

**MINUTES OF THE MEETING OF
THE INDIANA STATE ETHICS COMMISSION
April 11, 2019**

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 included Katherine Noel, Chairperson; Sue Anne Gilroy, Kenneth Todd and Corinne Finnerty. Staff present included Jennifer Cooper, Ethics Director; Lori Torres, Inspector General; Heidi Adair, Staff Attorney; Tiffany Mulligan, Chief Legal Counsel; Dale Brewer, Legal Assistant and Cynthia Scruggs, Director of Administration, Office of Inspector General.

Others present were Joan Blackwell, General Counsel/Ethics Officer, Office of the Attorney General; Christopher Proffitt, Office of the Attorney General; Stephanie Mullaney, Ethics Officer, Office of the Attorney General; James Bergens, Property Manager, Jasper-Pulaski Fish & Wildlife Area; Samantha DeWester, General Counsel/Ethics Officer, Department of Natural Resources; Kevin Moore, Director, Division of Mental Health & Addictions; Latosha N. Higgins, Managing Attorney/Ethics Officer, Family & Social Services; Donna Marks, Provider Communications Manager.

II. Adoption of Agenda and Approval of Minutes

Commissioner Finnerty moved to adopt the Agenda and Commissioner Gilroy seconded the motion which passed (4-0). Commissioner Gilroy moved to approve the Minutes of the March 14, 2019 Commission Meeting and Commissioner Todd seconded the motion which passed (3-0, Commissioner Noel abstained due to her absence at the March 14 meeting.)

III. Inspector General’s Report

Inspector General Torres presented a report on the first quarter of 2019. She reported the following: The OIG received 87 requests to investigate, and of these 87 requests, 14 new cases were opened. The OIG also closed 17 investigations. The office received 81 requests for informal advisory opinions of which four were withdrawn. The office issued 77 informal advisory opinions in an average of 1.19 days for each opinion. The OIG also made six recommendations.

Inspector General Torres also announced that the agency will host an Auditor & Investigator Conference on Tuesday, June 4th from 1 to 4 p.m. She also stated that the Office of Inspector General’s Annual Report should be completed by the next commission meeting.

IV. Request for Formal Advisory Opinion

2019-FAO-004 Joan Blackwell, General Counsel/Ethics Officer
Chris Proffitt, Communications Director
Office of the Attorney General

Joan Blackwell, General Counsel and Ethics Officer for the Office of the Indiana Attorney General (OAG), requested a formal advisory opinion on behalf of the OAG's Communications Director, Christopher Proffitt. This formal advisory opinion request is in regards to the application of IC 4-2-6-15 to specific types of video/audio communications that the OAG Communications Division wishes to post on Attorney General (AG) Curtis T. Hill, Jr.'s official state social media accounts, including the AG's official Facebook, Instagram, and Twitter accounts and on the official OAG website.¹

According to the OAG's request, the OAG is the "state's law firm," as the OAG represents the State of Indiana in lawsuits involving the State's interests and provides legal defense to state officials and state agencies in lawsuits. In addition to these duties, the OAG engages in numerous initiatives and other services to the citizens of the State of Indiana, including: numerous endeavors related to consumer protection; the Jail Chemical Addiction Program; the OAG Drug Abuse Taskforce and drug takeback events; a partnership with the Indianapolis Ten Point Coalition; and the work provided to citizens via the OAG's Unclaimed Property Division, a division of the OAG that collects and safeguards unclaimed property on behalf of all citizens of Indiana and distributes these unclaimed funds and property to their rightful owners.

The OAG's request reads that the OAG is continually looking for ways to engage with the citizens of the State of Indiana and raise awareness and familiarity with the services and initiatives of the OAG. They write that one of the initiatives the OAG has implemented toward achieving this goal is the OAG's Mobile Operation Unit, an office-owned vehicle that allows OAG staff to conduct mobile outreach to Hoosiers on unclaimed property and consumer protection as well as on other initiatives of interest to citizens and consumers. Another way that the OAG strives to increase engagement with Indiana citizens is through effective use of the office's social media accounts. The OAG, like other statewide-elected officials, has an official state Facebook account, Instagram account, and Twitter account. Each of these social media accounts includes the AG's name and title in the handle² - "Indiana Attorney General Curtis T. Hill, Jr" - and includes a picture of the AG as the account's profile picture. As part of the OAG's effort to use social media to more fully engage with the citizens of Indiana, the OAG would like to post various types of video and audio communications to these accounts, as described more fully below.

