Sheward 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.

According to Ms. Higgins, Dr. Sheward has not engaged in the negotiation or administration of any contract between the State and USHealthVest, nor was he in a position to make a discretionary decision affecting the outcome of the negotiation or administration of any contract with USHealthVest.

Accordingly, the Commission finds that this provision of the cooling off restriction would not apply, and he is not prohibited under this provision from accepting employment with USHealthVest immediately upon leaving state employment.

Third, Dr. Sheward 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.

Ms. Higgins provides that Dr. Sheward does not make any regulatory or licensing decisions in his position with FSSA that directly apply to USHealthVest. Accordingly, the Commission finds that Dr. Sheward has never made any regulatory or licensing decisions that applied to USHealthVest as a state employee, and he is not prohibited under this provision from accepting employment with USHealthVest immediately upon leaving state employment.

Fourth, Dr. Sheward 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 USHealthVest has extended an offer of employment to Dr. Sheward 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 USHealthVest.

Finally, Dr. Sheward 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.

In this instance, Dr. Sheward would be prohibited from representing or assisting USHealthVest, as well as any other person, in a particular matter in which he personally and substantially participated as a state employee.

Ms. Higgins provides that Dr. Sheward has not identified any particular matters in which he personally and substantially participated and in which he expects to be involved at USHealthVest. The Commission finds that Dr. Sheward must ensure compliance with the particular matter restrictions and refrain from assisting or representing any person on any other particular matters that he may have been personally and substantially involved in during his state employment.

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

VII. Request for Formal Advisory Opinion

2021-FAO-003

Tony Toomer, Opioid Treatment Program Manager

Latosha N. Higgins, Managing Attorney and Ethics Officer

Family and Social Services Administration

Latosha Higgins is the Ethics Officer for the Indiana Family and Social Services Administration (FSSA). Ms. Higgins is requesting an advisory opinion on behalf of Tony Toomer, Opioid Treatment Program (OTP) Manager for FSSA's Division of Mental Health and Addiction (DMHA).

Ms. Higgins is requesting an opinion from the Commission addressing whether it would be a conflict of interests for Mr. Toomer to accept outside employment with Valle Vista Health Systems (Valle Vista) while employed at FSSA.

Mr. Toomer commenced working for the State of Indiana in February 1994 as an administrative assistant. Through the years, he has served as a Provider and Community Liaison to Community Mental Health Centers and Managed Care Providers; Consumer Service Review Coordinator; Quality Assurance Coordinator; Certification and Licensure Analyst; and Medication Assistant Treatment – Prescription Drug and Opioid Addiction Grant Coordinator. In February 2017, he transitioned to the role of OTP Manager. In his current role, his responsibilities include providing regulatory oversight and ensuring the availability of quality opioid addiction treatment services in Indiana. This includes overseeing the annual quality review of OTPs and any corrective action resulting from an annual review or complaints received regarding an OTP.

Recently, Mr. Toomer received an offer of employment from Valle Vista to work part time on an as needed basis as a Chemical Dependency/Intensive Outpatient Therapist (CD/IOP). Valle Vista is certified by DMHA to provide mental health and addiction treatment services. They are also licensed by the Indiana Department of Health and accredited by the Joint Commission. As a certified provider of mental health services, Valle Vista is subject to oversight by the DMHA quality assurance and license and certification team.

Valle Vista operates two different types of facilities. One of these facilities is New Vista Outpatient Recovery Center (New Vista), which is an OTP certified by DMHA and subject to oversight by DMHA.

If permitted to accept employment with Valle Vista as a CD/IOP Therapist, Mr. Toomer's responsibilities would include providing intensive group therapy for assigned patients according to their individual needs. He would also be responsible for conducting individual assessments and assigning treatment goals in accordance with Valle

Vista's outpatient program. Additionally, he would be responsible for completing all necessary paperwork, consulting with other treatment providers and serving as a support and resource for the inpatient hospital as needed. Per Valle Vista, he would not have any responsibilities in the Valle Vista Health System/New Vista's OTP. Valle Vista has provided Mr. Toomer with a conflict of interests waiver to document the terms of employment.

Valle Vista would pay Mr. Toomer on an hourly basis, and Mr. Toomer would not serve in a supervisory or leadership role for Valle Vista. He would not charge patients nor would he bill insurance. Rather, Valle Vista would bill insurance and Medicaid. Mr. Toomer would not be compensated from any funds derived from any state contract or grant.

