

**MINUTES OF THE MEETING OF
THE INDIANA STATE ETHICS COMMISSION
June 9, 2022**

I. Call to Order

A regular meeting of the State Ethics Commission (“Commission”) was called to order at 10:00 a.m. Commission members present were Katherine Noel, Chair; Corinne Finnerty; Sue Anne Gilroy; and Rafael Sanchez (by telephone). Office of Inspector General staff present included David Cook, Inspector General; Tiffany Mulligan, Chief of Staff and Chief Legal Counsel; Sean Gorman, State Ethics Director; Mark Mader, Staff Attorney; Doreen Clark, Staff Attorney; Jan Kruse, Special Agent; and Nathan Baker, Legal Assistant.

Others present were David Bausman, General Counsel, Department of Natural Resources; Amanda Foor, Human Resources Director, State Personnel Department; Karen Hinton, Deputy Director, Indiana State Parks; Matthew Re, Staff Attorney, Department of Natural Resources; Jordan Hert, Construction Inspector, Lochmueller Group; Mattheus Mitchell, Compliance and Ethics Specialist, Department of Revenue; Nyh Wa, Partner, Ice Miller; Tim Prerret, Summer Associate, Ice Miller; Paul Peaper, IU Health; Keith Beesley, General Counsel, State Personnel Department; Andrew Stonehing, Personnel Director, State Personnel Department; David Holt, Chief Operating Officer, Indiana Destination Development Corporation; Joe Basile, Director of Legal Services, Office of the Lieutenant Governor; Erin Elam, Ethics Officer, Indiana Department of Health; Laura Parks, Staff Attorney, Indiana Department of Health; Jessica Keyes, Ethics Officer, Family and Social Services Administration; Kyleen Welling, Ethics Officer, Indiana Housing and Community Development Authority; Arnette Richard, IT Director, Indiana Housing and Community Development Authority; Mia Tapella, Intern, Indiana Department of Transportation; Chris Serak, Ethics Officer, Indiana Department of Transportation; Brennan Chopp, Intern, Indiana Department of Transportation; Chris MacDonald, Internal Affairs Officer, Department of Child Services; Krisi Shute, Deputy General Counsel, Indiana Department of Homeland Security; Jen Cooper, Assistant General Counsel, Management Performance Hub; Tamera Glickman, Deputy General Counsel, Indiana Department of Administration; and Beth Green, General Counsel, Department of Workforce Development.

II. Adoption of Agenda and Approval of Minutes

Commissioner Gilroy moved to adopt the agenda, and Commissioner Finnerty seconded the motion, and the Commission passed the agenda via roll call vote (4-0).

Commissioner Finnerty moved to approve the Minutes of the April 14, 2022, Commission Meeting, and Commissioner Sanchez seconded the motion, which passed via roll call vote (4-0).

III. Consideration of Waiver of Post-Employment Restrictions for Annette Richard

Kyleen Weling, Chief of Staff and Ethics Officer for the Indiana Housing and Community Development Authority, 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 via roll call vote (4-0).

IV. Request for Formal Advisory Opinion

2022-FAO-010

Anne Valentine, Chief of Staff

David Holt, Chief Operating Officer of IDDC

Office of Lieutenant Governor

Commissioner Finnerty moved to table further discussion of this matter to the July State Ethics Commission Meeting until more information could be considered from the requesting party. Commissioner Sanchez seconded the motion, which passed via roll call vote (4-0).

V. Request for Formal Advisory Opinion

2022-FAO-011

Jordan Hert, Construction Inspector, Lochmueller Group

Chris Serak, Ethics Officer

Indiana Department of Transportation

Jordan Hert (Hert) is a former Indiana Department of Transportation (INDOT) employee, having started in the role of INDOT Highway Technician 3 in 2015. INDOT promoted Hert to a Highway Technician 1 position in 2018 and again to a Construction Project Supervisor position in 2021. Hert left his position with the State on March 2, 2022, to begin work at his current employer, Lochmueller Group (Lochmueller), as a Construction Inspector 1.

During his employment at INDOT, Hert was assigned to complete a stage 2 constructability review for a bridge replacement project in Martin County (B-40589 Project). In conducting that review, he was provided a set of plans and engineers' estimates of pay items and quantities for the B-40589 Project. Based on the review, he provided a list of questions and suggestions for designers to consider. Prior to his separation from state employment in March of 2022, INDOT slated Hert to serve as Project Supervisor in charge of overseeing construction for the B-40589 Project for INDOT.

INDOT recently published a Request for Proposal (RFP) for the B-40589 Project, with an anticipated letting date of June 15, 2022. Lochmueller is interested in submitting a proposal for the RFP and would like to list Hert as the proposed Highway Technician or Inspector for the Project. If INDOT selects Lochmueller's proposal for the B-40589 Project contract, Hert's role on behalf of Lochmueller would be measuring, tracking and paying for project materials, as well as being responsible for a large portion of the material and testing requirements under the contract. He would also be responsible for ensuring that the contractor follows all INDOT standards and specifications for the Project.

The RFP for the B-40589 Project identifies a delayed start date of February 1, 2023, with the need for construction inspection activities from January 1, 2023, through November 2023. The RFP requires identification of a contractor's personnel who will be supplying services under the construction contract for the Project.

Hert requested INDOT's review of whether Lochmueller may bid on the B-40589 Project and identify Hert as one of Lochmueller's assigned personnel. Hert's proposed work on the B-40589 Project was reviewed for a recommendation by INDOT's Selection Review Committee (SRC) for a conflict of interest under INDOT agency policy. The SRC recommendation determined that Lochmueller may pursue work on the B-40589 Project and that Hert's proposed involvement on behalf of Lochmueller would not violate INDOT's agency conflict of interest policy.

Hert is requesting the Commission's opinion as to whether Lochmueller may identify Hert as one of Lochmueller's personnel who will be supplying services in Lochmueller's proposal for the B-40589 Project RFP. Further, should INDOT award Lochmueller the B-40859 Project, Hert requests that the Commission determine whether he would be permitted by the Code of Ethics (Code) to begin work on the Project in January of 2023, approximately ten months following his separation from state employment.

The analysis stated the following:

A. Confidential Information

IC 4-2-6-6 prohibits Hert, as a former state employee, 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 Hert receives does not result from confidential information that he learned in his role at INDOT and in his work as a state employee on the B-40589 Project, his post-employment position at Lochmueller would not violate IC 4-2-6-6.

B. 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 Hert from accepting employment from an employer for 365 days from the date that he left state employment under various circumstances.

The Commission notes that Hert has already begun employment with Lochmueller within the 365 day "cooling off" period following his separation from state employment. Therefore, the Commission declines to analyze Hert's compliance with this provision retroactively.

The second prohibition, known as the "particular matter" restriction prevents a state employee 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.

Hert is prohibited under this provision from representing or assisting Lochmueller, as well as any other person, in a particular matter in which he personally and substantially participated as a state employee.

Hert asked if he can serve as the proposed Highway Technician or Inspector for Lochmueller on the B-40589 Project. Based on the information provided, Hert's role for INDOT on the B-40589 Project involved evaluating the construction quantities based on preliminary plans and preparing a list of questions and suggestions for INDOT designers.

The Commission finds that the B-40589 Project is a public works project subject to the particular matter restriction under IC 4-2-6-11. Furthermore, the Commission finds that, based on the information provided, Hert's work on the B-40589 Project while with INDOT was personal and substantial. The Commission determines that his proposed work on the B-40589 Project on behalf of Lochmueller or any other person is prohibited under the particular matter restriction.

Commissioner Gilroy moved to approve the Commission's findings, and Commissioner Finnerty seconded the motion, which passed via roll call vote (4-0).

VI. Request for Formal Advisory Opinion

2022-FAO-012

David Bausman, General Counsel

Indiana Department of Natural Resources

David Bausman, the Ethics Officer and General Counsel for DNR, is requesting a formal advisory opinion from the Commission as to whether the Code permits employees of the Indiana State Park Inns Authority (Authority) to receive tips as part of their compensation for work performed in their official duties. Mr. Bausman is requesting this opinion on behalf of DNR and the Authority.

