

**MINUTES OF THE MEETING OF
THE INDIANA STATE ETHICS COMMISSION
August 12, 2021**

I. Call to Order

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

Others present were: Tammera Glickman, Deputy General Counsel, Indiana Department of Administration; Sylvia Watson, General Counsel and Ethics Officer, Indiana State Library; Ed Feigenbaum, Indiana Legislative Insight; Jessica Keyes, Ethics Officer, Family and Social Services Administration; Mattheus Mitchel, Compliance and Ethics Specialist, Department of Revenue; Kristi Shute, Deputy General Counsel and Ethics Officer, Indiana Department of Homeland Security; Christine McDonald, Internal Affairs Officer, Department of Child Services; Jameson Berry, Director of Industrial Compliance – IOSHA, Department of Labor; Amber Nicole Ying, Director/Special Counsel, Compliance and Ethics and Ethics Officer, Department of Revenue; Tony Hardman, General Counsel, Indiana Department of Labor; Victoria Wilkinson, 4L McKinney Law Student, Summer Extern at the Indiana State Library; Beth Green, General Counsel/Ethics Officer, Department of Workforce Development; Daniel Rusyniak M.D., Secretary, FSSA; Dale Gick, Director of Engineering, Department of Revenue; Justin Paicely, Deputy General Counsel/Ethics Officer, Department of Revenue; Cheryl Whitfield, Whistleblower/Intake Specialist, Department of Labor; Keith Beesley, Attorney, State Personnel Department; Holly Hays, Social Services Reporter, IndyStar; Matthew Tarkington, Attorney for Megan Arszman-Weisbrodt; and John Walls, Ethics Officer and Chief Counsel of Advisory, Attorney General.

II. Adoption of Agenda and Approval of Minutes

Commissioner Sanchez moved to adopt the Agenda and Commissioner Gilroy seconded the motion which passed (4-0).

Commissioner Gilroy moved to approve the Minutes of the June 10, 2021, Commission Meeting and Commissioner Sanchez seconded the motion which passed (4-0).

III. Consideration of Waiver of Post-Employment Restrictions for Dale Gick

Justin A. Paicely, Deputy General Counsel of the Indiana Department of Natural Resources presented the proposed Waiver of Post-Employment Restrictions in this matter to the Commission for their approval.

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

IV. Request for Formal Advisory Opinion

2021-FAO-007

Dr. Dan Rusyniak, FSSA Secretary

Jessica Keyes, Staff Attorney and Ethics Officer

Indiana Family and Social Services Administration

Jessica Keyes is the Ethics Officer for the Indiana Family and Social Services Administration (FSSA). Ms. Keyes is requesting an advisory opinion on behalf of Dr. Daniel Rusyniak, the recent Chief Medical Officer and the new Secretary of FSSA. Specifically, Ms. Keyes is requesting an opinion from the Commission to ensure that Dr. Rusyniak's continued outside employment/professional activity with Eskenazi Health and Indiana University (IU) School of Medicine is acceptable under the Code while he is employed in his new role as Secretary of FSSA.

Dr. Rusyniak appeared before the Commission in 2018 when he became the Chief Medical Officer for FSSA regarding this same outside employment. In 2018-FAO-017, the Commission found that his outside employment opportunities would not create any conflicts of interests under the Code and that he could continue in these positions while serving as Chief Medical Office for FSSA. Recently, Dr Rusyniak was promoted to Secretary of FSSA, effective August 1, 2021, and out of an abundance of caution, due to his new role within the agency, Dr. Rusyniak is requesting an updated opinion regarding continued outside employment with Eskanazi Health and his faculty position with IU School of Medicine.

Dr. Rusyniak was the Chief Medical Officer for FSSA from August 6, 2018, to July 30, 2021. During this time, after approval from the Commission through 2018-FAO-017, Dr. Rusyniak has worked in the emergency department of Eskanazi Health. Dr. Rusyniak wishes to continue this outside employment as he transitions to his new role as Secretary of FSSA. Dr. Rusyniak is also on temporary leave from IU School of Medicine, but he maintains a faculty position; he would like to maintain this position moving forward in his role as Secretary of FSSA as well.

As Chief Medical Officer for FSSA, Dr. Rusyniak's duties included providing leadership to the medical directors in each FSSA division and providing expertise and leadership to the agency, including policy advising and program planning. Dr. Rusyniak's role as Chief Medical Officer did not include any contract administration or rulemaking.

Dr. Rusyniak would like to continue to work a few evenings a month in the emergency department at Eskenazi Health while serving in his new role as Secretary of FSSA. Dr.

Rusyniak believes that it is important for him to continue working in the emergency room to maintain his skills through patient contact, which has aided him in his role as Chief Medical Officer and would continue to benefit him in his new role as Secretary. Eskenazi Health partners with the IU School of Medicine and serves as the public hospital division of the Health and Hospital Corporation of Marion County. Eskenazi is a safety-net hospital, meaning that it provides health care and other related services to the uninsured, Medicaid-recipients and other vulnerable populations regardless of ability to pay. Continuing to work shifts in the emergency department at Eskenazi Health would allow Dr. Rusyniak to have real world access to issues that are presented in the health care setting, which would be helpful in his role as FSSA Secretary in addressing the same issues.

Dr. Rusyniak has and will continue to pay for his own licensing fees and certifications. He has not and will not serve in a managerial or leadership role with Eskenazi Health or Indiana University Health Physicians (IU Health Physicians), his direct employer. Dr. Rusyniak is considered a supplemental employee, and IU Health Physicians will pay him for his work at Eskenazi Health on an hourly basis, rather than billing patients or insurance.

