

**MINUTES OF THE MEETING OF  
THE INDIANA STATE ETHICS COMMISSION  
December 10, 2020**

**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 Lori Torres, Inspector General; Jennifer Cooper, State Ethics Director; Tiffany Mulligan, Chief Legal Counsel, Office of Inspector General; Kelly Elliott, Staff Attorney, Office of Inspector General; Luba Gore, Staff Attorney, 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; Ed Feigenbaum, Indiana Legislative Insight; Tammera 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; Rachel Russell, Ethics Officer, Department of Child Services; Christine Macdonald, Internal Affairs Officer, Department of Child Services; 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; Mikel Fort, EMS District manager, Indiana Department of Homeland Security; Sarah Caffery, Pesticide Product Registration Specialist, Office of Indiana State Chemist; Brian Spillane, Revenue Tax Supervisor, Department of Revenue; Michael Minch, Out of State Field Auditor, Department of Revenue; Jonathan Whitham, General Counsel, Indiana Department of Homeland Security; Dr. Mark LeBlanc, Director, Office of Indiana State Chemist, Purdue University; Bill Anthony, Deputy Attorney General, Office of the Attorney General; and Carrie Leach, Quality Assurance Director and Ethics Officer for the Office of Indiana State Chemist, Purdue University.

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

Commissioner Gilroy moved to adopt the Agenda and Commissioner Sanchez seconded the motion which passed (5-0).

Commissioner Gilroy moved to approve the Minutes of the November 12, 2020 Commission Meeting and Commissioner Todd seconded the motion which passed (5-0).

**III. Consideration of Office of Indiana State Chemist Waiver of Post-Employment Restrictions for Sarah Caffery**

Carrie A. Leach, Ethics Officer for the Indiana State Chemist, 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 Todd seconded the motion which passed (5-0).

**IV. Request for Formal Advisory Opinion**

2020-FAO-015

Mikel Fort, EMS District Manager

Kristi K. Shute, Deputy General Counsel and Ethics Officer

Indiana Department of Homeland Security

Kristi Shute serves as Deputy General Counsel and Ethics Officer for the Indiana Department of Homeland Security (IDHS). Ms. Shute is requesting an advisory opinion on behalf of Mikel Fort addressing outside employment and conflicts of interests.

Mr. Fort's role with the State of Indiana began in June 2017. He serves as an EMS District Manager within the State Fire Marshal's Office. In this role, Mr. Fort is responsible for oversight of ambulance services, the EMS training center and EMS Supervising Hospital certifications for Districts 1, 2 and 4. His oversight of ambulance services includes routine ambulance compliance inspections, investigations into complaints and reports of violations and renewal of provider certifications, which is done every two years. Due to the lack of ambulance transport services and delays in transports in Districts 1, 2 and 4, he provides hospitals with a point of contact for ambulance services if the hospitals are unable to find a service to transport patients.

Mr. Fort also serves as a part-time Advanced Emergency Medical Technician (AEMT) for Pulaski County EMS, which is located in District 2. In addition to working part-time as an AEMT, Mr. Fort also teaches EMR, EMT and AEMT classes for the Pulaski County EMS Training Center and CPR for Pulaski Memorial Hospital. IDHS implemented a screen in July 2017 allowing Mr. Fort to engage in these activities (Mr. Fort filed the disclosure form, which includes a description of the screen, with the OIG).

Mr. Fort proposes creating and operating an ambulance transport company with his brother. The transport company would focus on interfacility and skilled nursing facility transports. The proposed business would operate in the Districts that Mr. Fort manages.

Mr. Fort understands and agrees to comply with the ghost employment, use of state property and confidentiality provisions of the Code. He also understands that he is not to use his IDHS position to secure unwarranted privileges or exemptions that are of substantial value and not properly made available to similarly situated individuals outside state government. Further, IDHS is prepared to implement a screen to ensure that he is not involved in any decisions, votes, or other matters in which his ambulance transport company would have a financial interest.

The analysis stated the following:

*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 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.

A written advisory opinion issued by the Commission stating that an individual's outside employment does not violate subsection (a)(1) or (a)(2) is conclusive proof that the individual's outside employment does not violate subsection (a)(1) or (a)(2).