According to Mr. Bausman, Indiana State Park Inns were part of the first seven Indiana State Parks, which were developed in 1916. Currently there are seven state park inns and lodges operating nearly 700 hotel and cabin rooms, a golf course and a central reservation system. Plans are being developed for two more lodges at existing Indiana State Parks.

The operation and management of Indiana State Park Inns were originally handled by an individual appointed by the county chair. Eventually, this responsibility was brought under DNR, although the operating structure was not codified. Under this system, State Park Inn employees were not considered state employees.

During the 2022 legislative session, the Indiana General Assembly passed Senate Enrolled Act 186 (SEA 186) to modernize the operations at State Park Inns. SEA 186 created the Authority as

a public body corporate and politic. Under SEA 186, which is effective July 1, 2022, the Authority's executive director and employees of the State Park Inns are not state employees, but they will be able to participate in state benefits and retirement options as state employees. Furthermore, SEA 186 specifically reads that the Authority's executive director and employees are under the jurisdiction of the Commission, and they are subject to ethics rules and requirements that apply to the executive branch of state government.

SEA 186 requires the Authority to establish a personnel system for Authority employees, including a pay scale and benefit package. The legislation also provides the Authority with the option of adopting its own personnel system separate from the State's personnel system.

Under the State Personnel Department's (SPD) pay plan rules, a state employee's salary is the total remuneration for the employee, and an employee is prohibited from accepting tips as part of their employment compensation. The Authority intends to adopt a separate personnel system that will allow tips to be included in an employee's remuneration for certain positions that customarily receive tips as part of overall compensation, such as service/wait staff and housekeeping. Authority employees in these positions would be considered "tipped employees" as defined by the U.S. Department of Labor (DOL).

Mr. Bausman provides that DNR is unaware of any other agency or body under the executive branch of state government that has employees in professions that traditionally include tips from guests as part of the employee's compensation. No other state agency utilizes state employees to serve as staff operating restaurants and inns.

Under the Fair Labor Standards Act, employers are permitted to take a tip credit for employees receiving tips toward the employer's minimum wage obligation, effectively permitting an employer to pay an hourly rate for tipped employees of at least \$2.13 per hour. If Authority employees are not permitted to accept tips under the Code, the Authority will be responsible for paying at least the federal minimum wage of \$7.25 per hour. Mr. Bausman notes that the Authority will compete with the private sector for retaining and hiring staff for roles that customarily receive tips; therefore, the inability to structure designated Authority employees' compensation to receive tips would negatively impact the fiscal viability of the Authority's operation of State Park Inns.

The analysis stated the following:

A. Gifts and Donor Restrictions

The Gift rule prohibits state employees 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 his or her official capacity.

The donor restrictions rule mirrors the Gift 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 Gift 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 his or 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 pecuniary interest in a contract or purchase with the agency.

Mr. Bausman writes that the Authority intends to allow tips to be included in the remuneration of certain positions that customarily receive tips, such as service/wait staff and housekeeping. In most instances, it seems unlikely that individuals who are tipping Authority employees would have a business relationship with the Authority. Most visitors to the State Park Inns are not seeking, obtaining, establishing, maintaining or implementing a pecuniary interest in a contract or purchase with the Authority or license or permit with the Authority; instead, they are simply visiting the State Parks Inns for personal enjoyment. Nonetheless, it is possible that an individual visiting a State Park Inn may have a business relationship with the Authority.

The Code does not define the term "gift", but it does, however, define "compensation" in IC 4-2-6-1(a)(7) as "any money, thing of value or financial benefit conferred on or received by any person in return for services rendered or for services to be rendered whether by that person or another". Per Internal Revenue Service (IRS) guidance, all cash and non-cash tips received by an employee are income and subject to federal income taxes. Further, if an employee's total tips in a calendar month exceed twenty dollars, the employee is required to report the tips to the employer and the employer is required to withhold Social Security, Medicare and federal income taxes from the employee's income.

Based on the information provided, the Commission finds that tips to specified employees are compensation and not gifts; therefore, the Gift rule and donor restriction rule would not apply, and the specified Authority employees would be able to accept tips as part of their compensation for employment.

B. Additional compensation

The Additional compensation rule prohibits a state employee from soliciting or accepting compensation for the performance of official duties other than provided for by law.

"Compensation" is defined in IC 4-2-6-1(a)(7) as any money, thing of value or financial benefit conferred on or received by any person in return for services rendered or for services to be rendered whether by that person or another.

The Authority proposes to structure these employees' compensation as tipped employees in compliance with IRS regulations providing for tips as income, as well as with the DOL regulations permitting an employer to count an employee's tips toward meeting the

employer's federal minimum wage requirements. Based on this information, the Commission determines that tips received by specified Authority employees are part of the employee's overall compensation as provided for by law. As such, tips received by specified Authority employees are not considered to be prohibited additional compensation under the Code.

Commissioner Gilroy moved to approve the Commission's findings, and Commissioner Sanchez seconded the motion, which passed via roll call vote (4-0).

VII. Request for Formal Advisory Opinion

2022-FAO-013

Paul Peaper, Former Senior Operations Director
Office of the Governor

Paul Peaper is a former Office of the Governor employee, who served as a Senior Operations Director for the Governor from January of 2017 through February of 2021. In this role, his primary responsibility was to serve as a liaison between assigned state agencies, including the Indiana Department of Health (IDOH) and the Family and Social Services Administration (FSSA). Mr. Peaper worked with agencies and their leaders to effectively communicate the Governor's agenda and served as the Governor's liaison to business and community organizations as well as other public and private entities on public health matters. During the course of his state employment, he did not have contracting authority or responsibility nor did he make any regulatory or licensing decisions regarding any matters.

Mr. Peaper provides that as a state employee, he participated in discussions with members of the Governor's Office and administration in the development of a long-term healthcare reform proposal as part of the Governor's 2021 agenda. To effectuate this proposal, the Governor directed FSSA to begin work with impacted stakeholders, including the Indiana Health Care Association (IHCA) and its members, to develop future policy and/or legislative proposals. The first of these stakeholder meetings occurred on February 15, 2021, prior to Mr. Peaper's separation from state employment on February 28, 2021.

Following Mr. Peaper's departure from state government, the stakeholder group developed and issued a Request for Information (RFI) to further develop a proposal to move long-term health care coordination and reimbursement into a managed care model. A subsequent Request for Proposal (RFP) was developed.

Furthermore, the General Assembly enacted legislation in both the 2021 and 2022 sessions that have impacted the development and the timeline of the proposal. As with the RFI and RFP, these legislative actions occurred after Mr. Peaper left state employment.

Mr. Peaper has recently received an offer of employment to serve as the next president of IHCA. IHCA is Indiana's largest trade organization and advocate representing proprietary, not-for-profit and hospital-based skilled nursing, assisted living and independent living communities. IHCA's more than 480 member facilities care for more than 35,000 of Indiana's

geriatric and disabled citizens, the majority of whom are low-income Medicaid recipients.

Mr. Peaper is seeking the Commission's opinion regarding the application of the Code to his post-employment opportunity with IHCA.

The analysis stated the following:

A. Confidential Information

IC 4-2-6-6 prohibits Mr. Peaper 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 Mr. Peaper receives does not result from confidential information, his potential employment with IHCA would not violate IC 4-2-6-6.

B. 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 a former state employee from accepting employment from an employer for 365 days from the date that he leaves state employment under various circumstances.

Because Mr. Peaper left state employment in February of 2021, the "cooling off" period has expired, and he is not prohibited under this provision from accepting the proposed position at IHCA. Furthermore, this provision does not impose any restrictions on his activities in that role.

As a former state employee, Mr. Peaper is subject to the post-employment rule's "particular matter" prohibition. 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 statute specifically excludes "the proposal or consideration of a legislative matter or the proposal, consideration, adoption, or implementation of a rule or an administrative policy or practice of general application" from the definition of particular matter. 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, Mr. Peaper is prohibited from representing or assisting IHCA, its members or any other person in a particular matter in which he personally and substantially participated as a state employee.

Mr. Peaper provides that the proposed role at IHCA may require his interaction with IDOH, which is the state agency primarily responsible for long-term care facility and employee licensure. Based on the information provided, Mr. Peaper was not involved with long-term

care facility or employee licensure during his state employment and has not identified any particular matters associated with his contact with IDOH.