Eskenazi Health and IU Health Physicians are Indiana Medicaid Providers. Each has an Indiana Medicaid Provider Agreement with FSSA, and both receive Medicaid reimbursements. Eskenazi Health does not have a direct contract with FSSA; however, its community mental health center is certified by FSSA's Division of Mental Health and Addiction. Additionally, IU Health Physicians is affiliated with Indiana University Health (IU Health), and FSSA's various divisions have six active contracts with IU Health, Indiana University and related entities. The contracts are at the division level in FSSA, and the FSSA divisions have ownership of the contracts. As Secretary, Dr. Rusyniak would not be in a position to negotiate or sign these contracts. To avoid a potential conflict under IC 35-44.1-1-4, neither Eskenazi Health nor IU Health Physicians will use funds from contracts with FSSA to pay Dr. Rusyniak; however, his fees may be paid from general Medicaid funds.

Pursuant to IC 12-8-1.5-10.5, the Office of the FSSA Secretary is designated as the single state agency for administration of the State's Medicaid program under IC 12-15. As such the Office of the FSSA Secretary develops and coordinates Medicaid policy for the State. Therefore, the FSSA Secretary may make decisions affecting Medicaid providers; however, his decisions would apply broadly to all Medicaid providers uniformly and not specifically to Medicaid providers at Eskenazi or IU Health Physicians. For example, if reimbursement rates were revised for Medicaid providers, such changes would apply uniformly to all relevant Medicaid providers. Additionally, while Eskenazi Health or IU Health Physicians may have infrequent issues to address specifically with FSSA, there is little direct contact between these institutions and FSSA generally.

Accordingly, it is unlikely that FSSA would make a decision that would have a unique impact on Eskenazi Health or IU Health Physicians; however, should there be a situation whereby Dr. Rusyniak, in his role as Secretary, would need to make a decision related specifically and solely to Eskenazi Health or IU Health Physicians, Dr. Rusyniak understands and acknowledges that pursuant to IC 4-2-6-9, he will be screened from participating in any decision or vote, or matter relating to that decision or vote in which Eskenazi Health or IU Health Physicians would have a financial interest in the outcome.

Dr. Rusyniak also would like to maintain his appointment at the IU School of Medicine while employed by FSSA. Dr. Rusyniak had formerly taken a temporary leave of absence from the medical school that permits him to retain his title and the full rights of a faculty member. During his leave of absence, Dr. Rusyniak will not receive any benefits or salary from the IU School of Medicine; however, he will be required to continue to abide by the professional standards of the medical school to remain a faculty member in good standing. This leave of absence is renewed annually.

Dr. Rusyniak also understands that he has a duty to maintain confidential information learned through his employment with the State and that he is prohibited from divulging confidential information or allowing anyone, including but not limited to Eskenazi Health and IU Health Physicians, from benefiting from the same.

Dr. Rusyniak further understands that he cannot use state time for outside employment with either Eskenazi Health or the medical school. Dr. Rusyniak plans to continue the emergency department shifts during off work time such as evenings or weekends.

The previous Secretary of FSSA, Dr. Sullivan, also sought a formal advisory opinion from the Commission for a similar situation wherein she worked shifts at Riley Hospital for Children (Riley) during her tenure at FSSA. The Commission found in that instance, after careful consideration of several factors, that Dr. Sullivan did not have any conflict of interests under the Code and would be able to continue her outside employment with Riley while serving as Secretary.

Ms. Keyes provides that Dr. Rusyniak's situation is analogous in many ways to Dr. Sullivan's work at Riley. Further, there are no changes to Dr. Rusyniak's outside employment duties, which the Commission previously approved. He and Ms. Keyes are seeking a formal opinion regarding whether his change in roles within FSSA would impact the permissibility of his outside employment opportunities under the Code.

The analysis stated the following:

Ms. Keyes' request for a formal advisory opinion invokes consideration of the provisions of the Code pertaining to Conflicts of Interests, Use of State Property, Ghost Employment and Benefitting from and Divulging Confidential Information. The application of each provision to Dr. Rusyniak 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 by Ms. Keyes, Dr. Rusyniak's employment at Eskenazi Health would not create a conflict of interests for him under this provision. Dr. Rusyniak would not serve in a supervisory or leadership role with the hospital; he would be working as a physician on an hourly basis and would not have a managerial or leadership role. According to Ms. Keyes, Dr. Rusyniak's responsibilities at Eskenazi Health would not conflict with his responsibilities at FSSA and would not require him to recuse himself from matters that are critical to the performance of his duties as Secretary of FSSA.

His other outside employment/professional activity would not provide Dr. Rusyniak with compensation of a substantial value. Dr. Rusyniak is taking a leave of absence from his position with IU School of Medicine and will not receive any benefits or salary during this time.

Ms. Keyes provides that Dr. Rusyniak understands that he is prohibited from disclosing confidential information that he may have access to by virtue of his state employment in any of his outside positions. Nothing in the information presented suggests that Dr. Rusyniak would use or attempt to use his state position for any unwarranted privileges or exemptions. Dr. Rusyniak held both of these outside positions prior to becoming the Chief Medical Officer, and now the Secretary, for FSSA.

Accordingly, the Commission finds that Dr. Rusyniak's outside employment positions with Eskenazi Health and IU School of Medicine would not create a conflict of interests for him under IC 4-2-6-5.5.

B. Conflict of interests - decisions and votes

IC 4-2-6-9 (a)(1) prohibits Dr. Rusyniak 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 Dr. Rusyniak from participating in any decision or vote, or matter relating to that decision or vote, if he or a business organization which employs him has a financial interest in the matter. IC 4-2-6-9(b) requires that an employee who identifies a potential conflict of interests notify his or her Ethics Officer and Appointing Authority and seek an advisory opinion from the Commission or file a written disclosure statement.