The OAG would like to use these communications on the OAG's social media accounts because the OAG recognizes that social media use is highly prevalent and that the way individuals

¹ The OAG referred to the AG's official social media accounts and the official website of the OAG as "digital media accounts" throughout their request. They also referred to "social media accounts"; the references to social media accounts should be understood to include the OAG's official website.

² "Handle" refers to the public username on a social media account.

engage with social media has evolved. The OAG believes individuals are more likely to engage with social media content that contains a video communication; therefore, the most effective way for the OAG to conduct outreach to Hoosiers on various office initiatives is through the use of video communications posted on social media.

The OAG writes that in August 2018, the OAG removed content from digital media accounts that had been created and posted by either OAG staff or by the OAG's Unclaimed Property marketing vendor after the OAG learned that an Unclaimed Property public service announcement (PSA), which the OAG's Unclaimed Property Division's marketing vendor created as part of its contract, included the AG's name, but not his likeness. The OAG writes that it has refrained from posting certain types of audio/video communications during this six-month period. During this hiatus, the OAG has observed a noticeable decline in the public's engagement with the OAG's Unclaimed Property website, as the number of searches on the Unclaimed Property Division website has significantly declined. The OAG has observed a 41% decrease in the number of searches on its Unclaimed Property website between June/July and Sept/October of 2018. (The metrics from OAG's outside vendor show that the Unclaimed Property Division website had a total of 593,070 searches completed in June/July, which decreased to 352,013 searches in September/October 2018.) The OAG believes that the lack of engaging social media content for Unclaimed Property has contributed to this decline.

In addition to removing content and refraining from posting other similar content on social media, the OAG writes that they conducted an internal review of content posted and then drafted an internal protocol for review and approval of all digital media content to ensure compliance. During this internal review, a number of questions arose about how IC 4-2-6-15 applies to social media usage by statewide elected offices and officials, such as the AG and the OAG, and as other statewide-elected officials use their social media accounts to engage with the public in various ways. As a consequence, on November 29, 2018, the OAG requested an informal advisory opinion from the OIG, which the OAG received on December 7, 2018. The informal advisory opinion raised specific questions about each type of audio/video communication noted in the OAG's November 29 request and recommended that the OAG seek a formal advisory opinion on these questions to obtain a final determination.

The OAG now seeks a formal advisory opinion on three types of audio/video communications the OAG would like to post on the OAG's official state social media accounts: (1) audio/video communications that are created by OAG Communications Division staff that do contain the AG's name or likeness as part of the communication; (2) audio/video communications created by the OAG's contractor for Unclaimed Property marketing materials that do not contain the AG's name and likeness; and (3) audio/video communications created and paid for by a third party (such as a news outlet) that do contain the AG's name and likeness as part of the communication.

Additional factual background and specific examples of each type of video for the Commission's consideration follow.

A. Audio/video communications created by OAG Communications Division staff that include the AG's name and likeness for posting on the AG's state digital media accounts

The OAG represented that the Communications Division consists of approximately seven employees whose duties include responding to questions from the media and the public, drafting official statements and press releases, engaging in outreach initiatives, documenting activities of the AG and other OAG events (including still photographs and short videos of speeches and other events), publishing an internal office newsletter on a monthly basis, and creating other materials, such as video communications, to illustrate various office initiatives that are of interest to Indiana citizens, such as the OAG's consumer protection and unclaimed property responsibilities.

The OAG Communications Division staff film the video communications on state-issued smartphones or cameras. These video data files are available to be posted to social media immediately after recording or at a later time after a Communications Division staff member edits the video file. The AG or the AG's name may appear in a portion of these staff-created videos. The OAG provided the commission with several examples of videos it would like to post on its social media accounts.

The OAG's request for an informal advisory opinion to the OIG asked the following question on these types of audio and video communications, as summarized below:

Is an audio/video communication that includes the Attorney General's name or likeness, created by a staff member on an office camera or smartphone and then uploaded to the Attorney General's official social media accounts (Facebook, Twitter, Instagram) or official website considered to be paid for "entirely or in part with appropriations made by the general assembly" and therefore in violation of IC 4-2-6-15?

B. May audio/video communications created by the OAG's vendor for Unclaimed Property that do not include the AG's name or likeness be posted on the AG's state digital media accounts?

The OAG has contracted with a marketing agency that creates various types of marketing materials specifically for the OAG's Unclaimed Property Division. This includes materials intended for social media posts. Some of the materials created for social media are not considered a "communication" under IC 4-2-6-15, but other materials that may be created by the vendor for social media are video communications.

None of the video communications created by this outside vendor under this contract include the AG's name or likeness directly in the communication; however, the OAG would like to post the communications on the AG's social media pages, which, as previously noted, contain the AG's name in the account handle and the AG's photographic likeness in the account profile picture. Therefore, the communications created by this vendor would appear as part of a post where the video communication is directly below and in close proximity to the AG's name and likeness.