Mr. Peaper provides that in the proposed role at IHCA, he would be responsible for the organization's lobbying and advocacy efforts regarding current regulatory and reimbursement framework as well as the managed care model for long-term care services reform that developed from the Governor's 2021 agenda.

The Commission finds that Mr. Peaper's participation in the proposals of legislative matters, policies and related general matters while serving in the Office of the Governor are not "particular matters" under the Code. Therefore, this provision does not prohibit Mr. Peaper from representing or assisting IHCA, its member facilities or any other person on such matters related to the policies and legislation on which he worked as a state employee.

Commissioner Finnerty moved to approve the Commission's findings, and Commissioner Gilroy seconded the motion, which passed via roll call vote (4-0).

VIII. Consideration of the Agreed Settlement

In the Matter of Kris Meltzer
Case Number 2021-12-0347

Doreen Clark presented the proposed Agreed Settlement in this matter to the Commission for their approval.

Commission Chair Noel moved to approve the Agreed Settlement and Commissioner Gilroy seconded the motion which passed via roll call vote (4-0).

IX. Ethics Director's Report

State Ethics Director Sean Gorman reported that the OIG has issued 30 Informal Advisory Opinions (IAOs) since the April 2022 State Ethics Commission meeting. Most of the IAOs were regarding the Code of Ethics on post-employment, outside employment, conflicts of interest, and gifts. Seven (7) Informal Advisory Opinion requests were withdrawn or referred.

He continued that the Auditors and Investigators Conference presented by the Office of Inspector General will be held on the afternoon of June 22, 2022. The conference will be held in person and would feature presentations from the U.S. Attorney's Office, Southern District of Indiana, as well as from personnel from the Office of Inspector General.

Finally, Mr. Gorman noted that since the Office of Inspector General will be presenting at the Attorney General's Contracts Seminar on July 13, 2022.

X. Adjournment

Commissioner Gilroy moved to adjourn the public meeting of the State Ethics Commission. Commissioner Finnerty seconded the motion, which passed via roll call vote (3-1).

The public meeting adjourned at 11:07 a.m.

From: [Valentine, Anne](#)
To: [Gorman, Sean M](#)
Cc: [Holt, David \(LG\)](#)
Subject: Request for a formal advisory opinion of the Indiana Ethics Commission
Date: Friday, April 22, 2022 10:45:48 AM
Attachments: [image001.png](#)
[image004.png](#)

As the Ethics Officer for the Office of Lieutenant Governor and the Indiana Destination Development Corporation, I am writing to request an advisory opinion for the Indiana Destination Development Corporation.

Indiana Destination Development Foundation, Inc. (the "Foundation") is an Indiana nonprofit corporation exempt from federal taxation pursuant to Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Code"). The Foundation is further classified as a Code Section 509(a)(3) supporting organization that is "organized and operated exclusively for the benefit of" the Indiana Destination Development Corporation ("IDDC"). The Lt. Governor, on behalf of the IDDC, appoints the entire Foundation Board of Directors. The Foundation's core mission is to support the IDDC, primarily through fundraising from the corporate and philanthropic community and making grants to the IDDC.

Because the Foundation does not have its own staff, the IDDC would like to leverage its employees to help support the Foundation in a manner that complies with Ind. Code Section 35-44.1. In what ways (and on what terms) can the IDDC employees support the Foundation during working hours?

Sincerely,



Anne Valentine
Chief of Staff

Office of the Lieutenant Governor
200 W Washington Street, Room 333
Indianapolis, IN 46204
Phone: 463-245-7728
avalentine@lg.in.gov

From: [Valentine, Anne](#)
To: [Gorman, Sean M](#)
Cc: [Holt, David \(LG\)](#); [Basile, Joseph \(Joe\)](#); [Mulligan, Tiffany M](#)
Subject: Information for Ethics Commission
Date: Tuesday, July 5, 2022 4:22:28 PM
Attachments: [IDDC Policy regarding work for Foundation DRAFT.pdf](#)
[IGA IDDC Final.pdf](#)
[image001.png](#)
[image002.png](#)
[image003.png](#)
[image004.png](#)

Sean,

In preparation for the July 14 meeting of the Ethics Commission, I'm sending the attached documents for the Commission as it considers our request for a formal advisory opinion.

IDDC Policy regarding work for Foundation DRAFT

- This is in draft form as we are seeking clarification on the travel language to ensure that it comports with State policy and will appropriately edit this draft if that is not the case (and will submit the updated version to the Ethics Commission)
- There is a Conflict of Interest form referenced – we will provide this form to the Commission at the July 14 meeting (it is currently being drafted)

IGA IDDC Final

- A letter from the author and sponsor of the legislation that created the Indiana Destination Development Corporation in 2019 indicating the intent to allow IDDC to create and support a foundation and plans to specific that in legislation during the 2023 session.

Please let us know if there is any additional information we can provide ahead of the July 14 meeting. Thank you for your assistance.

Sincerely,
Anne

ANNE VALENTINE ● CHIEF OF STAFF

Office of Lt. Governor Suzanne Crouch ● Statehouse, Room 333 ● Indianapolis, IN 46204

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Indiana Destination Development Corporation

**Indiana Destination Development Corporation
Standards for Indiana Destination Development Corporation Employees
Who Perform Work on Behalf of the Foundation**

I. Introduction

A. Background:

P.L. 78-2019 § 5 (codified as IC 5-33-3-3) authorizes the Indiana Destination Development Corporation (“IDDC”) to receive and expend funds, grants, gifts and contributions of money, property, labor, and other things of value from public and private sources for effectuating its corporate purposes. To assist in the branding, promoting, and telling of Indiana’s authentic story, the IDDC has established the Indiana Destination Development Foundation (“Foundation”), and the Foundation was exclusively created for the benefit of, to perform the functions of, or to carry out the purposes of the IDDC.

IDDC employees will play a crucial role in the operation of the Foundation by assisting in the development and promotion of Indiana’s tourist resources. In accordance with this policy, certain IDDC employees may serve on the board of directors of the Foundation, provide administrative support for the Foundation, and engage in fundraising activities on behalf of the Foundation.

B. Importance of Ethical Principles and Transparency:

The Foundation must have the public's trust. Thus, its activities must meet or exceed the highest ethical standards.

The Indiana Code of Ethics is the minimum standard IDDC employees must follow while working with the Foundation. To ensure compliance with these standards and to avoid even the appearance of impropriety, IDDC adopts these additional guidelines that IDDC employees shall adhere to when performing work on behalf of the Foundation. IDDC may amend these guidelines at the Commissioner’s discretion at any time. IDDC will file these policies with the Indiana State Ethics Commission pursuant to 42 IAC 1-6-1. IDDC employees must follow these guidelines in addition to any other documents created by the Foundation that may be applicable to the employees who participate in Foundation activities.



Indiana Destination Development Corporation

Transparency promotes trust by informing the public as to the ethical standards that guide the Foundation's activities. Accessibility to the standards will help assure the public that the Foundation's business and the conduct of IDDC employees on behalf of the Foundation are above reproach.

C. Scope and Coverage:

These guidelines represent the minimum expectations for ethical behavior of IDDC employees who serve on the board of directors of the Foundation, provide administrative support for the Foundation, and/or engage in fundraising activities on behalf of the Foundation. These guidelines shall take effect as of the date indicated in the signature block below and shall remain in effect until there is a written rescission of such by IDDC.

II. Definitions

Agency: For purposes of these guidelines and under I.C. 4-2-6-1 of the Indiana Code of Ethics, agency includes a private, nonprofit, government related corporation.

Authorized Employee: An individual who is employed by the IDDC on a full-time, a part-time, a temporary, an intermittent, or an hourly basis performing work on behalf of the Foundation. In order to perform authorized work on behalf of the Foundation, an employee must be approved in writing to do so by the IDDC Chief Executive Officer or his or her designee.

Authorized Work: Only work approved by the IDDC Chief Executive Officer or his or her designee shall be considered authorized work on behalf of the Foundation.

Business Relationship: Pursuant to I.C. 4-2-6-1(a)(5), dealings of a person with an agency seeking, obtaining, establishing, maintaining, or implementing a pecuniary interest in a contract or purchase with the agency or a license or permit requiring the exercise of judgment or discretion by the agency. A business relationship also refers to the relationship a lobbyist has with an agency and the relationship an unregistered lobbyist has with an agency.