Dr. Rusyniak will now be serving as Secretary of FSSA and will be working a few shifts per month in the emergency department at Eskenazi Health. Dr. Rusyniak will serve as a supplemental (hourly) employee at Eskenazi Health through IU Health Physicians, which is affiliated with IU Health.

Accordingly, Dr. Rusyniak would have a potential conflict of interests if he participates in decisions or votes, or matters related to such decisions or votes, in which he, Eskenazi Health, IU Health Physicians or IU Health would have a financial interest in the outcome.

Eskenazi Health does not have any direct contracts with FSSA; however, its community mental health center is certified by FSSA's Division of Mental Health and Addiction. Additionally, FSSA's various divisions have six active contracts with IU Health and related entities. Ms. Keyes provides that these contracts are at the division level in FSSA and that the division directors are the owners of the contracts, not the Secretary.

Eskenazi Health and other IU Health-affiliated facilities serve Medicaid patients. FSSA is the state agency responsible for administering the Medicaid program; however, any decisions that Dr. Rusyniak would make regarding Medicaid would be broad in scope and would affect all Medicaid providers uniformly. Ms. Keyes does not anticipate that Dr. Rusyniak would ever be in a position to participate in a decision or vote in which Eskenazi Health, IU Health Physicians or IU Health, would have a unique financial interest.

The Commission finds that Dr. Rusyniak does not have an identified potential conflict of interests at this time; however, in the event that any matters in which a decision made by Dr. Rusyniak as Secretary could uniquely affect Eskenazi Health, IU Health Physicians or IU Health arise, FSSA must be prepared to institute a screening mechanism whereby it would delegate any decisions, and matters related to such decisions, in which Eskenazi Health, IU Health Physicians or IU Health would have a unique financial interest in the outcome to the Deputy Secretary.

C. Conflict of interests – contracts

Pursuant to IC 4-2-6-10.5, a state employee may not knowingly have a financial interest in a contract made by an agency. This prohibition, however, does not apply to an employee that does not participate in or have contracting responsibility for any of the activities of the contracting agency, provided certain statutory criteria are met.

Ms. Keyes provides Eskenazi Health does not have any direct contracts with FSSA; however, FSSA's various divisions have six active contracts with IU Health and related entities.

Ms. Keyes provides that in order to avoid any conflicts under IC 35-44.1-1-4 (the criminal conflict of interests statute), IU Health Physicians will not use funds from these contracts with FSSA to pay Dr. Rusyniak. She notes that his fees may be paid from general Medicaid funds; such funds are not considered to be derived from a state contract.

The Commission finds that FSSA has taken the appropriate steps to ensure Dr. Rusyniak will not have a conflict of interests under both the Code and Indiana criminal code and that Dr. Rusyniak would not have a financial interest in a state contract that would create a conflict of interests.

D. Confidential information

Dr. Rusyniak 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 Dr. Rusyniak from accepting any compensation from any employment, transaction or investment that is entered into or made as a result of material information of a confidential nature. The term “person” is defined in IC 4-2-6-1(a)(13) to encompass both an individual and a corporation, such as IU Health. In addition, the definition of “information of a confidential nature” is set forth in IC 4-2-6-1(a)(12).

To the extent Dr. Rusyniak is exposed to or has access to such confidential information in his new position as Secretary of FSSA, he would be prohibited not only from divulging that information but from ever using it to benefit any person, including any of his outside employers, in any manner.

E. Use of state property and Ghost employment

42 IAC 1-5-12 prohibits Dr. Rusyniak 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 Dr. Rusyniak 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 Dr. Rusyniak observes these provisions regarding his outside employment/professional activities, his outside positions would not violate these ethics laws.

Commissioner Finnerty moved to approve the Commission’s findings, and Commissioner Gilroy seconded the motion which passed (4-0).

V. Request for Formal Advisory Opinion

2021-FAO-008

Cheryl Whitfield, Whistleblower/Intake Specialist

J. Anthony Hardman, General Counsel and Ethics Officer

Indiana Department of Labor

J. Anthony Hardman serves as General Counsel and Ethics Officer for the Indiana Department of Labor (IDOL). Mr. Hardman is requesting an advisory opinion on behalf of Cheryl Whitfield, candidate for the IDOL position of Whistleblower/Intake Supervisor (Supervisor) with IDOL’s Indiana Occupational Safety and Health Administration (IOSHA). Specifically, Mr. Hardman is seeking the Commission’s opinion addressing whether Ms. Whitfield would have a conflict of interests under the Code if she were to accept the Supervisor position with IDOL and maintain an interest in her outside business. Her business is a professional services contractor specializing in Occupational Safety and Health Compliance Management that offers safety solutions to help

workers follow company policies and standard operating procedures so that employers can comply with applicable safety and health codes.

Ms. Whitfield is the sole owner of a company called Code-Keepers, LLC (Code-Keepers). Code-Keepers was registered with the Indiana Secretary of State in June 2017 and currently has an Active status. Code-Keepers creates safety plans for companies based on OSHA requirements for Hazard Communication, Emergency Action Plan, Fire Safety, Exit Routes, Walking/Working Surfaces, Medical and First Aid, Recordkeeping and more.

The services that Code-Keepers offers are similar to the services that IDOL's health and safety consultation division, INSafe, currently offers to Indiana employers free of charge; however, there should be no internal dealings between INSafe and the Supervisor position, and Mr. Hardman does not anticipate a conflict of interests for Ms. Whitfield in this regard. Currently Code-Keepers has only one client and has one company with whom it recently spoke; however, it does not yet have a contract with this second company. Code-Keepers is an Indiana Department of Transportation (INDOT) certified Disadvantaged Business Enterprise/Airport Disadvantaged Business Enterprise (DBE/ACDBE) and an Indiana Department of Administration (IDOA) approved Minority/Women Business Enterprise (M/WBE). Code-Keepers is registered on INDOT's and IDOA's Contractor/Vendor Listings for working with state-certified contractors and General Industry employers. It also has a website and social media pages.