Mr. Toomer is interested in this outside employment opportunity because he is pursuing licensure as a Licensed Social Worker and Licensed Addiction Counselor. To be eligible to sit for his exams, Mr. Toomer must satisfy certain employment and supervision requirements. Unfortunately, he is unable to obtain this experience through his responsibilities in his current FSSA position because he does not have direct contact with patients or clinical supervision from a qualified supervisor.

Given that Mr. Toomer is responsible for the direct oversight of OTPs, FSSA has implemented a screen to ensure that he does not participate in any votes, decisions or other matters in which Valle Vista or New Vista would have any financial interest. If he is permitted to pursue this employment opportunity, the screen will continue.

The screen provides that matters regarding Valle Vista or New Vista that come before DMHA are referred to Mr. Toomer's manager or another staff member who would not involve Mr. Toomer in any decisions or votes or any other matter involving Valle Vista or New Vista. They understand that no emails concerning Valle Vista/New Vista should be sent to his attention, and they are not to consult him on any matters concerning Valle Vista/New Vista

Ms. Higgins provides that the screen would not require Mr. Toomer to recuse himself from a large number of matters or prevent him from performing any of his critical responsibilities as OTP Manager. New Vista is one of twenty-two (soon to be twenty-seven) OTPs operating in the State, and Mr. Toomer would still have broad oversight on policies or initiatives that would apply to all OTPs; however, he would not have direct involvement in any matters specifically involving Valle Vista/New Vista.

DMHA reviews OTPs on an annual basis, so the screen would likely be implemented once a year. The screen would ensure that Mr. Toomer does not have any involvement in the review of New Vista or any follow up actions related to the review. These would be handled by other staff members.

Mr. Toomer would complete all his work for Valle Vista outside of his 37.5 state working hours each week. Additionally, Mr. Toomer understands that he is not to use his FSSA position to secure unwarranted privileges or exemptions that are of substantial value and not properly available to similarly situated individuals outside state government. He also understands and agrees to abide by the Code's rules governing conflicts of interests, ghost

employment, use of state property and confidential information.

The analysis stated the following:

Ms. Higgins' request for a formal advisory opinion invokes consideration of the provisions of the Code pertaining to Conflicts of Interests, Use of State Property, Ghost Employment and Benefitting from and Divulging Confidential Information. The application of each provision to Mr. Toomer is analyzed below.

A. Outside employment

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

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.

Based on the information and opinion provided by Ms. Higgins, Mr. Toomer's employment at Valle Vista would not create a conflict under this provision. Mr. Toomer's role and responsibilities at Valle Vista as a CD/IOP therapist would be very different from his role as OTP Manager. Mr. Toomer plans to see patients as a therapist, for a few hours a week for Valle Vista. Per Valle Vista, he would not have any responsibilities in the Valle Vista Health System/New Vista's OTP, and he would not be in a supervisory or leadership role. Accordingly, Mr. Toomer's responsibilities with Valle Vista do not appear to be inherently incompatible with his FSSA responsibilities.

Because Mr. Toomer is responsible for the direct oversight of OTPs, FSSA has implemented a screen to ensure that he does not participate in any votes, decisions or other matters in which Valle Vista or New Vista would have any financial interest to ensure he does not have a conflict of interests under IC 4-2-6-9 (see Section B).

Ms. Higgins provides that DMHA reviews OTPs on an annual basis, so the screen would likely be implemented once a year. Further, New Vista is one of twenty-two (soon to be twenty-seven) OTPs operating in the State. Accordingly, the Commission finds that this screen would not require Mr. Toomer to recuse himself from matters central or critical to the performance of his official duties that his ability to perform them would be materially impaired.

Further, the Commission confirmed that Mr. Toomer would not be required to disclose confidential information to which he may have access by virtue of his state employment in his outside position with Valle Vista.

Nothing in the information presented suggests that Mr. Toomer would use or attempt to use his state position for any unwarranted privileges or exemptions. Mr. Toomer must continue to ensure he does not use or attempt to use his official FSSA position for any unwarranted privileges or exemptions.

The Commission finds that Mr. Toomer's outside employment opportunity with Valle Vista would not create a conflict of interests for him under IC 4-2-6-5.5.