Compensation: Any money, thing of value, or financial benefit conferred on or received by any person in return for services rendered, or for services to be rendered, whether by that person or another.



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Foundation: The Foundation is the Indiana Destination Development Foundation and is a 501(c)3 non-profit supporting organization of the Indiana Destination Development Corporation.

Fundraising: The organized activity or an instance of soliciting money, pledges or other items of value for the Foundation.

III. Guidelines

A. Employee:

- 1) Only Authorized Employees shall perform Authorized Work on behalf of the Foundation.
- 2) Authorized Employees shall perform Authorized Work for both the IDDC and the IDDF in an official capacity and as part of their official IDDC duties.
- 3) The following positions qualify as Authorized Employees to perform work on behalf of the Foundation within the scope of their respective job description:
 - a. **Chief Executive Officer:** The Chief Executive Officer shall serve as the President of the Foundation and set the direction of the Foundation. The individual shall also oversee fundraising and set the Foundation meeting agendas with the Foundation's Board of Directors.
 - b. **Chief Operating Officer and Chief of Staff:** The Chief Operating Officer and Chief of Staff shall serve as the Secretary and Treasurer of the Foundation, while also overseeing activities of the IDDC staff in their work for the Foundation. Additionally, the individual shall oversee fundraising for the Foundation, and monitor relevant measurements of success for all initiatives for the Foundation. The individual shall also support the development of Foundation meeting agendas and work with Foundation attorneys and accountants to maintain financial reports.
 - c. **Vice President of Fundraising and Partnership Development:** The individual shall seek sponsorships for Foundation initiatives, develop an annual work plan for achieving the established fundraising goal, and create opportunities for stakeholders to financially support the Foundation. Moreover, the individual shall manage the Community Engagement Officers and oversee the sale of



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- advertisements to raise funds for the Foundation. Furthermore, the individual shall monitor, measure, and report fundraising efforts as required.
- d. Director of Sports Tourism and Event Planning: The individual shall handle Foundation meeting logistics and provide back-up administrative duties as needed including handling deposits for the Foundation.
 - e. Community Engagement Officer: The individual shall provide administrative duties, including invoicing, for the Foundation and report to the Vice President of Fundraising and Partnership Development. The individual shall sell advertisement to raise funds for the Foundation. Additionally, the individual shall maintain up-to-date data and payments with respect to budgeting and financials as it relates to advertising revenue for the Foundation.
 - f. Executive Assistant and Field Director: The individual shall provide administrative support for the Foundation. The individual shall also send and maintain notices and agendas through OnBoard or similar software and support the development of Foundation meeting agendas with the IDDC Secretary/CEO and Chief of Staff. Additionally, the individual shall handle the deposits for the Foundation including reconciliation of funds received. Furthermore, the individual shall track outgoing Foundation payments and incoming checks within the Foundation's financial system, and work with the Foundation's accountant on financial reporting.
- 4) The aforementioned job descriptions seek to define the core responsibilities of each position but shall not be construed as fully inclusive of all tasks that may be assigned by the Chief Executive Officer or her designee, including as such tasks may relate to the Foundation.
 - 5) State resources including, but not limited to, printers, office supplies, software, and vehicles may be used to perform Authorized Work on behalf of the Foundation.
 - 6) The IDDC Chief Executive Officer or his or her designee will provide Authorized Employees with a copy of these guidelines. Authorized Employees shall:
 - Read and acknowledge receipt of guidelines.
 - Agree to comply with policies and procedures stated in these guidelines.
 - 7) Authorized Employees understand that the Foundation is charitable, and they will engage only in activities that relate to one or more of the 501(c)(3)'s tax-exempt purposes while working on Foundation activities.



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- 8) If an employee is not authorized to perform work on behalf of the Foundation and they receive an inquiry about the Foundation, they will refer said inquiry to the IDDC Chief Executive Officer or his or her designee.
- 9) The Office of the Lieutenant Governor's Ethics Officer ("Ethics Officer") will screen IDDC employees for conflicts of interest before said employees perform any Authorized Work on behalf of the Foundation.
 - a. Prior to receiving authorization to work on behalf of the Foundation, IDDC employees must complete and sign a Conflict of Interest Disclosure Statement in the form attached and file it with the Ethics Officer.
 - b. The Ethics Officer will review the Statement to ensure the employee does not have any conflicts of interest with the Foundation, a Foundation Board Member, a person or organization the Foundation is soliciting funds from, or an organization benefitting from the Foundation's work. For the purposes of these guidelines, a conflict of interest includes having a financial interest in one of these organizations or being in a position at IDDC to make decisions that would financially impact any of these individuals or organizations.
 - c. If the Ethics Officer determines that the employee has a conflict of interest that cannot be eliminated or mitigated, IDDC will not authorize the employee to perform work on behalf of the Foundation.
 - d. If the Ethics Officer determines the employee has a conflict of interest that can be eliminated or mitigated, the IDDC Chief Executive Officer or his or her designee may authorize the employee to perform work on behalf of the Foundation so long as the IDDC has implemented a screen as approved by the Ethics Officer or the State Ethics Commission if required by I.C. 4-2-6-9.
 - e. The IDDC employee shall update his or her Disclosure Statement on an annual basis and when any significant changes or additions to the Statement occur.
- 10) If at any time an employee has an ethical concern regarding the Foundation, the IDDC employee shall report the issue immediately to the Office of Inspector General and/or the Ethics Officer. If the employee is uncertain as to whether or not an issue is one of ethics, including an issue that may not be addressed in these guidelines, the employee shall contact the Ethics Officer for guidance as soon as possible.



Indiana Destination Development Corporation

B. Authorized Employee Compensation:

- 1) Authorized Employees shall not receive additional compensation for matters handled on behalf of the Foundation.
- 2) Authorized Employees' assistance with the Foundation shall not be tied to supplemental compensation, including, but not limited to, pay increases and/or spot bonuses, unless said assistance is directly listed in the employee's performance expectations.

C. Transparency:

- 1) All Authorized Employees shall be held to the highest ethical standards when working on behalf of the Foundation and shall cooperate and assist as necessary with any questions regarding the Foundation including transparency, audits, fundraising, and solicitation matters.
- 2) These guidelines and other guidelines issued on behalf of the Foundation shall be disclosed to the public.
- 3) The Foundation and employees working on behalf of the Foundation will comply with Indiana's Open Door Law found in I.C. 5-14-1.5.
- 4) The names of donors, individual(s) and/or businesses that do not donate anonymously to the Foundation shall be disclosed to the public. The amount of donations received by the Foundation shall also be subject to the Access to Public Records Act found in I.C. 5-14-3.

D. Fundraising and Acceptance of Donations:

- 1) Only Authorized Employees shall fundraise during a standard work schedule.
- 2) Any fundraising performed shall not be done through coercion.
- 3) All written fundraising activities will include the following disclaimers. If the fundraising activity is verbal, these disclaimers shall be made part of a written document provided to the potential donor before receiving any donation:
 - "Participation is completely voluntary." and,
 - "Participation will not affect any ongoing matter(s)." and,



Indiana Destination Development Corporation

- “Participation will not have any effect on any future application for participation in any of IDDC’s programs or any future regulatory action(s).”
- 4) Contribution(s) will not affect any ongoing matter(s) with the IDDC.
 - 5) Authorized Employees will not solicit subordinates.
 - 6) No special solicitation will be directed towards entities regulated by the IDDC, if any.
 - 7) Authorized Employees will not solicit any person or entity that has a business relationship with IDDC, including anyone:
 - That has a contract or grant with the IDDC;
 - That is bidding on a contract or grant with the IDDC;
 - That is soliciting business from the IDDC;
 - That is lobbying the IDDC; or
 - Through any form of coercion.
 - 8) The Foundation may accept non-solicited contributions from those with a business relationship with IDDC. However, the Foundation shall not accept contributions from those with a business relationship with IDDC that have a pending regulatory action with the IDDC, if any.
 - 9) Generally, the Foundation may accept any and all gifts. However, the Foundation will not accept a gift if:
 - A reasonable person would infer that the gift was offered to the Foundation to influence an action or inaction of the IDDC or its employees in their official capacity; or
 - It presents the appearance of impropriety for the IDDC.
 - 10) The Foundation will accept all gifts in accordance with gift acceptance procedures adopted by the Foundation. These procedures will ensure transparency of any gifts made to the Foundation. If there are any questions about the acceptance of gifts, Foundation Board members or IDDC employees shall contact the Ethics Officer.