The OAG's request for an informal advisory opinion to the OIG posed the following question on these types of audio and video communications, as summarized below:

Can the OAG post an audio/video communication paid for with state funds that does not contain the AG's name and likeness, but the audio/video communication is then posted on the AG's social media accounts, which do contain the AG's name in the account handle and a picture of the AG as the profile picture?

C. May audio/video communications paid for by a third party that include the AG's name and likeness be posted on the AG's state digital media accounts?

The OAG Communications Division staff, who manage the official state social media accounts for the OAG, also wish to post or "share" links to videos created and paid for by third parties, such as news outlets. These communications include the AG's name or likeness but are not paid for with any state funds; however, as with the previous questions, these videos would be posted on the OAG's social media accounts, which are managed by state employees.

The OAG's request for an informal advisory opinion asked the following question on these types of communications, as summarized below:

Can the OAG post or share on its official social media accounts a video created and paid for by a third-party (such as a news outlet) that contains the AG's name or likeness?

Accordingly, the OAG requested a formal advisory opinion from the Commission on these questions.

The advisory opinion stated the following analysis:

IC 4-2-6-15 reads that a state officer may not use the state officer's name or likeness in a "communication" paid for entirely or in part with appropriations made by the General Assembly, regardless of the source of the money.

"State officer" is defined to include the Attorney General (IC 4-2-6-1(a)(19)(F)). The other "state officers" are the Governor, the Lieutenant Governor, the Secretary of State, the Treasurer of State, the Auditor of State, and the Superintendent of Public Instruction. "Communication" for purposes of this rule includes only the following: (1) an audio communication; (2) a video communication; or (3) a print communication in a newspaper (as defined in IC 5-3-1-0.4).

The OAG has submitted three specific questions with regards to the application of IC 4-2-6-15 to social media and other communications efforts overseen by the OAG's Communications Division. Each question is analyzed below.

- 1) Is it permissible under IC 4-2-6-15 to post audio/video communications created by OAG staff using state-issued smartphones and cameras that include the AG's name and likeness on official digital media accounts?**

Specifically, the OAG asks whether these types of audio/video communications would be considered to be "paid for entirely or in part with appropriations from the general assembly" or is the use of the state employee's salary, the state funds used to purchase this equipment and digital media hosting costs of the resulting communication too negligible for the communication to be considered paid for entirely or in part with state funds.

Under IC 4-2-6-15(d), the AG is prohibited from creating an audio/visual communication that includes the AG's name and/or likeness if such communication is paid for entirely or in part with appropriations from the General Assembly, regardless of the source of the money.

The Commission determined that there is no de minimis expenditure exception within the statute. IC 4-2-6-15(d) states that "[a] state officer may not use the state officer's name or likeness in a communication paid for entirely or in part with appropriations made by the General Assembly, regardless of the source of the money." [emphasis added]

Under the question raised, an audio/visual communication, which includes the AG's name and likeness, is being paid for in part by appropriations – here the state employees' time and state equipment used to create the communication. Accordingly, this type of communication is not permitted under IC 4-2-5-15.

- 2) Is it permissible under IC 4-2-6-15 to post audio/video communications created by an OAG vendor (where the communications would be paid for with state appropriations) that do not contain the AG's name and likeness on the OAG's official digital media accounts that do include the AG's name in the handle (or on the webpage) and the AG's photograph as the profile picture (or on the webpage)?**

Standing alone, this type of audio or video communication paid for by state funds is permissible as it does not contain the AG's name or likeness; however, in this case the communication would be posted on a digital media account that is branded with the AG's name and/or likeness.

The Commission determined that this display of the AG's photo and/or the name Curtis T. Hill, Jr. in connection with an audio or video communication that is paid for with state appropriations is not permissible under IC 4-2-6-15.

- 3) Is it permissible under IC 4-2-6-15 for the OAG to post audio/video communications paid for by a third party (such as a news outlet) that contain the AG's name or likeness?**

The OAG Communications Division staff, who manage the official state social media accounts for the OAG, also wish to post or "share" links to videos created and paid for by third parties, such as news outlets. These communications include the AG's name or likeness but are not paid for with any state funds; however, as with the previous

questions, these videos would be posted on the OAG's social media accounts, which are managed by state employees.

The Commission finds that this type of audio/video communication is considered a communication that contains the AG's name or likeness and is paid for entirely or in part by appropriations. As in the Commission's determination to the first question, there is no de minimis exception for the "paid for entirely or in part by appropriations..." language in the statute.