The Supervisor position, among other things, requires the review of complaints and referrals provided to IDOL about potential health and safety hazards that are alleged to exist at places of employment across the State of Indiana. The Supervisor then makes a decision regarding the next steps for the complaint or referral, including if an on-site inspection is to be assigned to an IOSHA compliance officer. The Supervisor also makes decisions regarding whether whistleblower complaints against employers across the State of Indiana meet the prima facie elements to warrant an investigation and ultimately if the complaint has merit. The Supervisor has other responsibilities that include supervising and training IDOL intake staff, team leaders and whistleblower investigators as well as having a shared responsibility to assist in training new compliance officers.

IDOL proposes that it put screens in place to prevent Ms. Whitfield from having to make a decision in her capacity as Supervisor regarding a client or prospective client of Code-Keepers. Ms. Whitfield has already provided IDOL with a current client list, and she agrees to update that list whenever Code-Keepers begins to establish a business relationship with a new client. IDOL proposes that it will compare every employer that is reported to IDOL as having a potential health and safety hazard or has a whistleblower complaint against Code-Keeper's client list. If a reported employer is not on the list, Ms. Whitfield will be able to execute her duties as usual; however, if a reported employer is on the list or is otherwise a client or potential client of Code-Keepers, IDOL will route the decisions to be made regarding those complaints or referrals through other IDOL personnel who are capable of making those decisions.

Ms. Whitfield also understands and agrees that she shall not use her IDOL position to secure unwarranted privileges or exemptions that are of substantial value and not properly available to similarly situated individuals outside of state government. Specifically, she shall not use information she obtains regarding reported employers to build a prospective client list for Code-

Keepers or to contact the employers for any purpose other than for IDOL business in her capacity as Supervisor during IDOL work hours. She also understands and agrees that she shall not use her position as Supervisor with IDOL to obtain clients for Code-Keepers or to benefit the business in any way. This includes not mentioning or posting her position as Supervisor publicly so that clients or potential clients of Code-Keepers do not know she works for IDOL. Finally, she understands and agrees to comply with the ghost employment, use of state property and confidential information provisions of the Code.

Mr. Hardman and Ms. Whitfield would like the Commission's opinion on whether the proposed screen would be appropriate and permit Ms. Whitfield to continue operating her outside business if she accepts the Supervisor position with IDOL.

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 Ms. Whitfield's continued operation of her outside business would not violate subsection (a)(1) or (a)(2) once she became a state employee. 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, Ms. Whitfield would likely have to recuse herself from matters that are central and/or critical to the performance of her official duties such that her ability to perform them may be materially impaired. Specifically, the Commission finds that serving in the IDOL Supervisor position while simultaneously operating Code-Keepers, a business focused on assisting other businesses who are likely the subject of complaints/referrals that IDOL receives, would create an inherent conflict of interests for Ms. Whitfield under the Code. No screening mechanism could prevent this conflict of interests because, in her role as Supervisor, Ms. Whitfield would review the complaints/referrals that IDOL receives regarding these businesses and be in a position to make decisions on next steps,

Further, the Commission finds that a position with IDOL would enable Ms. Whitfield to have a perceived, if not actual, unfair advantage over competitors in identifying clients for her outside

business. Members of the public and/or competitors could see her position with IDOL in screening complaints regarding workplace safety and her simultaneous operation of her outside business in assisting companies with workplace safety compliance as her using her IDOL position to secure an unfair advantage in identifying and building a client base.

Accordingly, the Commission does not approve Ms. Whitfield's continued operation of her outside business if she were to accept the Supervisor position with IDOL.

B. Conflict of interests - decisions and votes

IC 4-2-6-9 (a)(1) prohibits Ms. Whitfield from participating in any decision or vote, or matter relating to that decision or vote, if she has a financial interest in the outcome of the matter. Similarly, IC 4-2-6-9(a)(3) prohibits Ms. Whitfield from participating in any decision or vote, or matter relating to that decision or vote, if she or a business organization for which she serves as an officer 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."

Ms. Whitfield is a candidate for the position of Supervisor at IDOL. As Supervisor, Ms. Whitfield's responsibilities would include reviewing complaints and referrals provided to IDOL about potential health and safety hazards that are alleged to exist as places of employment across the State of Indiana.

Ms. Whitfield would like to continue her operation of her business, Code-Keepers, if she accepts the Supervisor position at IDOL. Code-Keepers assists companies in creating custom safety plans and solutions so that they can comply with applicable safety and health codes for their employees.

The Commission finds that the decisions Ms. Whitfield would have to make in her IDOL capacity could have a financial impact on her outside business as her business provides services to employers related to the types of complaints and referrals for which she would be reviewing and determining any needed next steps. 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 or her Ethics Officer and Appointing Authority and seek an advisory opinion from the Commission or file a written disclosure statement with the Office of Inspector General (OIG). Both options require the implementation of a screen that would ensure that the employee does not participate in matters that would create a conflict of interests.

Mr. Hardman identified this potential conflict of interests, and he has requested this formal advisory opinion and indicated that IDOL is prepared to implement a screen to ensure Ms. Whitfield is not involved in any decisions, votes or other matters in which her outside business would have a financial interest; however, the Commission finds that it would not be possible to screen Ms. Whitfield from all decisions/votes in which her business could have a financial interest in the outcome of the matter. The Commission finds that the proposed screening procedures would not prevent a conflict of interests from arising for Ms. Whitfield under IC 4-2-6-9.