E. Travel:

All Authorized Employees traveling on behalf of the Foundation will be reimbursed per State policy.



Indiana Destination Development Corporation

F. Compliance Mandatory:

- 1) The IDDC will discipline any employee, authorized or otherwise, committing violations of these guidelines in accordance with the applicable Employee Discipline and Procedures. The IDDC will report any employee, authorized or otherwise, that the IDDC suspects violated the Indiana Code of Ethics to the Inspector General's Office for review.
- 2) The Ethics Officer shall review all reports of possible ethical violations and forward all reports of violations of the Indiana Code of Ethics to the Inspector General's office. No retaliation shall be taken against any individual making a report of a possible violation, i.e., "whistleblowing".

Indiana Destination Development Corporation

By: Elaine E. Bedel

Elaine E. Bedel, Secretary & CEO

Effective Date: July 5, 2022

STATE OF INDIANA
INDIANA GENERAL ASSEMBLY
THIRD FLOOR STATE HOUSE
INDIANAPOLIS, INDIANA 46204

June 23, 2022

State Ethics Commission
Office of the Inspector General
315 West Ohio Street, Room 104
Indianapolis, Indiana 46202
Attn: Sean Gorman, State Ethics Director

Dear State Ethics Commission:

In 2019, the Indiana General Assembly recognized the importance of promoting Indiana as a great place for living, visiting, and learning by passing House Enrolled Act 1115, Tourism Development. The legislation created the Indiana Destination Development Corporation (IDDC) and on July 1, 2020, the IDDC was incorporated.

It has come to our attention that the State Ethics Commission has concerns related to the IDDC's use of a foundation. As lead author and sponsor of this legislation, it was our intent to allow the IDDC to create a foundation to raise private sector dollars like the Indiana Economic Development Corporation (IEDC) or the Indiana Department of Natural Resources (DNR). We plan to provide clarity on this issue with legislation during the upcoming 2023 legislative session.

For the reasons set forth above, we believe it is imperative for the IDDC to have a foundation which can raise private sector funds to assist IDDC in accomplishing its intended mission with the same tools as provided by the General Assembly to other state agencies, and to do so in a manner which saves Hoosier citizens tax dollars.

If you have any questions, please do not hesitate to contact us.

Respectfully,



Chip Perfect
Senate District 43
122nd General Assembly



Mike Karickhoff
House District 30
122nd General Assembly



Eric Holcomb, Governor
State of Indiana

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

July 1, 2022

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 Logan McCullough

Dear Chairperson Noel and members of the Ethics Commission:

The Indiana Family and Social Services Administration (“FSSA”), on behalf of Logan McCullough, requests a Formal Advisory Opinion from the State Ethics Commission regarding a potential conflicts of interest matter. Mr. McCullough is requesting a formal advisory opinion regarding a potential referral source for the program with which he is employed..

Mr. McCullough is currently an intake vocational rehabilitation counselor (VRC) with the Vocational Rehabilitation Program (VR) with the Division of Disability and Rehabilitative Services (DDRS) for FSSA. This is a recent change in his role with FSSA. In this new role, Mr. McCullough’s primary responsibilities include:

- Providing counseling and guidance to individuals with disabilities to assist them in achieving employment outcomes consistent with their strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.
- Providing coverage for (while transitioning out of) caseloads of participants who are blind or visually impaired

Half of Mr. McCullough’s new role is specific to intake services and the other half is providing general and ongoing services for individuals in the VR program. Mr. McCullough also recently moved from the Madison and Henry County “Area” (Area 12) for VR to the Muncie “Area” (Area 11) for his new position.

As noted above, he is still providing supportive services for his former position in Area 12 for participants who are Blind or Visually Impaired as coverage for the next few weeks during the transition to a new staff member. Consultation is provided by Mr. McCullough as needed, and



should be completed soon. Additionally, through on or about July 11, Mr. McCullough is covering the Blind and Visually impaired caseload for Area 11 until a new employee can take over that position in full.

Some VRCs specifically serve as a Specialty Counselor for populations with hearing loss, low vision, traumatic brain injuries, or similar diagnoses within the Vocational Rehabilitation Program. While it is not intended that Mr. McCullough work with any specific population as a Specialty Counselor, he could work with low vision individuals in his VRC role.

In September of 2021, Mr. McCullough's Wife earned a certification in Braille training. Specifically, the training Mr. McCullough's Wife went through was specific to certification in one-on-one Braille training. There are no other known trained one-on-one Braille trainers certified within the state. Because of her unique certification, Mr. McCullough's Wife would like to contract with VR as a vendor for Braille training services (one-on-one) with those participants who are Blind or Visually Impaired and could benefit from this training. There are other Braille training services in the state, one example being through Bosma, but no other known one-on-one certified trainers.

Mr. McCullough could be in a position to refer VR individuals to Braille training services, either through general services or potential coverage for participants who are Blind or Visually Impaired, and the concern would be that this would be an ethical violation if he referred someone seeking one-on-one Braille training to his Wife. Mr. McCullough's Wife would have a contract with the state of financial value to provide one-on-one training if allowable.

Mr. McCullough would not be the employee to review and release payment for claims to his Wife for the Braille training, nor would he have any direct supervision over her and her services pursuant to any contract she entered into with VR.

Mr. McCullough advises that if asked about Braille training services from an applicant or participant, he would likely tell an individual about Bosma services and/or refer them to Specialty Counselors working with low vision individuals, who may refer them elsewhere or to Mr. McCullough's Wife.

Mr. McCullough would not have a direct financial interest in any contract his Wife may enter into with FSSA/VR. He could benefit from a vendor contract indirectly. Mr. McCullough understands the restrictions against divulging or benefitting from any confidential information learned through state employment.

Based on the information above, I would request a determination by the Ethics Commission regarding any ethical concerns with Mr. McCullough's Wife's vendor contract with VR for training services due to Mr. McCullough's potential for referrals.

Mr. McCullough sought an informal advisory opinion from the Office of the Inspector General as an initial step in this process, and same is attached hereto as Exhibit A. Thank you for your consideration.

Sincerely,

A handwritten signature in cursive script that reads "Jessica Keyes".

Jessica Keyes
FSSA Ethics Officer

From: [Keyes, Jessica K](#)
To: [Keyes, Jessica K](#)
Subject: L. McCullough Informal Advisory Opinion
Date: Thursday, June 30, 2022 3:47:37 PM

From: Clark, Doreen (OIG) <DoClark@ig.IN.gov>
Sent: Monday, April 4, 2022 11:45 AM
To: Keyes, Jessica K <Jessica.Keyes@fssa.IN.gov>
Subject: \$ecure RE: Advice
Importance: High

Jessica,

Thank you for contacting our office for ethics advice as the Ethics Officer for the Indiana Family and Social Services Administration (FSSA). We understand that you are requesting advice on behalf of Logan McCullough (Mr. McCullough), Intake Vocational Rehabilitation Counselor (VRC) with the Vocational Rehabilitation (VR) program within FSSA's Division of Disability and Rehabilitation Services (DDRS). We understand that Mr. McCullough's wife (Mrs. McCullough) wishes to contract with the VR program as a vendor in order to offer her Braille training services to VR clients.

In Mr. McCullough's role as Intake VRC, his responsibilities include providing counseling and guidance to individuals with disabilities to assist them in achieving employment outcomes with their strengths, resources, priorities, concerns, abilities, capabilities, interests and informed choice. Additionally, some Intake VRC's serve as Specialty Counselors for populations with hearing loss, low vision, traumatic brain injuries or similar diagnoses. You write that while it is not intended that Mr. McCullough work with any specific population, there is a possibility he could work with low vision individuals. Aside from providing intake services, Mr. McCullough also provides general and outgoing services for individuals in the VR program.