The Commission finds that it is unable to provide a statement that Mr. Fort's outside employment opportunity in forming and operating an ambulance transport service company would not violate subsection (a)(1) or (a)(2). The Commission has concerns about conflicts of interests under this rule and under IC 4-2-6-9 (See Section B below). The Commission finds that in order to avoid a conflict of interests under IC 4-2-6-9, Mr. Fort would likely have to recuse himself from matters that are central and/or critical to the performance of his official duties (including his duties related to routine ambulance compliance inspections, investigations into complaints and reports of violations and renewal of provider certifications for ambulance transport services within the Districts he oversees) such that his ability to perform them may be materially impaired.

Accordingly, the Commission does not approve Mr. Fort's outside employment with his prospective ambulance transport business.

*B. Conflict of interests - decisions and votes*

IC 4-2-6-9 (a)(1) prohibits Mr. Fort 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. Fort from participating in any decision or vote, or matter relating to that decision or vote, if he or a business organization for which he serves as a partner or 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".

Mr. Fort serves as an IDHS EMS District Manager and would like to operate an outside ambulance transport service, a business organization in which he would presumably be a partner, director, member and/or employee. As an EMS District Manager, Mr. Fort's responsibilities include oversight of ambulance service for Districts 1,2 and 4. He also

provides hospitals with a point of contact for ambulance services if the hospitals are unable to find a service to transport patients.

The Commission finds that decisions Mr. Fort would have to make in his IDHS capacity could have a financial impact on his outside business, as his proposed business would provide ambulance transport services within the Districts he manages. This presents a potential conflict of interests under IC 4-2-6-9(a).

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

Both options require the implementation of a screen that would ensure the employee does not participate in the matters that would create a conflict of interests.

It is unclear if Mr. Fort has notified the IDHS appointing authority, but Ms. Shute and Mr. Fort have requested this formal advisory opinion, and Ms. Smith has indicated that IDHS is prepared to implement a screen to prevent Mr. Fort from participating in any decisions, votes or other matters in which his ambulance transport company would have a financial interest.

IDHS is prepared to implement a screen to ensure that Mr. Fort is not involved in any decisions, votes or other matters in which his ambulance transport company would have a financial interest; however, the Commission finds that it would not be possible to screen Mr. Fort from *all* decisions/votes in which he or his business would have a financial interest in the outcome of the matter, as the proposed screening procedures would not prevent a conflict of interest from arising for Mr. Fort under IC 4-2-6-9.

Mr. Fort's responsibilities include oversight of the ambulance services operating in the Districts he manages as an EMS District Manager. Even if IDHS were able to screen him from participating in the certifications/inspections of his own ambulance service, he would still be required to make such decisions that could affect competing ambulance services in his Districts. Consequently, if he operates his proposed ambulance transport company in the Districts he manages, this would create a potential conflict of interests under this rule because his company would have a financial interest in the outcome of most, if not all, decisions he would make concerning oversight and compliance regulation related to other ambulance services within his Districts.

Accordingly, the Commission finds that IDHS would be unable to adequately screen Mr. Fort from participation in all matters in which his proposed company would have a financial interest. As a result, he cannot operate his proposed business in his assigned Districts while he is a state employee and avoid violation of this rule.

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

**V. Request for Formal Advisory Opinion**

2020-FAO-016

Michael Minch, Field Examiner

Brian Spillane, Tax Auditor Supervisor

Amber Nicole Ying, Special Counsel/Director Compliance and Ethics & Ethics Officer

Department of Revenue

Michael Minch is an Out of State Auditor in the Indiana Department of Revenue (DOR). He is requesting an opinion from the Commission addressing whether it would be a conflict of interests for him to accept outside employment as a Tax Collector.

Mr. Minch is assigned to conduct audits of companies in the Northeast region of the United States. He is currently conducting audits in Massachusetts, New York, New Jersey and Pennsylvania. All of the companies that he is currently auditing have a distribution center, warehouse, retail store or other financial interest in Indiana.

In Mr. Minch's position, he performs income tax audits and sales and use tax audits. There are audits that are specifically associated with income taxes, such as S-Corporations, partnerships and withholding taxes. Likewise, there are audits specifically associated with sales and use taxes, such as motor vehicle rental tax or food and beverage tax audits depending on the company being audited. He does not audit property taxes. Mr. Minch cannot enter into any contracts or modify any current contracts with the companies that he audits. Only upper management can enter into or modify contracts with the companies

When Mr. Minch is auditing a company, he works with the tax managers and staff members of the company who gather the documentation he requests. He also works with CEOs, CFOs and accounting professionals that represent the company. During his audit, he ensures that the company has filed the necessary returns that Indiana law requires, and if the company has not, he makes adjustments to ensure that the company is tax compliant. He explains to the company why all the adjustments have been made during the final conference of the audit. During the final conference, he also informs the company that it has the right to contest the audit.