The Commission finds that due to the nature of Ms. Whitfield's business, Code-Keepers, every complaint and referral she would review and make a decision as to its disposition for IDOL would identify a potential client for her business. Although the Commission appreciates IDOL's and Ms. Whitfield's efforts to adhere to the requirements of the Code and attempts to prevent a conflict of interests for Ms. Whitfield, the Commission finds that the proposed screen could never completely eliminate the potential conflict or perceived impropriety of Ms. Whitfield having access to information about every business that would be a candidate for the services that her outside business provides.

Accordingly, the Commission finds that IDOL would be unable to adequately screen Ms. Whitfield from participation in all matters in which her outside business would have a financial interest. As a result, she cannot operate her outside business while serving in the Supervisor role for IDOL without violating this rule.

Commissioner Sanchez moved to approve the Commission's findings, and Commissioner Finnerty seconded the motion which passed (4-0).

VI. Consideration of Agreed Settlement

In the Matter of Paul Sipples
Case Number 2020-06-0183
Luba Gore, Staff Attorney
Indiana Office of Inspector General

Luba Gore presented the proposed Agreed Settlement in this matter to the Commission for their approval.

Commissioner Gilroy moved to approve the Agreed Settlement and Commissioner Sanchez seconded the motion which passed (4-0).

VII. Consideration of Agreed Settlement

In the Matter of Megan Arszman-Weisbrodt
Case Number 2020-10-0310
Luba Gore, Staff Attorney
Indiana Office of Inspector General

Luba Gore presented the proposed Agreed Settlement in this matter to the Commission for their approval.

Commissioner Sanchez moved to approve the Agreed Settlement and Commissioner Gilroy seconded the motion which passed (4-0).

VIII. Consideration of Agreed Settlement

In the Matter of Elston Boldery
Case Number 2018-01-0019
Tiffany Mulligan, Chief Legal Counsel
Indiana Office of Inspector General

Tiffany Mulligan presented the proposed Agreed Settlement in this matter to the Commission for their approval.

Commissioner Gilroy moved to approve the Agreed Settlement and Commissioner Sanchez seconded the motion which passed (4-0).

IX. Director's Report

State Ethics Director, Jen Cooper, indicated that Final Reports for the three Ethics Cases with Agreed Settlements that the Commission voted on at today's meeting will be presented at the next meeting for approval.

Director Cooper continued that OIG staff has issued 46 informal advisory opinions since the previous last meeting. The majority of these requests dealt with questions concerning conflicts of interests, use of state property, ghost employment, outside employment, post-employment and gifts.

She continued that a new Ethics Training for Fall 2021 is being worked on. New software is being procured and smaller modules will be created in order to facilitate ongoing training.

Finally, Director Cooper reported that the 2021 Legal and Ethics Conference has a tentative date scheduled for November 16, 2021 with hopes that it will be held in-person this year.

X. Adjournment

Commissioner Sanchez moved to adjourn the public meeting of the State Ethics Commission. No second was asked for a no vote was taken.

The public meeting adjourned at 11:22 a.m.

INDIANA STATE POLICE

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www.state.in.us/isp

August 26, 2021

TO: Indiana Ethics Commission

FROM: Nila Miller-Cronk, Major
Commander, Office of Professional Standards

SUBJECT: Request for Formal Advisory Opinion

As the Department's Ethics Officer, on July 20, 2021, I requested an ethics informal advisory opinion through the Inspector General's Office on behalf of Master Trooper David Caswell, who is an Unarmed Response to Active Shooter Event (URASE) trained ISP instructor who was trained by Dr. Hogue and Sgt. Chris Kath on May 8, 2015, for ISP, in addition to his other assigned duties. Master Trooper Caswell has off-duty employment, DC Consulting LLC, that has been approved by the Department. His LLC has been asked by the Indiana Toll Road Concession Company LLC (ITRCC) to put together a Workplace Violence presentation to train their remote employees (mowing crews, toll takers, and roadside worker) what their options are when dealing with an active shooter/ violence situation. The ITRCC are requesting to purchase Master Trooper Caswell's presentation and they are asking for approximately 20 – 30 minute presentation. He has met with ITRCC to discuss what information they would like in the presentation. And he has met with a marketing company to discuss cost for the preparation of the presentation. In his talks with Rick Fedder – Chief Operating Officer, he (Fedder) advised ITRCC leased the Toll Road from the State of Indiana and ITRCC does not receive any funding from the State of Indiana. ITRCC is a subsidiary of IFM Global Fund.

Prior to going any further into this venture, Master Trooper Caswell wanted to inquire about any potential ethics issues. Specifics of this request are contained in the complex Informal Advisory Opinion response prepared by Staff Attorney Mark E. Mader, which is contained in the email attached to this request.

On August 17, 2021, after review of the informal advisory opinion and discussions with Department Legal personnel and the Executive Staff the following response was sent to Master Trooper Caswell:

Your request has been vetted through my office, Legal and discussed with Colonel French and Lt. Col. Bilkey. The facts are as follows:

- You are an Unarmed Response to Active Shooter Event (URASE) trained ISP instructor who was trained by Dr. Hogue and Sgt. Chris Kath on May 8, 2015.
- You requested permission to put together a Workplace Violence presentation to train remote employees (mowing crews, toll takers, and roadside worker) of the Indiana Toll Road Concession Company LLC on their options when dealing with an active shooter/violence situation under your personal LLC, DC Consulting LLC.

- The Indiana Toll Road Concession Company LLC could contact ISP either through the PIO at Bremen or Captain Galaviz at GHQ and they could receive this training for free.

After reviewing your request, as well as the facts listed above, to include in-depth discussions with ISP Legal and members of the Executive Staff it has been determined that your request is denied. This request from the Indiana Toll Road Concession Company LLC would be something you are paid by ISP to do as part of your assigned duties. If you are interested in developing a Workplace Violence presentation for your off-duty employment, it would only be permitted for out-of-state clients, not Indiana clients.