You write that Mr. McCullough's role as Intake VRC is a new position for him. Previously, he was employed as a Blind/Visually Impaired Specialist with DDRS and is still covering the case load from his previous position for the next couple of months. Mr. McCullough has recently moved from Madison and Henry County "Area" (Area 12) for VR to the Muncie area (Area 11) for his new position. Mr. McCullough is still providing services for his former position in Area 12.

You write that Mrs. McCullough is legally blind and receives services from VR through her case staffed by another VRC, who helps to coordinate with family members of VR employees. In September of 2021, Mrs. McCullough earned a certification in Braille training. There are no other known trained one-on-one Braille trainers certified within the State.

Due to Mrs. McCullough's unique certification, you write that she is interested in contracting with VR as a vendor for Braille training services (one-on-one) with individuals on the blind/visually impaired caseload. You state that while there are other Braille training services in the State, such as through Bosma, no other known one-on-one certified trainers exist. You state that this arrangement could possibly place Mr. McCullough in a position to refer VR individuals to Braille training services. In addition, Mrs. McCullough would also have a contract with the State of financial value.

You write that Mr. McCullough would not be the employee to review and release payments for claims to his wife nor would he have any supervision over her and her services pursuant to any contract she entered into with VR. Mr. McCullough also advises that if asked about Braille training services, he would likely tell an individual about Bosma services and/or refer them to Specialty Counselors working with low vision individuals.

We understand that you are seeking advice to determine what ethical concerns could arise under the Code of Ethics (Code) should Mrs. McCullough seek to become a vendor with VR. You also seek to determine whether there are any ethical concerns under the Code if Mr. McCullough provides transportation to and from his office or other VR offices for Mrs. McCullough to provide training if she becomes a vendor for the State.

Your inquiry primarily invokes consideration of IC 4-2-6-9, the conflicts of interests related to decisions and votes rule; IC 4-2-6-10.5, the conflicts of interests related to contracts rule; IC 4-2-6-16, the Nepotism rule; and IC 4-2-6-6, 42 IAC 1-5-10 and 42 IAC 1-5-11, the confidentiality rules. We have included the relevant definitions and rules at the end of this opinion.

1. **IC 4-2-6-9 - Conflicts of Interests Related to Decisions and Votes**

First, IC 4-2-6-9, which pertains to conflicts of interests; decisions and voting, prohibits a state employee from participating in any decision or vote, or matter related to that decision or vote, if the employee has knowledge that various persons may have a financial interest in the outcome of the matter, including (1), the state employee him/herself; (2) an immediate family member; (3) a business organization in which the state employee is serving as an officer, director, member, trustee, partner or employee, or (4) an organization with whom the state employee is negotiating or has an arrangement concerning prospective employment. The Code defines “financial interest” in IC 4-2-6-1(a)(11) to include “an interest . . . in a purchase, sale, lease, contract, option, or other transaction between an agency and any person; or . . . involving property or services . . .” The term does not include an interest that is not greater than the interest of the general public or any state officer or any state employee.

Under this rule, Mr. McCullough could not participate in any decisions or votes, or matters related to decisions or votes, in which he knows his wife has a financial interest. You provide that Mr. McCullough is currently completing the blind and visually impaired caseload for the next few months while also completing his intake VRC duties. You also write that Mr. McCullough refers VR individuals to Braille training services. If Mrs. McCullough’s wife contracts with VR as a vendor, it is possible that Mr. McCullough may be asked to participate in a matter in which his wife has a financial interest, such as referring individuals to his wife’s services. **Thus, Mr. McCullough has a potential conflict of interests under this rule, and he must follow the rule’s notification requirements prescribed in IC 4-2-6-9(b) to avoid violating this rule if his wife becomes a VR vendor.**

Please note that because Mr. McCullough has an identified conflict of interests, mere recusal from any decision or vote is not enough. For example, it is not enough for Mr. McCullough to just refer clients to another service. **The rule also requires that Mr. McCullough notify FSSA’s appointing authority, Dr. Rusyniak, and you, as the agency ethics officer, in writing and either (1) seek a formal advisory opinion from the Commission or (2) file a written disclosure [form](#) with our office in accordance with IC 4-2-6-9’s notification**

requirements. The disclosure form includes a screen that you would put together, which would prohibit Mr. McCullough from participating in any matters in which his wife has a financial interest. Additionally, you specifically ask whether Mr. McCullough could transport his wife to and from his office or other VR offices. Nothing in the Code specifically prohibits this; however, it could raise questions about a potential conflict of interests. By having Mr. McCullough follow the rule's notification requirements prescribed in 4-2-6-9 (b), it would help Mr. McCullough avoid the appearance of impropriety due to the established screening process. Please let us know if you have any questions about this process.

2. IC 4-2-6-10.5 – Conflicts of Interests Related to Contracts

Pursuant to IC 4-2-6-10.5, a state employee may not knowingly have a financial interest in a contract made by any state agency. The Code defines "financial interest" to include an interest arising from employment. The Commission has interpreted this rule to apply when a state employee derives compensation from a contract between a state agency and a third party.

The rule's exception provides that an employee may have a financial interest in a contract made by a state agency so long as that employee (1) does not participate in or have official contracting responsibility for the contracting agency, and (2) files a disclosure form with our office prior to the contract's execution between the agency and third party.

This rule would apply only if Mr. McCullough has a financial interest in a contract made by a state agency (as compared to the analysis under IC 4-2-6-9, which addresses a family member's financial interest). Although Mrs. McCullough may receive funds from a state contract if she decides to proceed with a contracting business with VR, nothing in the information you provided indicates that Mr. McCullough has an ownership interest in his wife's company or will otherwise have a direct financial interest in his wife's business. So long as he does not have a direct financial interest in his wife's contract with VR, he will not be in violation of this rule.

3. IC 4-2-6-16 Nepotism

The nepotism rule, found at IC 4-2-6-16, consists of four primary prohibitions: (1) an individual employed in an agency may not hire a relative, (2) an individual may not be employed in the same agency in which his relative is the appointing authority, (3) an individual may not be placed in a relative's direct line of supervision and (4) an individual may not contract with or supervise the work of a business entity with which a relative is a partner, executive officer or sole proprietor. Pursuant to IC 4-2-6-1, "relative" includes a spouse.

Prohibitions (1), (2) and (3) do not apply to this situation because Mr. McCullough is not hiring his wife and his wife will not be an employee of FSSA. Under prohibition (4), however, Mr. McCullough cannot contract with or supervise the work of his wife's business. **So long as Mr. McCullough is not involved in the contract with his wife's business and is not supervising her work in any way, then his wife becoming a VR vendor would likely not violate the nepotism rule.**

4. 42 IAC 1-5-10 and 42 IAC 1-5-11- Confidential Information

42 IAC 1-5-10 and 11 also would prohibit Mr. McCullough from divulging, benefitting from or permitting any other person to benefit from, confidential information learned as a result of his position with FSSA. To the extent that Mr. McCullough possesses information of a confidential nature by virtue of his position at FSSA that could be used to benefit any person, including his wife, he will need to ensure he complies with these rules.

Thank you again for submitting your question to our office. Please note that this response does not constitute an official advisory opinion. Only the Commission may issue an official advisory opinion. This informal advisory opinion allows us to give you quick, written advice. The Commission will consider that an employee or former employee acted in good faith if it is determined that the individual committed a violation after receiving advice and the alleged violation was directly related to the advice rendered. Also, remember that the advice given is based on the facts as we understand them. If this e-mail misstates facts in a material way, or omits important information, please bring those inaccuracies to our attention.

Sincerely,
Doreen Clark
Office of Inspector General

Sec. 1. (a) As used in this chapter, and unless the context clearly denotes otherwise:

...

(7) "Compensation" means any money, thing of value, or financial benefit conferred on, or received by, any person in return for services rendered, or for services to be rendered, whether by that person or another.

...

(11) "Financial interest" means an interest:

(A) in a purchase, sale, lease, contract, option, or other transaction between an agency and any person; or

(B) involving property or services.

The term includes an interest arising from employment or prospective employment for which negotiations have begun. The term does not include an interest of a state officer or employee in the common stock of a corporation unless the combined holdings in the corporation of the state officer or the employee, that individual's spouse, and that individual's unemancipated children are more than one percent (1%) of the outstanding shares of the common stock of the corporation. The term does not include an interest that is not greater than the interest of the general public or any state officer or any state employee.