Mr. Minch is interested in an outside employment opportunity as a Tax Collector in Langhorne Manor Borough, Pennsylvania (Borough), where he currently resides. This is an elected position that is held for four years. As Tax Collector, he will be responsible for sending property tax bills to the Borough's homeowners and for collecting the property taxes. The funds from the property taxes will be deposited into a checking account and then remitted to the Borough and the school board, Neshaminy School District. If a homeowner becomes delinquent in paying property taxes that are due, a lien will be sent out, but it will not be his responsibility to send out this lien. As Tax Collector, Mr. Minch will not have the authority to assess payees, determine the amount of taxes a payee owes or determine whether liens are appropriate measures. His position would be part-time and require a minimal time investment of two to three hours per week. He would perform these duties in the evening or on the weekends outside of his normal DOR working hours.

The only business in the Borough is that of Cairn University, and it does not have any kind of nexus to Indiana. Cairn University's main area of education is bible study, but it also offers programs in English, History, Liberal Arts and Psychology. Mr. Minch does not and has not conducted any audits of Cairn University in his position with DOR.

Mr. Minch consulted with Amber Ying, Ethics Officer for DOR, about this outside employment opportunity, and she referred him to the Office of Inspector General (OIG) for an informal advisory opinion. The OIG issued an informal advisory opinion to Mr. Minch on December 1, 2020. Mr. Minch is now requesting a final determination from the Commission regarding whether he can accept this outside employment opportunity under the Code.

The analysis stated the following:

Mr. Minch's request for a formal advisory opinion invokes consideration of the provisions of the Code pertaining to Conflicts of Interests, Political Activity, Use of State Property, Ghost Employment and Benefitting from and Divulging Confidential Information. The application of each provision to Mr. Minch 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.

Based on the information provided, Mr. Minch's outside employment position as a Tax Collector would not create a conflict under this provision. Mr. Minch's role and responsibilities as a Tax Collector would be very different from his role as an Out of State Auditor with DOR, and it does not appear that the positions would overlap in any meaningful way.

Accordingly, the Commission finds that Mr. Minch's responsibilities as a Tax Collector would not be inherently incompatible with his DOR responsibilities nor would they require his recusal from matters that are critical to the performance of his state duties.

In addition, the Commission confirmed that Mr. Minch would not be required to disclose confidential information to which he may have access by virtue of his state employment in his outside position as a Tax Collector.

Nothing in the information presented suggests that Mr. Minch would use or attempt to use his state position for any unwarranted privileges or exemptions. Mr. Minch must continue to

ensure he does not use or attempt to use his official DOR position for any unwarranted privileges or exemptions.

The Commission finds that Mr. Minch's outside employment opportunity as a Tax Collector would create a conflict of interests for him under this rule.

*B. Conflict of interests - decisions and votes*

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

Based on the information provided about his role at DOR, Mr. Minch would not be required to participate in any decision or vote, or matter relating to a decision or vote, for DOR in which the Borough would have a financial interest.

Accordingly, he does not have an identified potential conflict of interests at this time; however, if a potential conflict of interests is identified in the future, he must ensure that he meets all 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. Political activity*

Because the role of Tax Collector is an elected position, Mr. Minch will need to ensure he complies with the political activity rule, found in 42 IAC 1-5-4. This rule prohibits a state employee from engaging in political activity, including solicitation of political contributions from (a) other state employees or special state appointees; or (b) any other person when on duty or acting in his or her official capacity. When not on duty or acting in his official capacity, Mr. Minch can engage in political activity so long as he does not solicit political contributions from any state employees or special state appointees that he directly supervises or from a person who has a business relationship with DOR.

The Commission reminded Mr. Minch to be cautious of this rule and follow the guidance it provided in its opinion in [2018-FAO-0016](#). In this opinion the Commission advised a state employee that he could run for State Representative while serving as a state employee; however, the Commission cautioned him not to do any of the following: engage in political activity while on duty or acting in his official capacity, use his official state title on campaign materials, solicit campaign contributions from his direct reports or from anyone who has a business relationship with his state agency, use his official position to secure unwarranted privileges or exemptions of substantial value, participate in decisions or votes in which the legislature would have a financial interest, use state property for non-official work performance during work hours, and benefit from or divulge confidential information. The

Commission also advised the employee to add a disclaimer to his campaign material and website regarding unsolicited political contributions.