Accordingly, because OAG staff, whose salaries are paid for by appropriations from the General Assembly, would make the posting, the posting would be an audio/visual communication that was paid for entirely or in part by appropriations from the General Assembly and is not permissible under IC 4-2-6-15.

The OAG presented public policy reasons for these communications in their request for a formal advisory opinion. The Commission noted that under IC 4-2-6-15(a)(2), the prohibition against communications paid for with appropriations from the General Assembly does not apply to a communication that "a compelling public policy reason justifies the state officer to make; and the expenditure for which is approved by the budget agency after an advisory recommendation from the budget committee."

Although the Commission decided that these communications are prohibited under the language in IC 4-2-5-15, the OAG could take this matter before the budget committee and seek approval for this type of expenditure under IC 4-2-6-15(a)(2).

The Commission found that all three of the communications described by the OAG are not permissible under IC 4-2-6-15:

- It is not permissible under IC 4-2-6-15 to post audio/video communications created by OAG staff using state-issued smartphones and cameras that include the AG's name and likeness on official digital media accounts;
- It is not permissible under IC 4-2-6-15 to post audio/video communications created by an OAG vendor (where the communications would be paid for with state appropriations) that do not contain the AG's name or likeness on the OAG's official digital media accounts that include the AG's name in the handle (or on the webpage) and the AG's photograph as the profile picture (or on the webpage); and
- It is not permissible under IC 4-2-6-15 for the OAG to post audio/video communications paid for by a third party (such as a news outlet) that contain the AG's name or likeness.

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

V. **Request for Formal Advisory Opinion**

2019-FAO-006 James Bergens, Property Mgr, Jasper-Pulaski Fish & Wildlife Area
Samantha DeWester, General Counsel/Ethics Officer, DNR
Department of Natural Resources

James Bergens is a Department of Natural Resources (DNR) employee. Mr. Bergens works as the Property Manager at Jasper-Pulaski Fish and Wildlife Area (FWA), which is part of the Division of Fish and Wildlife (Division).

Mr. Bergens' main duties as Property Manager at Jasper-Pulaski FWA are to plan, coordinate, implement and direct 1) wildlife management practices and procedures, 2) construction and maintenance of property facilities and 3) purchase and maintenance of all property equipment.

As a condition of Mr. Bergens' employment, he and his wife live in a state-owned residence on Jasper-Pulaski FWA. In preparation for retirement and based on the knowledge that they would need a place to live, Mr. Bergens and his wife purchased a house and five acres next to the Jasper-Pulaski FWA in 2003. In 2004, the 55 acres of farmland surrounding the original five acres came up for sale, and they purchased the property. The 60 total acres are adjacent to Jasper-Pulaski FWA and border the state property on two sides.

Mr. Bergens and his wife are selling 38 of their 60 acres, and he asked the Division if they would be interested in purchasing the property. The Division indicated it would be interested in purchasing the property at appraised value. The Division submitted the request to DNR's Land Acquisition Specialist, Ken Hasselkus. Mr. Hasselkus suggested Mr. Bergens request an ethics opinion, and DNR's Ethics Officer, Samantha DeWester, referred Mr. Bergens to the Office of Inspector General for an informal advisory opinion.

In his request for an informal advisory opinion from the OIG, Mr. Bergens provided that he does not have any contracting responsibility for the Jasper-Pulaski FWA or DNR. His only role as related to contracts is to provide information on Jasper-Pulaski FWA's needs to those who do have this responsibility. Mr. Bergens provided the example of the Jasper-Pulaski FWA's trash contract. Mr. Bergens would determine the specifications, such as to provide two dumpsters and empty them once per week, and then provide a list of possible vendors in his area. He would submit that information in a Purchase Request to DNR Purchasing, and they would send out the bid packets, receive the vendor bid proposals and execute the contract with the selected vendor. Mr. Bergens would then be responsible for ensuring that the terms of the contract were met and that the vendor was paid per terms of the contract.

Ms. Bergens also provides that he does not participate in any decisions regarding land acquisition purchases. Jasper-Pulaski FWA has a five year management plan written by his assistant that includes a three tiered land acquisition plan (a copy was included in the supplemental materials Mr. Bergens included with his Formal Advisory Opinion request). Since Jasper-Pulaski FWA is primarily forested, the goal is to purchase upland or farmland, which would be Tier 1, the highest priority. Another factor in assigning priorities is proximity to the

FWA. Land adjacent to the FWA would also fall into the Tier 1 category. When a parcel becomes available, Division leadership is notified, and they make the decision to proceed based on the acquisition plan and the availability of funds. Leadership will work with the Division of Land Acquisition to hire out an appraisal. Due to federal restrictions, the Division will not offer more than the appraised value. Division leadership will make all decisions, and Land Acquisition will handle all the administrative functions in the land acquisition. Because federal funds will be used, a federal reviewer will also review the appraisal to ensure that he or she agrees with the appraisal. The property Mr. Bergens intends to sell fits the criteria for Tier 1 since it is both upland and farmland and borders the FWA on two sides.