On August 18, 2021, Master Trooper Caswell provided the following response to the Department's finding:

I wanted to respond to your email for clarification.

I apologize my first email only had an overview of what the Indiana Toll Road Concession Company, LLC was asking for. The information I provided you was only to inquire for an ethics ruling because I wanted to make sure that my status as a state employee wouldn't become an ethics issue by entering a contract with the Indiana Toll Road Concession Company, LLC. Therefore, my explanation of the request may not have been clear enough regarding the proposal.

ITRCC LLC reached out to me because of the outside instructing and programs I have worked on separately from ISP. ITRCC LLC is asking for a Toll Road specific training for the remote workers (toll takers, money collectors, roadside workers, etc.) for workplace violence response, environmental awareness, situational awareness, etc. They wish to purchase the presentation to train their new employees with a 20 - 30 minute presentation. I am unable to alter the URASE presentation to fit the needs and customization that the ITRCC LLC is asking for. I do not recall the last time I assisted with a URASE presentation, but believe it was approximately 2016 or 2017.

I appreciate the training that ISP has provided, however, the program they are requesting is specifically one that I have worked on and put together for them based on their request with information from various trainings and resources. Additionally, I offered to come in as ISP and do the URASE training for them for free. They advised they had already received that training and it was not what they were looking for at this time. They are planning and desire to purchase a program designed specifically for their company with specific training modules geared for them including their policies, procedures, etc. that they can provide to their current and new employees.

I know there are other ISP personnel that have utilized the training they have received through our department for employment outside of ISP including polygraph examiners for outside companies, accident reconstruction for insurance, firearms for training individuals, and security assessments. That was not my intent with this program. I have researched other workplace / violence response training other than the ISP URASE training to include Run, Hide, Fight; Los Angeles Police Run, Hide, Fight training, OSHA Violence in the Workplace resources, and numerous other online articles and trainings.

Thank you all for taking the time to review my response and further explanation. If any of you have specific questions, I am more than happy to meet with you or speak via telephone.

On August 25, 2021, Master Trooper Caswell was provided the following update after receiving the updated information:

The new information you provided will need to be presented to the Ethics Commission for a formal advisory opinion. The next Ethics Commission meeting will be held on Thursday, September 9th and I need to submit the request by Monday, September 30th. Are you wanting to move forward, request a formal advisory opinion from the Ethics Commission and you present it before them? If so, let me know immediately and I will get the request submitted so we can be added to the agenda for the September Ethics Commission meeting.

That same day Master Trooper Caswell requested for his updated information to be presented to the Ethics Commission for a formal advisory opinion on September 9, 2021.

In a follow-up email later on August 25, 2021, Master Trooper Caswell also requested the information below be included in the ethics hearing information:

They (ITRCC LLC) are also considering having their supervisors trained in Impairment in the Workplace training which I have been authorized to teach by the Department. I request this be included in the ethics hearing information.

The Indiana State Police Department respectfully requests for both matters to be included on the agenda for the next monthly Ethics Commission meeting which is scheduled for Thursday, September 9, 2021, for the purposes of rendering a formal advisory opinion on these matters for Master Trooper David Caswell.

If you have any questions or need any additional information, please feel free to contact me at 317-232-8326 (office) or 317-694-7620 (cell).

Respectfully requested,



Nila Miller-Cronk
Major

Attachment

Miller-Cronk, Nila

From: Mader, Mark E
Sent: Wednesday, July 21, 2021 3:53 PM
To: Miller-Cronk, Nila
Subject: \$ecure RE: Informal Advisory Opinion; Miller; ISP; Conflicts of Interests

Nila,

Thank you for contacting our office to request ethics advice in your capacity as Ethics Officer for the Indiana State Police (ISP) on behalf of an ISP employee. We understand the employee has off-duty employment with DC Consulting LLC (DC). The Indiana Toll Road Concession Company LLC (ITRCC) has asked the employee to produce a twenty-to-thirty-minute work-place violence presentation (training video) to train their remote employees (mowing crews, toll takers and roadside workers) on what their options are when dealing with an active shooter/violence situation. ITRCC has indicated it would like to purchase this training video. Additionally, you report that the employee has met with a marketing company to discuss production costs for the training video.

You also report that the employee met with Rick Fedder, Chief Operating Officer for ITRCC, who advised the employee that ITRCC leases the toll road from the State of Indiana and does not receive any funding from the State. Fedder reported that ITRCC is a subsidiary of IFM Global Fund.

We understand the employee is inquiring whether the Code of Ethics (Code) presents any issues that would prohibit him from going forward with the production and sale of this training video for ITRCC.

Your inquiry primarily invokes consideration of IC 4-2-6-5.5, IC 4-2-6-9 and IC 4-2-6-10.5, the Code's conflicts of interests rules. It also implicates 42 IAC 1-5-10, 42 IAC 1-5-11 and IC 4-2-6-6, the Code's confidentiality rules. We included all relevant rules and definitions at the end of this opinion for your reference.

1. IC 4-2-6-5.5 – Outside Employment/Professional Activity

The outside employment/professional activity rule prohibits state employees from:

1. accepting other employment that would involve compensation of substantial value if the responsibilities of that employment are inherently incompatible with the responsibilities of public office or would require them to recuse themselves from matters so central or critical to the performance of their official duties that their ability to perform them would be materially impaired;
2. accepting other employment or engaging in professional activity that would require them to disclose confidential information that was gained in the course of state employment;
or
3. using their official position to secure unwarranted privileges or exemptions that are of substantial value and not properly available to similarly situated individuals outside state government.

In general, the employee may not accept other employment or professional activity if it triggers any of the above listed matters. Based on the information he provided you, subsection (1) is not likely to apply to his production

and sale of the training video with ITRCC because it does not appear that the responsibilities of that employment are inherently incompatible with his ISP responsibilities or would require him to recuse himself from matters so central or critical to the performance of his official ISP duties that his ability to perform them would be materially impaired.