In addition, the Commission advised Mr. Minch to maintain and provide a list of all political contributions he receives to DOR to ensure he does not solicit or accept campaign contributions from anyone who has a business relationship with DOR.

*D. Confidential information*

Mr. Minch 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. Minch 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 governmental agency or political subdivision, such as the Borough. 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. Minch is exposed to or has access to such confidential information in his position with DOR, 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. Minch 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. Minch 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. Minch observes these provisions regarding his outside employment activities, his outside position as a Tax Collector 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).

**VI. Director’s Report**

State Ethics Director, Jen Cooper, stated that since the last Commission meeting, the Office of Inspector General had issued 26 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 will begin on January 1, 2021. Lists with the names and contact information for the



required filers are being compiled so that e-mails can be sent out ahead of the February 1, 2021 deadline for filing.

Director Cooper ended her report by thanking the Commissioners for their work this year on the State Ethics Commission.

Commissioner Gilroy asked how Financial Disclosure Statements are filed. Director Cooper indicated that Statements can be filed online from the Inspector General website, or by sending in a hard copy form to the OIG office.

## **VII. Adjournment**

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

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



IC 4-2-6-11

Post-employment waiver

As the Appointing Authority of the Office of the Governor, I am filing this waiver of the application of the Code of Ethics' post-employment restriction as it applies to Britni Saunders in her post-employment with Deloitte Consulting 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:

Ms. Saunders served as the Director of the Indiana State Personnel Department ("SPD"), the centralized human resource (HR) service responsible for the Executive Branch of Indiana state government from 2017 until November 2020. As the Director of SPD, Ms. Saunders had substantial decision-making authority over policies, rules, and contracts.

With respect to Deloitte, her intended employer, Ms. Saunders participated in the procurement of actuarial services for the State's health plan in the summer of 2019, which resulted in an award to Deloitte. Ms. Saunders approved and signed this contract on behalf of SPD. SPD previously contracted all benefits consultation services with Mercer and later split this contract in two. This allowed SPD to keep pharmaceutical consultation with Mercer and health plan actuarial services with another company. Deloitte was competitively procured for these services as part of the RFP process.

In addition, Ms. Saunders also participated in a procurement process for software implementation services in September 2017. This resulted in a failed contract negotiation with Deloitte due to price and an implementation approach that would not work for the State.

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

In her intended employment with Deloitte, Ms. Saunders' duties would include selling and delivering human capital-related consulting services to state and local governments throughout the United States. She would also be responsible for providing subject matter expertise on various HR-related projects. Ms. Saunders, however, would not do any work for or with the government of the state of Indiana in her work with Deloitte. She would not be lobbying Indiana state government agencies in this position and further, would have no interaction with the Indiana state government.

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:

Ms. Saunders will not have direct or indirect contact with Indiana state government in her role with Deloitte.



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:

Ms. Saunders' intended employment is consistent with the public's interest because it will allow her to bring necessary insight regarding the needs of governments to a private sector employer that is utilized by governments at various levels. This will ultimately result in better services being provided to governments.

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

Denial of this waiver would result in substantial economic hardship for Ms. Saunders and would prohibit her from an opportunity to grow professionally.

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.



Earl Goode



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).



Cynthia V. Carrasco



DATE

D. Approval by State Ethics Commission

**FOR OFFICE USE ONLY**

Approved by State Ethics Commission

\_\_\_\_\_  
Katherine Noel, Chair, State Ethics Commission

\_\_\_\_\_  
Date



STATE OF INDIANA  
OFFICE OF THE GOVERNOR  
State House, Second Floor  
Indianapolis, Indiana 46204

Eric J. Holcomb  
*Governor*

January 14, 2020

Katherine Noel, Chairman  
Indiana State Ethics Commission  
315 W Ohio Street, Room 104  
Indianapolis, IN 46202

Subject: Waiver of post-employment restriction for Britni Saunders

Dear Ms. Noel,

As the appointing authority for the Office of the Governor, I am writing to you to express my approval of the waiver of the application of a post-employment restriction for Britni Saunders' proposed employment with Deloitte.

I understand that I.C. 4-2-6-11(g) requires the appointing authority authorizing the waiver to present it to the State Ethics Commission ("Commission"). I regret that I am unable to appear in person to present the waiver. However, I have asked Cyndi Carrasco, who serves as the ethics officer for our office, to attend the Commission meeting on my behalf.