...

(12) "Information of a confidential nature" means information:

(A) obtained by reason of the position or office held; and

(B) which:

(i) a public agency is prohibited from disclosing under IC 5-14-3-4(a);

(ii) a public agency has the discretion not to disclose under IC 5-14-3-4(b) and that the agency has not disclosed; or

(iii) is not in a public record, but if it were, would be confidential.

(13) "Person" means any individual, proprietorship, partnership, unincorporated association, trust, business trust, group, limited liability company, or corporation, whether or not operated for profit, or a governmental agency or political subdivision.

IC 4-2-6-9 Conflict of economic interests; commission advisory opinions; disclosure

statement; written determinations

Sec. 9. (a) A state officer, an employee, or a special state appointee may not participate in any decision or vote, or matter relating to that decision or vote, if the state officer, employee, or special state appointee has knowledge that any of the following has a financial interest in the outcome of the matter:

- (1) The state officer, employee, or special state appointee.
- (2) A member of the immediate family of the state officer, employee, or special state appointee.
- (3) A business organization in which the state officer, employee, or special state appointee is serving as an officer, a director, a member, a trustee, a partner, or an employee.
- (4) Any person or organization with whom the state officer, employee, or special state appointee is negotiating or has an arrangement concerning prospective employment.

(b) A state officer, an employee, or a special state appointee who identifies a potential conflict of interest shall notify the person's appointing authority and ethics officer in writing and do either of the following:

- (1) Seek an advisory opinion from the commission by filing a written description detailing the nature and circumstances of the particular matter and making full disclosure of any related financial interest in the matter. The commission shall:
 - (A) with the approval of the appointing authority, assign the particular matter to another person and implement all necessary procedures to screen the state officer, employee, or special state appointee seeking an advisory opinion from involvement in the matter; or
 - (B) make a written determination that the interest is not so substantial that the commission considers it likely to affect the integrity of the services that the state expects from the state officer, employee, or special state appointee.
- (2) File a written disclosure statement with the commission that:
 - (A) details the conflict of interest;
 - (B) describes and affirms the implementation of a screen established by the ethics officer;
 - (C) is signed by both:
 - (i) the state officer, employee, or special state appointee who identifies the potential conflict of interest; and
 - (ii) the agency ethics officer;
 - (D) includes a copy of the disclosure provided to the appointing authority; and
 - (E) is filed not later than seven (7) days after the conduct that gives rise to the conflict.

A written disclosure filed under this subdivision shall be posted on the inspector general's Internet web site.

(c) A written determination under subsection (b)(1)(B) constitutes conclusive proof that it is not a violation for the state officer, employee, or special state appointee who sought an advisory opinion under this section to participate in the particular matter. A written determination under subsection (b)(1)(B) shall be filed with the appointing authority.

IC 4-2-6-10.5 State officers and employees; financial interest in contract made by agency; exceptions

Sec. 10.5. (a) Subject to subsection (b), a state officer, an employee, or a special state appointee may not knowingly have a financial interest in a contract made by an agency.

(b) The prohibition in subsection (a) does not apply to a state officer, an employee, or a special state appointee who:

- (1) does not participate in or have contracting responsibility for the contracting agency;
and
 - (2) files a written statement with the inspector general before the state officer, employee, or special state appointee executes the contract with the state agency.
- (c) A statement filed under subsection (b)(2) must include the following for each contract:
- (1) An affirmation that the state officer, employee, or special state appointee does not participate in or have contracting responsibility for the contracting agency.
 - (2) An affirmation that the contract:
 - (A) was made after public notice and, if applicable, through competitive bidding; or
 - (B) was not subject to notice and bidding requirements and the basis for that conclusion.
 - (3) A statement making full disclosure of all related financial interests in the contract.
 - (4) A statement indicating that the contract can be performed without compromising the performance of the official duties and responsibilities of the state officer, employee, or special state appointee.
 - (5) In the case of a contract for professional services, an affirmation by the appointing authority of the contracting agency that no other state officer, employee, or special state appointee of that agency is available to perform those services as part of the regular duties of the state officer, employee, or special state appointee.

A state officer, employee, or special state appointee may file an amended statement upon discovery of additional information required to be reported.

- (d) A state officer, employee, or special state appointee who:
- (1) fails to file a statement required by rule or this section; or
 - (2) files a deficient statement;

before the contract start date is, upon a majority vote of the commission, subject to a civil penalty of not more than ten dollars (\$10) for each day the statement remains delinquent or deficient. The maximum penalty under this subsection is one thousand dollars (\$1,000).

4-2-6-16 Continuation of job assignment that existed on July 1, 2012; “employed”; employment of relatives; violation; penalty

Sec. 16. (a) This chapter does not prohibit the continuation of a job assignment that existed on July 1, 2012.

(b) As used in this section, “employed” refers to all employment, including full-time, part-time, temporary, intermittent, or hourly. The term includes service as a state officer or special state appointee.

(c) An individual employed in an agency may not hire a relative.

(d) Except as provided in subsection (e), an individual may not be employed in the same agency in which an individual's relative is the appointing authority.

(e) An individual may be employed in the same agency in which the individual's relative is the appointing authority, if the individual has been employed in the same agency for at least twelve (12) consecutive months immediately preceding the date the individual's relative becomes the appointing authority.

(f) Except as provided in subsection (e), an individual may not be placed in a relative's direct line of supervision.

(g) An individual employed in an agency may not contract with or supervise the work of a business entity of which a relative is a partner, executive officer, or sole proprietor.

(h) Any person within an agency who knowingly participates in a violation of this chapter is subject to the penalties set forth in [section 12](#) of this chapter.

Doreen Clark

Staff Attorney

Office of Inspector General

315 West Ohio Street., Room 104

Indianapolis, IN 46202

doClark@ig.in.gov

Phone: (317) 234-3993

*****PRIVILEGED AND CONFIDENTIAL*****

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REQUEST FOR FORMAL ETHICS OPINION FROM THE INDIANA ETHICS COMMISSION

Agency: Indiana Office of Administrative Law Proceedings
Ethics Officer: Jami Sayeed
Director: Michelle Allen
Employee: Caroline A. Stephens Ryker

FACTS

Caroline A. Stephens Ryker (“Ms. Ryker”) is an employee of the Indiana Office of Administrative Law Proceedings (“OALP”). Ms. Ryker currently serves as an Administrative Law Judge (“ALL”) in the General Government Division of OALP, and on July 11, 2022, Ms. Ryker will transition to a new position as a Chief Administrative Law Judge for the Social Services Division of the OALP.

Outside of work, Ms. Ryker serves as a board member of the National Association of Hearing Officials (“NAHO”) as the Central Representative. She began serving as the Central Representative in January of 2022, and her term will end in December of 2024. NAHO is a nonprofit organization committed to providing education on best practices for Administrative Law Judges.¹ OALP currently purchases memberships from NAHO for select employees so that they can take advantage of NAHO’s training opportunities.

Each year, NAHO holds a conference on best practices for ALJs. NAHO covers the cost of the conference for board members along with some of the travel expenses incurred by board members because the day before the conference, NAHO holds a day-long board meeting. NAHO also covers some travel costs and the cost of the conference for speakers who present at the conference. As a board member, Ms. Ryker is eligible to have her conference fee covered along with some of her travel expenses. Additionally, Ms. Ryker plans to speak at the conference, which would result in a similar coverage of her conference expenses by NAHO. This year, the conference will be held during the second week of August of 2022.

Ms. Ryker will not use state resources to complete her NAHO related responsibilities, including the preparation and presentation of her NAHO class. If she needs to attend to a NAHO issue during work hours, she will either make the time up or use leave. Her participation in NAHO as a board member is not part of her job, although she has agreed to maintain her NAHO certification status while an ALJ that OALP.²

The August 2022 NAHO Conference will address topics that are relevant to Ms. Ryker’s current and future job with OALP. Specifically, in both roles, she serves as an ALJ, and in her new role, she will be training and supervising ALJs. A conference on best practices for ALJs will allow her to stay current on issues in administrative law as well as in the practice of serving as an adjudicator. She will be able to use the skills that she learns for the adjudication of her own cases and will be able to pass the skills she learns onto other ALJs within OALP. Attending this kind of conference falls within Ms. Ryker’s job duties.