B. Conflict of interests - decisions and votes

IC 4-2-6-9 (a)(1) prohibits Mr. Toomer 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. Toomer from participating in any decisions or votes, or matters related to such decisions or votes, in which Valle Vista would have a financial interest in the outcome.

IC 4-2-6-9(b) provides that a state employee who identifies a potential conflict of interests shall notify the person's appointing authority and seek an advisory opinion from the Commission or file a written disclosure statement with the OIG.

Valle Vista, Mr. Toomer's prospective outside employer, also operates New Vista, which is an OTP. Ms. Higgins provides that Mr. Toomer is responsible for the direct oversight of OTPs and therefore has an identified potential conflict of interests. FSSA has implemented a screen to ensure that he does not participate in any votes, decisions or other matters in which Valle Vista or New Vista would have any financial interest in the outcome.

The screen provides that matters regarding Valle Vista or New Vista that come before DMHA are referred to Mr. Toomer's manager or another staff member who would not involve Mr. Toomer in any decisions or votes or any other matter involving Valle Vista or New Vista. They understand that no emails concerning Valle Vista/New Vista should be sent to Mr. Toomer and that they are not to consult him on any matters concerning Valle Vista/New Vista

DMHA reviews OTPs on an annual basis, so the screen would likely be implemented once a year. The screen would ensure that Mr. Toomer does not have any involvement in the review of New Vista or any follow up actions related to the review. Other staff members would handle these reviews.

The Commission finds that FSSA's screen is adequate to ensure that Mr. Toomer does not participate in matters in which Valle Vista/New Vista would have a financial interest, including the annual review his department conducts and any related follow up actions.

Accordingly, so long as the screen is followed, Mr. Toomer would not have a conflict of interests under this rule.

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 an agency. The Commission has interpreted this rule to apply when a state employee derives compensation from a contract between the State and a third party.

This prohibition, however, does not apply to an employee that does not participate in or have contracting responsibility for any of the activities of the contracting agency, provided certain statutory criteria are met.

Ms. Higgins provides that Mr. Toomer would be paid on an hourly basis for his work in seeing patients for Valle Vista and that he would not be compensated from any funds derived from any state contract or grant.

Accordingly, the Commission finds that Mr. Toomer would not have a financial interest in a state contract.

D. Confidential information

Mr. Toomer is prohibited under 42 IAC 1-5-10 and 42 IAC 1-5-11 from benefitting from, permitting any other person to benefit from or divulging information of a confidential nature except as permitted or required by law. Similarly, IC 4-2-6-6 prohibits Mr. Toomer 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 Valle Vista. In addition, the definition of “information of a confidential nature” is set forth in IC 4-2-6-1(a)(12).

To the extent Mr. Toomer is exposed to or has access to such confidential information in his position with FSSA, he is prohibited not only from divulging that information but from ever using it to benefit any person, including his outside employer, in any manner.

E. Use of state property and Ghost employment

42 IAC 1-5-12 prohibits Mr. Toomer from using state property for any purpose other than for official state business unless the use is expressly permitted by a general written agency, departmental or institutional policy or regulation that has been approved by the Commission. Likewise, 42 IAC 1-5-13 prohibits Mr. Toomer 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 Mr. Toomer observes these provisions regarding his outside employment activities, his outside position with Valle Vista would not violate these ethics laws.

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

VIII. Director's Report

State Ethics Director, Jen Cooper, stated that since the last Commission meeting, the Office of Inspector General had issued 21 informal advisory opinions with the majority of opinions on the subjects of post-employment restrictions, conflicts of interests, outside employment, and gifts.

Director Cooper also reported that the Financial Disclosure Statement filing period for required filers for 2020 began on January 1, 2021. February 1, 2021 is the deadline for filing and an update on how many filers have completed the process will be provided at the next SEC meeting.

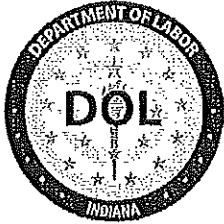
Additionally, Tiffany Mulligan, Chief Legal Counsel for the Office of Inspector General, has been appointed as Interim Inspector General as Former Inspector General Lori Torres is now serving as Chief Deputy Attorney General and Chief of Staff with the Indiana Attorney General's office. Director Cooper will report who the new Inspector General is once they are appointed by the Governor's office.

Finally, Commissioner Gilroy expressed the Commission's gratitude for Lori Torres' service as Inspector General.