Thank you for your consideration of this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Earl Goode".

Earl Goode  
Chief of Staff  
Office of Governor Eric J. Holcomb

CC: Indiana Office of Inspector General



# State of Indiana

## Indiana Horse Racing Commission

Eric Holcomb, Governor

[www.in.gov/hrc](http://www.in.gov/hrc)

December 22, 2020

### **Re: Request for a formal advisory opinion**

Pursuant to Ind. Code 4-35-7-12, money collected from casinos known as Adjusted Gross Receipts ("AGR") is distributed to various equine welfare and promotion organizations. In practice, these groups are known as "Horsemen's Associations" ("Associations"). The Associations are charged with using the AGR funds for, among other things, benevolence for horsemen and families of horsemen racing in Indiana.

The Indiana Horse Racing Commission ("IHRC") has an employee named Jessica Barnes. Ms. Barnes has been employed with the agency for over twenty years. Her 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 suffered health setbacks that will result in significant medical bills. One of the Associations, the Indiana Standardbred Association ("ISA"), dedicates part of its AGR funds as an "emergency relief" fund for its members and Indiana Standardbred horsemen. The ISA has inquired about the appropriateness of offering a donation to Mr. Barnes, from the relief fund, given that his spouse is an employee of the IHRC.

The approval of Associations to receive AGR funds is solely the responsibility of the IHRC Commissioners. While IHRC staff does make recommendations, Ms. Barnes, in her role with the IHRC is not responsible for making recommendations on approval to the Commissioners. Moreover, ISA has assured IHRC that the donation amount would be consistent with the amount donated to any other member requiring assistance from the fund.

Having reviewed the Ethics Code and having sought an informal advisory opinion, it appears that the specific rules in question are the Gifts and Donor Restrictions rules, 42 IAC 1-5-1 and 42 IAC 1-5-2, respectively. Based upon the definition of a business relationship, it appears that ISA's relationship with IHRC likely qualifies as a business relationship which would mean that Mr. Barnes is prohibited from accepting the donation while his spouse is employed with the IHRC.

However, 42 IAC 1-5-1(b)(5) permits state employees or spouses to accept gifts 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 in that person's official capacity. Mr. Barnes has been a horse trainer for most of his life and has maintained social relationships throughout the industry. Likewise, Ms. Barnes has been employed by IHRC for two decades and has formed strong social ties both of her own and through Mr. Barnes. Both have dedicated their careers and lives to equine athletes and the Indiana horse racing industry and both are held in high regard by Indiana horsemen.



# State of Indiana Indiana Horse Racing Commission

Eric Holcomb, Governor

[www.in.gov/hrc](http://www.in.gov/hrc)

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Based on the above, and in consideration of the relationship between IHRC and ISA, the IHRC respectfully requests a formal advisory opinion to determine whether the exception 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 these extreme circumstances.

Your attention to this matter is greatly appreciated and if any additional information is required, I am happy to provide it upon request.

Respectfully,

Noah Jackson  
General Counsel/Ethics Officer  
Indiana Horse Racing Commission



Eric Holcomb, Governor  
State of Indiana

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

**VIA ELECTRONIC MAIL**

December 28, 2020

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

RE: Request for Formal Advisory Opinion for Dr. Jerry Sheward

Dear Chair Noel and members of the Ethics Commission:

The Indiana Family and Social Services Administration (“FSSA”), 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, requests a Formal Advisory Opinion from the State Ethics Commission addressing conflicts of interest and post-employment restrictions for Dr. Sheward.

Recently, Dr. Sheward 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.

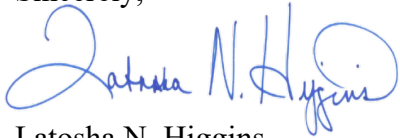
Dr. Sheward indicates that there are no particular matters that he substantially or personally participated in during his tenure that would preclude him from providing services post-employment to USHealthVest. Furthermore, he has not had any interactions with USHealthVest in his official capacity. If he is permitted to pursue this outside employment activity, he does not plan to take part in any discussions or negotiations between FSSA/DMHA and USHealthVest. His 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 information of FSSA during his post-employment endeavors. Furthermore, Dr. Sheward understands and agrees to abide by the one-year restriction regarding registering as an executive branch lobbyist.