¹ More information on the organization can be found here: <https://www.naho.org/>

² NAHO certifies that ALJ have been training in best practices if they complete a specific amount of training across specified topics.

Ms. Ryker has conferred with the OALP Ethics Officer, who has represented to her that OALP will considered waiving the gift rule provided it addresses the relevant ethical issues.

ETHICAL ISSUES

1. The conference registration may constitute either 1) a gift, 2) honoraria, or 3) compensation, depending on the perspective of the decisionmaker. Under which analysis should the conference registration be assessed? Ultimately, may Ms. Ryker accept the conference registration from NAHO if OALP waives the gift rule?
2. The travel expenses may constitute either 1) a gift or 2) compensation, depending on the perspective of the decisionmaker. Under which analysis should the travel expenses be assessed? Ultimately, may Ms. Ryker accept the reimbursement of her travel expenses from NAHO if OALP waives the gift rule?
3. Is Ms. Ryker permitted to attend the conference (which provides training directly relevant to her job with OALP) using state time, provided she deducts any time she spends presenting on behalf of NAHO?

ETHICAL RULES IMPLICATED

I. 42 IAC 1-5-1 Gifts; Travel Expenses; Waivers

(a) A state employee or special state appointee, or the spouse or unemancipated child of a state employee or special state appointee, shall not knowingly solicit, accept, or receive any: (7) travel expenses...(8) registration fees...from a person who has a business relationship with the employee's or special state appointee's agency...³

(c) An employee's or special state appointee's state officer or appointing authority may waive application of subsection (a) of this rule in individual cases when consistent with the public interest. The waiver shall: (1) be in writing; and (2) identify the following: (A) The employee or special state appointee. (B) The nature and value of the gift. (C) The donor of the gift. (D) Why acceptance of the gift is consistent with the public interest.

II. 42 IAC 1-5-3 Honoraria

An employee shall not personally accept an honorarium for any activity that may be considered part of the state employee's official duties...However, in no case may an employee accept an honorarium

³ "'Business relationship' includes the following: (A) Dealings of a person with an agency seeking, obtaining, establishing, maintaining, or implementing: (i) a pecuniary interest in a contract or purchase with the agency; or(ii) a license or permit requiring the exercise of judgment or discretion by the agency..." IC 4-2-6-1. "'Travel expenses' means transportation, lodging, and meals..." 42 IAC 1-3-24.

from a person who has a business relationship or seeks to influence an official action with the employee's agency.⁴

III. 42 IAC 1-5-8: Additional compensation

A state officer, employee, or special state appointee shall not solicit or accept compensation for the performance of official duties other than provided for by law.

IV. 42 IAC 1-5-13 Ghost employment

A state officer, employee, or special state appointee shall not engage in, or direct 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.

V. IC 4-2-6-17(a) Use of state property for other than official business; exceptions; Violations

Subject to IC 4-2-7-5, a state officer, an employee, or a special state appointee may not use state materials, funds, property, personnel, facilities, or equipment for purposes other than 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. The commission may withhold approval of a policy or rule that violates the intent of Indiana law or the code of ethics, even if Indiana law or the code of ethics does not explicitly prohibit that policy or rule.

VI. 42 IAC 1-5-5(a) Moonlighting

A current state officer, employee, or special state appointee may not knowingly: accept other employment involving compensation of substantial value if the responsibilities of that employment are inherently incompatible with the responsibilities of public office or require the individual's recusal from matters so central or critical to the performance of the individual's official duties that the individual's ability to perform those duties would be materially impaired; accept employment or engage in business or professional activity that would require the individual to disclose confidential information that was gained in the course of state employment; or use or attempt to use the individual's official position to secure unwarranted privileges or exemptions that are: of substantial value; and not properly available to similarly situated individuals outside of state government.

⁴ "'Honorarium' means a payment of money for: (1) an appearance; (2) a speech; or (3) an article; but does not include payment or reimbursement of travel expenses for a state employee." 42 IAC 1-3-12

ANALYSIS

I. 42 IAC 1-5-1 Gifts; Travel Expenses; Waivers

The registration fee and travel expenses associated with the NAHO conference may constitute gifts from an entity that has a business relationship with OALP. However, Ms. Ryker's attendance of the NAHO conference is in the public's interest because the material that she will learn is 1) directly relevant to her job with the state and 2) will benefit the public by way of her implementing her new knowledge in her own hearings as well as by her sharing her knowledge with her coworkers who serve in a similar capacity. If it addresses the ethical issues associated with her acceptance of the registration fee and travel expenses, OALP may be considered waiving the gift rule.

II. 42 IAC 1-5-3 Honoraria

The registration fee may constitute honoraria provided to Ms. Ryker from an entity that has a business relationship with OALP, if provided to Ms. Ryker for speaking at the NAHO Conference. Ms. Ryker may not accept the registration fee from NAHO if the registration fee is in exchange for her teaching a class at the NAHO conference. Ms. Ryker's travel expenses do not constitute honoraria.

III. 42 IAC 1-5-8: Additional compensation

Ms. Ryker is not serving as a NAHO board member or speaking at the NAHO conference as part of her job duties with OALP. If she attends the conference more generally, her attendance would fall within her job responsibilities with the state.

However, the provision of the conference fee and the travel expenses may constitute compensation for her services as a board member and a speaker at the conference, which are not related to Ms. Ryker's job with the state. Alternatively, they do not constitute compensation for attending the conference itself, which falls within the performance of Ms. Ryker's state related job duties.

IV. 42 IAC 1-5-13 Ghost employment

Ms. Ryker may attend the NAHO conference using state time because the training directly relates to her job duties. However, Ms. Ryker may not use state time to teach at the conference or to perform any duty related to her service as a NAHO board member.

V. IC 4-2-6-17(a) Use of state property for other than official business; exceptions; Violations

Ms. Ryker may not use state property to participate as a speaker or as a board member with NAHO.

VI. 42 IAC 1-5-5(a) Moonlighting

Ms. Ryker's participation as a board member at NAHO is not inherently in conflict with current or future roll.

Thank you for your consideration. Ms. Ryker is willing to obtain a statement from NAHO specifying the reasons for the conference registration and travel reimbursement, if needed to determine the appropriate analysis.

Caroline A. Stephens Ryker, employee



STATE OF INDIANA) INDIANA STATE ETHICS COMMISSION
)SS:
COUNTY OF MARION) CASE: 2021-12-0347

IN RE THE MATTER OF KRIS MELTZER

FINAL REPORT OF THE INDIANA STATE ETHICS COMMISSION

Comes now the Ethics Commission for the State of Indiana (“Commission”), and hereby reports its findings of fact, conclusions of law, and sanctions in the above captioned matter.

FINDINGS OF FACT

1. The Respondent and the Inspector General entered into an Agreed Settlement (“Agreement”) which was accepted by the Commission during their June 9, 2022 meeting.
2. Pursuant to the Agreement, the Respondent, an employee of the Indiana Department of Child Services, admitted to violations of the Indiana Code of Ethics; specifically, he admitted to violations of 42 IAC 1-5-4, the political activity rule, and Ind. Code § 4-2-6-17, the use of state property rule.
3. Pursuant to the Agreement, Respondent admitted that he violated 42 IAC 1-5-4 and Ind. Code § 4-2-6-7 by utilizing a computer owned by the State of Indiana and his state email address to solicit campaign funds from members of the Shelby County Bar Association.

CONCLUSIONS OF LAW

Said conduct, admitted and acknowledged by Respondent, constitutes a violation of 42 IAC 1-5-4 and Ind. Code § 4-2-6-7.

SANCTIONS

The Commission sanctions the Respondent a fine in the amount of One Hundred Dollars (\$100.00) to be paid to the “Indiana State Ethics Commission” within sixty (60) days from June 9, 2021, the date that the Commission approved the settlement agreement.

Approved on July 14, 2022.

Katherine Noel, Chair

Corinne Finnerty, Commissioner

Sue Anne Gilroy, Commissioner

Rafael Sanchez, Commissioner