As you know, we often defer to the agency Ethics Officer regarding outside employment issues. As the ISP Ethics Officer, you would have a better sense of the employee's role with ISP and how his responsibilities for ISP would affect his ability to perform his ISP duties. You also can advise him of any ISP policies that would apply to his outside employment with DC in making this training video.

In regard to subsection (2), you write that the employee's work in producing and selling this training video will not require him to disclose any confidential information that he learned while working for ISP. So long as this is the case, his outside employment will not violate subsection (2). Further, he cannot use his official ISP position to secure unwarranted privileges or exemptions for DC, ITRCC or anyone else that subsection (3) prohibits.

Additionally, please note that only the State Ethics Commission (Commission) can provide conclusive proof that an outside employment/professional activity is not in conflict with an employee's state duties. If the employee would like such a statement, he can find instructions for submitting a request for a formal advisory opinion from the Commission on our website: <http://www.in.gov/ig/2334.htm>. Please let us know if either he or you have any further questions about the formal advisory opinion process.

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

IC 4-2-6-9 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 employee is serving as an officer, director, a member, a trustee, a partner or an employee; and (4) any person or organization with whom the state employee is negotiating 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.

Based on the information the employee provided regarding his position at ISP and DC, it does not appear that he currently has a potential conflict of interests under this rule. If this should change in the future, and he would be asked to participate in a matter related to a decision or vote in which DC, ITRCC or any related company would have a financial interest, please note that mere recusal from that matter is not enough. The rule also requires individuals who identify a potential conflict of interests to notify ISP's appointing authority and ethics officer in writing and either (1) seek a formal advisory opinion from the Commission or (2) file a written disclosure **form** with our office in accordance with IC 4-2-6-9's notification requirements.

3. 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. In other words, if a state contract/grant funds any compensation the employee would receive for his work with DC or ITRCC or a related company, the rule would prohibit him from accepting this compensation unless he can meet the requirements of the rule's exception.

Based on the information the employee provided you, ITRCC does not receive any funding from ISP and/or the State. Accordingly, the employee's compensation would not be derived from a state contract or state fund, and this rule will not apply to the employee's production of this training video.

4. 42 IAC 1-5-13 and IC 4-2-6-17 – Ghost Employment and Use of State Property

Additionally, any activity related to the employee's production of the training video for ITRCC must be done outside of his normal state working hours to avoid violations of the ghost employment rule (42 IAC 1-5-13). Furthermore, he cannot use state property, such as his state email, state phone or state computer, for activities related to his production of this training video to comply with the use of state property rule (IC 4-2-6-17). All activities related to his production and sale of this training video for ITRCC must be done using non-state resources and non-state time. The employee should ensure that he only performs work on the ITRCC training video on his own time and with resources provided by ITRCC or himself.

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

Also, the employee should remember the ethics rules pertaining to confidential information found at 42 IAC 1-5-10 and 42 IAC 1-5-11. These rules prohibit the employee from benefitting from, permitting another person to benefit from or divulging information of a confidential nature except as permitted by law. To the extent that the employee possesses information of a confidential nature by virtue of his position as an ISP employee that could be used to benefit any person, he would need to ensure he complies with these rules.

6. IC 4-2-6-6 - Confidential Information

Finally, the employee should also keep in mind the ethics statute pertaining to confidential information found at IC 4-2-6-6, which prohibits a state employee from accepting any compensation from any employment, transaction or investment that was entered into or made because of material information of a confidential nature. So long as any compensation he receives from ITRCC or related companies for making this training video does not result from information of a confidential nature that he learned in his ISP position, any such compensation would not violate IC 4-2-6-6.

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,

Mark E Mader
Staff Attorney
Office of Inspector General

Please take a few moments to provide feedback on your experience: <https://www.surveymonkey.com/r/OIGInformals>. Thank you!

IC 4-2-6-1 Definitions

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

...

(5) "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.
- (B) The relationship a lobbyist has with an agency.
- (C) The relationship an unregistered lobbyist has with an agency.

...

(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 4-2-6-5.5 Conflict of interest; advisory opinion by commission

Sec. 5.5. (a) A current state officer, employee, or special state appointee may not knowingly do any of the following:

- (1) 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.
- (2) 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.
- (3) Use or attempt to use the individual's official position to secure unwarranted privileges or exemptions that are:
 - (A) of substantial value; and
 - (B) not properly available to similarly situated individuals outside state government.

(b) 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).

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).

IC 4-2-6-17 Use of state property for other than official business; exceptions; Violations

Sec. 17. (a) 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.

(b) An individual who violates this section is subject to action under section 12 of this chapter.

42 IAC 1-5-10 Benefiting from confidential information

Authority: IC 4-2-7-3; IC 4-2-7-5

Affected: IC 4-2-7

Sec. 10. A state officer, employee, or special state appointee shall not benefit from, or permit any other person to benefit from, information of a confidential nature except as permitted or required by law.

42 IAC 1-5-11 Divulging confidential information

Authority: IC 4-2-7-3; IC 4-2-7-5

Affected: IC 4-2-7

Sec. 11. A state officer, employee, or special state appointee shall not divulge information of a confidential nature except as permitted by law.

42 IAC 1-5-13 Ghost employment

Authority: IC 4-2-7-3; IC 4-2-7-5

Affected: IC 4-2-7

Sec. 13. 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.