IX. Adjournment

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

The public meeting adjourned at 10:35 a.m.



INDIANA

DEPARTMENT OF LABOR

ERIC J. HOLCOMB, GOVERNOR
Joe B. Hoage, Commissioner
402 West Washington Street, Room W195
Indianapolis, Indiana 46204-2751
Phone: (317) 232-2655
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IC 4-2-6-11

Post-employment waiver

As the Appointing Authority of the Indiana Department of Labor, I am filing this waiver of the application of the Code of Ethics' post-employment restriction as it applies to Joby A. Johnson in his post-employment with Sunrise Coal, LLC.

I understand that I must file and present this waiver to the State Ethics Commission at their next available meeting. I further understand that this waiver is not final until approved by the State Ethics Commission.

A. This waiver is provided pursuant to IC 4-2-6-11(g) and specifically waives the application of *(Please indicate the specific restriction in 42 IAC 1-5-14 (IC 4-2-6-11) you are waiving):*

- IC 4-2-6-11(b)(1): 365 day required "cooling off" period before serving as a lobbyist.
- IC 4-2-6-11(b)(2): 365 day required "cooling off" period before receiving compensation from an employer for whom the state employee or special state appointee was engaged in the negotiation or administration of a contract and was in a position to make a discretionary decision affecting the outcome of such negotiation or administration.
- IC 4-2-6-11(b)(3): 365 day required "cooling off" period before receiving compensation from an employer for which the former state employee or special state appointee made a directly applicable regulatory or licensing decision.
- IC 4-2-6-11(c): Particular matter restriction prohibiting the former state employee or special state appointee from representing or assisting a person in a particular matter involving the state if the former state officer, employee, or special state appointee personally and substantially participated in the matter as a state worker. *(Please provide a brief description of the specific particular matter(s) to which this waiver applies below):*

B. IC 4-2-6-11(g)(2) requires that an agency's appointing authority, when authorizing a waiver of the application of the post-employment restrictions in IC 4-2-6-11(b)-(c), also include specific information supporting such authorization. Please provide the requested information in the following five (5) sections to fulfill this requirement.

1. Please explain whether the employee's prior job duties involved substantial decision-making authority over policies, rules, or contracts:

Mr. Johnson's duties as Chief Mine Inspector and Mine Rescue Team Trainer did not involve substantial decision-making authority over policies, rules, or contracts. That authority is the primary responsibility of the Indiana Mining Board. The Mining Board has the final decision after consulting with mine operators and the Bureau of Mines Director.

Mr. Johnson did not promulgate any rules, but he made decisions regarding a mine's compliance with mine health and safety rules. However, compliance was voluntary, and he had no enforcement authority. He also put a budget together for the mine rescue station in June of 2019 and the Board and the Operators collaborated on the best way to divide the monies for assessment. The Board notifies the Operators when and how the monies are to be paid.

2. Please describe the nature of the duties to be performed by the employee for the prospective employer:

Mr. Johnson's primary duties at Sunrise will be examining belt lines, escapeways, air courses, and seal areas for safety and health conditions. There would be the possibility of assisting in Federal Mine Safety and Health Administration (MSHA) annual refresher training and other training opportunities. Mr. Johnson may also remain on the Indiana State Mine Rescue Team and may remain the trainer of the team, subject to approval by both Sunrise and the Bureau of Mines.

3. Please explain whether the prospective employment is likely to involve substantial contact with the employee's former agency and the extent to which any such contact is likely to involve matters where the agency has the discretion to make decisions based on the work product of the employee:

There is no anticipated substantial contact with the Bureau of Mines or the Department of Labor. Any involvement with the Bureau of Mines would be related to his potential continuous involvement with the state mine rescue team. Mr. Johnson could then possibly have input as a collaborator with the Board as mine rescue trainer regarding the number of personnel that each Operator is required to furnish to the mine rescue team under IC 22-10-12-11, but the final decision would be with the Board and the Operators.

4. Please explain whether the prospective employment may be beneficial to the state or the public, specifically stating how the intended employment is consistent with the public interest:

Benefits to the state and the public would include having a safe and highly qualified mine worker working for a mining operator like Sunrise. Sunrise currently owns two of four mines that are inspected by the State Bureau of Mines. Having Mr. Johnson working directly in the mine every day will be like having another trained set of eyes in the mines looking to improve safety for all the workers. Likewise, if he remains on the state mine rescue team and remains the trainer of the team, any rescue that may be needed will still benefit from his expertise in that area.