Sincerely,



Latosha N. Higgins  
Managing Attorney and Ethics Officer



Eric Holcomb, Governor  
State of Indiana

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

VIA ELECTRONIC MAIL

December 28, 2020

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

RE: Request for Formal Advisory Opinion for Tony Toomer

Dear Chair Noel and members of the Ethics Commission:

The Indiana Family and Social Services Administration (“FSSA”), on behalf of Tony Toomer, Opioid Treatment Program Manager for the Division Mental Health and Addiction (DMHA) requests a Formal Advisory Opinion from the State Ethics Commission addressing whether it would be a conflict of interest for him to accept outside employment with Valle Vista Health Systems (Valle Vista).

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 Opioid Treatment Program 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 opioid treatment programs and any corrective action resulting from an annual review or complaints received regarding an opioid treatment program.

Recently, Mr. Toomer received an offer of employment from Valle Vista Health Systems (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. The facility is also licensed by the Indiana State 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 also operates New Vista Outpatient Recovery Center (New Vista), which is an OTP certified by DMHA. New Vista is subject to oversight by DMHA.

If permitted to accept employment with Valle Vista as a CD/IOP Therapist, Mr. Toomer's responsibilities would include being responsible for 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 Opioid Treatment Program. Valle Vista has provided Mr. Toomer with the attached conflict of interest waiver to document the terms of employment.

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

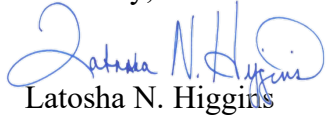
Mr. Toomer is interested in this outside employment opportunity because he is pursuing licensure as a Licensed Social Worker and Licensed Addiction Counselor. To be eligible to sit for his exams, Mr. Toomer must satisfy certain employment and supervision requirements. Unfortunately, he is unable to obtain this experience through his responsibilities in his current 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 where Valle Vista or New Vista would have any financial interest. If he is permitted to pursue this employment opportunity, the screen will continue. Additionally, Mr. Toomer would complete all his work for Valle Vista outside of his 37.5 work hours.

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 ethics code governing conflicts of interest, ghost employment, use of state property, and confidential information.

Thank you for your consideration of this request for a formal advisory opinion.

Sincerely,



Latosha N. Higgins  
Managing Attorney and Ethics Officer

Attachment: Valle Vista Conflict of Interest Waiver



**Valle Vista Health System**

898 East Main Street  
Greenwood, IN 46143

317.887.1348  
FAX 317.882.1631  
www.vallevistahospital.com

December 7, 2020

Tony Toomer  
1437 E 11st Street  
Indianapolis, IN 46201

Re: Limited Waiver of Conflicts of Interest

Dear Mr. Toomer,

This letter shall serve to memorialize our recent conversation in which you disclosed your interest in continuing your work with Department of Mental Health and Addiction (DMHA), while accepting employment with Valle Vista Health Systems. This letter shall memorialize Valle Vista Health System's agreement to a limited waiver of this conflict of interest during your employment with Valle Vista Health System.

By way of background, your anticipated role with Valle Vista Health System is to serve as CD/IOP Therapist. As a CD/IOP Therapist, your job responsibilities include but are not limited to responsible for providing intensive group therapy for assigned patients according to their individual needs. The IOP therapist completes individual assessments and assigns treatment goals accordingly in our Outpatient Program. The CD/IOP therapist completes all necessary paperwork per policy, consults with other treating providers, and serves as a support and resource for the inpatient hospital, as needed. You are expected to work PRN. You will have no responsibilities in Valle Vista Health System / New Vista's Opioid Treatment Program (OTP).

Based upon the foregoing disclosure, Valle Vista Health System is willing to grant a limited waiver of the conflict of interest with your express agreement to the above-listed terms. Valle Vista Health System reserves the right to re-visit and reconsider its above-described limited waiver of the conflicts of interest described in this letter. Further, should the circumstances concerning your relationship and responsibilities with the Department of Mental Health and Addiction (DMHA) changes, you are required to notify the undersigned with updated information so that Valle Vista Health System may consider whether this limited waiver of conflicts will be withdrawn and/or a new limited waiver of conflicts will be issued to you.

Sincerely,

Sergio Cianci Chapman  
Chief Executive Officer

cc: Facility Compliance Officer

Acknowledged & Agreed:

By: \_\_\_\_\_  
FACILITY EMPLOYEE NAME

\_\_\_\_\_  
Date