IC 4-2-6-6

Present or former state officers, employees, and special state appointees; compensation resulting from confidential information

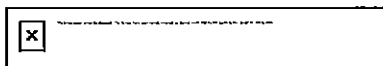
Sec. 6. No state officer or employee, former state officer or employee, special state appointee, or former special state appointee shall accept any compensation from any employment, transaction, or investment which was entered into or made as a result of material information of a confidential nature

Mark E Mader
Staff Attorney
Office of Inspector General
315 West Ohio Street, Room 104
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Phone: (317) 233-3767

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Formstack Submission For: Informal Advisory Opinions

Submitted at 07/20/21 10:04 AM

Name:	Nila Miller-Cronk
Email:	nmiller-cronk@isp.in.gov
Phone:	(317) 232-8326
State Agency:	Indiana State Police
Description of Your State Occupation:	Commander of the ISP Internal Investigation Section and the Department's Ethics Officer

What is your ethics question?:

A department employee has off-duty employment, DC Consulting LLC, and his LLC has been asked by the Indiana Toll Road Concession Company LLC to put together a Workplace Violence presentation to train their remote employees (mowing crews, toll takers, and road side worker) what their options are when dealing with a active shooter/violence situation. They are requesting to purchase my presentation and they are asking for approximately 20 – 30 minute presentation. I have met with ITRCC to discuss what information they would like in the presentation. I have met with a marketing company to discuss cost for the preparation of the presentation. In my talks with Rick Fedder – Chief Operating Officer, he advised ITRCC leased the Toll Road from the State of Indiana and ITRCC does not receive any funding from the State of Indiana. ITRCC is a subsidiary of IFM Global Fund.

Prior to going any further into this venture, he wanted to inquire about any potential ethics issues.

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Formstack, 11671 Lantern Road, Suite 300, Fishers, IN 46038

STATE OF INDIANA) INDIANA STATE ETHICS COMMISSION
)SS:
COUNTY OF MARION) CASE: 2020-06-0183

IN RE THE MATTER OF PAUL SIPPLES

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 August 12, 2021 meeting.
2. Pursuant to the Agreement, the Respondent, a former employee of the Indiana Department of Natural Resources, admitted to a violation of the Indiana Code of Ethics; specifically he admitted to a violation of 42 IAC 1-5-13, the ethics rule pertaining to ghost employment.
3. Pursuant to the Agreement, Respondent admitted that he violated 42 IAC 1-5-13 by engaging in and directing DNR employees to engage in work other than their official duties during state-working hours.

CONCLUSIONS OF LAW

Said conduct, admitted and acknowledged by Respondent, constitutes a violation of 42 IAC 1-5-13.

SANCTIONS

The Commission sanctions the Respondent a fine in the amount of Four Hundred Twenty-Six Dollars (\$426.37) to be paid to the “Indiana State Ethics Commission” within sixty (60) days from August 12, 2021, the date that the Commission approved the settlement agreement.

Approved on September 9, 2021.

Katherine Noel, Chair

Corinne Finnerty, Commissioner

Sue Anne Gilroy, Commissioner

Rafael Sanchez, Commissioner

Kenneth Todd, Commissioner

STATE OF INDIANA) INDIANA STATE ETHICS COMMISSION
)SS:
COUNTY OF MARION) CASE: 2020-10-0310

IN RE THE MATTER OF MEGAN ARSZMAN-WEISBRODT

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 August 12, 2021 meeting.
2. Pursuant to the Agreement, the Respondent, a former employee of the Indiana Horse Racing Commission, admitted to a violation of the Indiana Code of Ethics; specifically, he admitted to a violation of 42 IAC 1-5-8, the additional compensation rule, and 42 IAC 1-5-5 the moonlighting rule.
3. Pursuant to the Agreement, Respondent admitted that she violated (a) 42 IAC 1-5-8, by accepting additional compensation for the performance of her official duties; and (b) 42 IAC 1-5-5(a)(3) by using her official title to secure compensation for herself that would otherwise not have been properly available to similarly situation individuals outside of state government.

CONCLUSIONS OF LAW

Said conduct, admitted and acknowledged by Respondent, constitutes a violation of 42 IAC 1-5-5, and 42 IAC 1-5-8.

SANCTIONS

The Commission sanctions the Respondent a fine in the amount of One Thousand Nine Hundred Fifty Dollars (\$950.00) to be paid to the “Indiana State Ethics Commission” within sixty (60) days from August 12, 2021, the date that the Commission approved the settlement agreement.

Approved on September 9, 2021.

Katherine Noel, Chair

Corinne Finnerty, Commissioner

Sue Anne Gilroy, Commissioner

Rafael Sanchez, Commissioner

Kenneth Todd, Commissioner

STATE OF INDIANA) INDIANA STATE ETHICS COMMISSION
)SS:
COUNTY OF MARION) CASE: 2018-01-0019

IN RE THE MATTER OF ELSTON BOLDERY

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 August 12, 2021 meeting.
2. Pursuant to the Agreement, the Respondent, a former employee of the Indiana Department of Correction, admitted to a violation of the Indiana Code of Ethics; specifically, he admitted to a violation of Ind. Code § 4-2-6-17, the ethics rule pertaining to misuse of state property.
3. Pursuant to the Agreement, Respondent admitted that he violated Ind. Code § 4-2-6-17 by using state property for purposes other than official state business.

CONCLUSIONS OF LAW

Said conduct, admitted and acknowledged by Respondent, constitutes a violation of Ind. Code § 4-2-6-17.

SANCTIONS

The Commission sanctions the Respondent with a ban from future state employment and a fine in the amount of Five Hundred Dollars (\$500.00) to be paid to the “Indiana State Ethics Commission” within sixty (60) days from August 12, 2021, the date that the Commission approved the settlement agreement.

Approved on September 9, 2021.

Katherine Noel, Chair

Corinne Finnerty, Commissioner

Sue Anne Gilroy, Commissioner

Rafael Sanchez, Commissioner

Kenneth Todd, Commissioner