5. Please explain the extent of economic hardship to the employee if the request for a waiver is denied:

Mr. Johnson currently makes \$47,000 per year working for the state as Chief Mine Inspector with the Bureau of Mines and Mining Safety. His starting pay with Sunrise would be over \$60,000 per year, which is the starting pay for most positions at the mine. Opportunities to increase the annual wage to \$75,000 or higher are possible by the end of the year.

If a waiver is denied, it is uncertain what kind of a job Mr. Johnson could get outside his field of expertise and how much it would pay. Without being able to utilize his expertise in mining, companies that may consider hiring him would likely want to only pay him close to what he was last making with the state - \$47,000 per year. It is also uncertain if he would even be offered such an opportunity again if he had to wait a year to work for a mine.

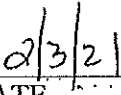
C. Signatures

1. Appointing authority/state officer of agency

By signing below I authorize the waiver of the above-specified post-employment restrictions pursuant to IC 4-2-6-11(g)(1)(A). In addition, I acknowledge that this waiver is limited to an employee or special state appointee who obtains the waiver before engaging in the conduct that would give rise to a violation.



Joe B. Hoage, Commissioner of Labor



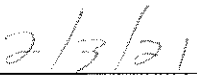
DATE

2. Ethics Officer of agency

By signing below I attest to the form of this waiver of the above-specified post-employment restrictions pursuant to IC 4-2-6-11(g)(1)(B).



J. Anthony Hardman, General Counsel - IDOL



DATE

D. Approval by State Ethics Commission

FOR OFFICE USE ONLY	
Approved by State Ethics Commission	
_____ Katherine Noel, Chair, State Ethics Commission	_____ Date



Eric Holcomb, Governor
State of Indiana

Office of General Counsel
402 W. WASHINGTON STREET, ROOM W451, MS27
INDIANAPOLIS, IN 46204-2744

February 1, 2021

Ethics Commission
Office of the Inspector General
315 West Ohio Street, Room 104
Indianapolis, Indiana 46202
Via Email: info@ig.in.gov

RE: Request for Formal Advisory Opinion for Dr. Breanca Merritt

Dear Chair Noel and members of the Ethics Commission:

The Indiana Family and Social Services Administration (“FSSA”), on behalf of Dr. Breanca Merritt, requests a Formal Advisory Opinion from the State Ethics Commission addressing whether it would be a conflict of interest for Dr. Merritt to continue her outside academic, community service, and consulting activities along with her affiliation with Indiana University Purdue University Indianapolis (“IUPUI”) while employed as the Chief Equity and ADA Officer for FSSA.

Dr. Merritt joined FSSA in January 2021 as the first Chief Health Equity and ADA Officer, a recently created position that reports directly to FSSA Secretary Dr. Jennifer Sullivan. Her responsibilities include leading the FSSA Office of Healthy Opportunities providing leadership in the evaluation of policy decisions that affect race equity, building metrics for agency accountability, ensuring agency adherence to the Americans with Disabilities Act, and serving at the executive level working to build a culture of equality across the agency. Her role may also include activities such as assisting with identifying contractors or developing language for requests for proposals during the procurement process; however, procurements would be overseen by other staff in the FSSA executive office that are not overseen by Dr. Merritt. Dr. Merritt’s role in this situation would be that of a subject matter expert.

Before joining FSSA, Dr. Merritt served as the founding director of the Center for Research on Inclusion and Social Policy at IUPUI. She was also a clinical assistant professor in IUPUI’s O’Neill School of Public and Environmental Affairs and adjunct faculty for the Africana Studies program. She continues to have an affiliation with IUPUI, serve on external boards, and serve as



a paid consultant. Except for one existing contract with the Urban League, Dr. Merritt's activities generally do not include any compensation.

Dr. Merritt is a frequently sought-after speaker because of her expertise in the areas of social policy, vulnerable populations, and racial equity. While many requests may be directly related to her work with FSSA, it is also likely that she may receive requests unrelated to her work with FSSA. Dr. Merritt would like to accept future offers to speak and consult. She advised me that seldom do the speaking engagements include an honorarium. She is aware of the need to be cognizant of potential conflicts of interest when accepting speaking engagements.

Dr. Merritt is also interested in continuing her involvement with the Indianapolis Public Schools ("IPS") and Central Indiana Community Education Foundation. Her involvement includes participating in regular meetings to discuss equity and policy making among students and families with IPS and discussing the criminal justice system and equity with the Central Indiana Community Foundation. Although she committed to these obligations before joining FSSA in the context of her prior role, the responsibilities intersect with her current role as they relate to equity and public policy. Dr. Merritt is not compensated for her involvement with IPS or the Central Indiana Community Education Foundation.

FSSA has an agreement with IPS in which IPS provides educational services to school-age students who are residents at the Neuro Diagnostic Institute. Dr. Merritt was not involved in the negotiation of this agreement nor is she involved in the oversight of the agreement. The agreement between FSSA and IPS was entered into before Dr. Merritt joined FSSA. It is administered by the FSSA Division of Mental Health and Addiction. FSSA does not have any business relationship with the Central Indiana Communication Education Foundation.

Dr. Merritt's other obligations include serving on the board of the following organizations: Fair Housing Center of Central Indiana, Hawthorne Community Center, Blueprint Council Continuum of Care Indianapolis, and the Thomas Gregg Neighborhood School. Except for the Blueprint Council Continuum of Care for Indianapolis and Thomas Gregg Neighborhood School, the board meetings for these organizations occur outside of her regular work hours. For meetings that occur during her regular work hours, Dr. Merritt will either join the meeting later or make up the time by working later those days. Dr. Merritt does not receive any compensation for serving on any of these boards.

Of the organizations where Dr. Merritt serves on the board, only Hawthorne Community Center ("Hawthorne") has a business relationship with FSSA. In July 2019, Hawthorne received a grant from FSSA to be used for its School Age Care Project. The grant award is administered by the FSSA Office of Early Childhood and Out of School Learning. The award was made to Hawthorne before Dr. Merritt joined FSSA. Furthermore, Dr. Merritt is not involved with the administration of this grant.

Dr. Merritt would also like to continue in her role as an associate member of the faculty in the IUPUI School of Liberal Arts Africana Studies Program and Community Scholar for the Africana

Studies Program and to serve on the advisory board of their new Center for Africana Studies and Culture.

Dr. Merritt's appointment as a Community Scholar is a renewable three-year honorary appointment that commenced on January 1, 2021. Community Scholars are expected to make contributions to meeting educational objectives for IUPUI students through community-based learning activities, research, or professional service, such as being a guest speaker. It is an unpaid appointment where she will be entitled to participate in research and to access other university facilities. The appointment does not involve any instructional or financial commitments. It is not tenured, and it does not confer any voting rights or other benefits accruing to other faculty. Although the Community Scholar appointment does not require teaching, Dr. Merritt is interested in teaching. Any potential teaching obligations would require 1.5 hours a week during the work week for 13 weeks. She would ensure future courses were scheduled outside work hours.

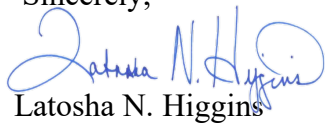
Dr. Merritt also has a few manuscripts under review by peer-review journals and under her affiliation with IUPUI. Any minor work Dr. Merritt completes on those projects after submission will be completed after hours and on weekends. She also has a team of students and staff leading work on a project that she passed on to them before joining FSSA. She will likely need to meet with them monthly until August 2021. She will limit her interactions with this team to after hours.

Lastly, Dr. Merritt is a contracted consultant with the Urban League Indianapolis African American Quality of Life Initiative team. As with her other outside activities, she plans to complete the work required under this one-year agreement outside of her regular work hours. Her compensation for this work does not come from any state contract or grant.

Dr. Merritt understands that she is not to use her FSSA position to secure unwarranted privileges or exemptions that are of substantial value and not properly available to similarly situated individuals outside state government. She also understands and agrees to abide by the ethics code governing conflicts of interest, ghost employment, use of state property, and confidential information.

Based on the information presented, Dr. Merritt's outside activities do not appear to be incompatible with her duties. Rather, Dr. Merritt's outside activities will help maintain and build upon her professional skills such that she may better be able to meet the essential functions of her position such as developing and expanding community collaborations related to racial equity; learning about equity-related innovations relevant to FSSA; and developing increased knowledge about trends across the State of Indiana.

Sincerely,



Latosha N. Higgins
Managing Attorney and Ethics Officer