The informal advisory opinion issued by the OIG on February 27, 2019 recommended that Mr. Bergens seek a Formal Advisory Opinion from the Commission to ensure he would not violate any of the ethics rules related to conflicts of interests if he were to sell his land to DNR.

The advisory opinion stated the following analysis:

A. Conflict of interests-decisions and votes

IC 4-2-6-9 (a)(1) prohibits Mr. Bergens 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. “Financial interest” means an interest in a purchase, sale, lease, contract, option, or other transaction between an agency and any person; or involving property or services. This prohibition extends beyond merely the decision or vote on the matter to encompass any participation in that decision or vote.

In addition, the rule requires a state employee who identifies a potential conflict of interests to notify his agency’s appointing authority and ethics officer in writing and either (1) seek a formal advisory opinion from the State Ethics Commission or (2) file a written disclosure form with the OIG.

Mr. Bergens provides that he does not participate in any final decisions regarding land acquisition. Ms. Dewester confirmed that, moving forward, Mr. Bergens’ duties as Property Manager of Jasper-Pulaski FWA would not include participating in any decisions or votes, or matters related to such decisions or votes, involving the purchase of his property or in which he would have a financial interest at this time. The land sale and process would be handled by DNR’s Land Acquisition Division. Accordingly, the Commission finds that Mr. Bergens does not have a potential conflict of interests under this rule at this time.

Although Mr. Bergens does not have a conflict of interests under this rule at this time, the Commission asks that DNR provide written confirmation that neither Mr. Bergens nor his subordinates would be involved in any manner in the sale of his property to DNR in order to avoid any appearance of impropriety.

B. Conflict of interests – contracts

Assuming the land would be purchased via a contract between Mr. Bergens and DNR, he would need to ensure that he complies with all of the requirements in IC 4-2-6-10.5. This rule prohibits a state employee from having a financial interest in a contract with a state agency unless (1) he does not participate in or have contracting responsibility for the contracting agency; and (2) he files a disclosure statement with the OIG before executing the contract with the state agency.

The Commission finds that Mr. Bergens does not have contracting responsibility for DNR, and therefore he would not violate this rule so long as he discloses his financial interest in the land purchase contract with DNR by completing all of the required sections of the Conflict of Interests-Contracts disclosure statement and filing it prior to executing the contract in accordance with IC 4-2-6-10.5(b) and (c).

Ms. DeWester and Mr. Bergens confirmed that Mr. Bergens would be able to file the Conflict of Interests-Contracts disclosure form prior to executing the contract for the sale of his land to DNR. Accordingly, Mr. Bergens would not have a conflict of interests under this rule.

C. Confidential information

Mr. Bergens 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. The term “person” is defined in IC 4-2-6-1(a)(13) to encompass both an individual and a corporation. In addition, the definition of “information of a confidential nature” is set forth in IC 4-2-6-1(a)(12).

The Commission finds that to the extent Mr. Bergens is exposed to or has access to such confidential information in his position with DNR, he would be prohibited not only from divulging that information but from ever using it to benefit himself or any other person in any manner.

D. Conflict of Interests - Indiana Criminal Code

In addition to the Code of Ethics rules described above, the Indiana Criminal Code also prohibits a state employee from having financial interests in contracts with the agency that the employee serves. Based on the information provided, Mr. Bergens would likely be entering into a contract for purchase of his property with DNR, the agency that he serves. The criminal statute can be found at IC 35-44.1-1-4. Subsection (c)(5) permits a state employee to obtain approval from the State Ethics Commission that he or she does not have a conflict of interests under the IC 35-44.1-1-4 or the Code of Ethics.

The Commission finds that Mr. Bergens would not have a conflict of interests under either IC 4-2-6-10.5 and/or IC 4-2-6-9. The Commission further finds that Mr. Bergens would not have a conflict of interests under the criminal statute, IC 35-44.1-1-4.

Accordingly, this opinion serves as written approval from the Commission that Mr. Bergens does not have a conflict of interests in connection with a contract or purchase under IC 4-2-6 and IC 35-44.1-1-4.

The Commission found that that Mr. Bergens would not violate the Code of Ethics if he were to sell his land to DNR. Mr. Bergens does not have a conflict of interests under IC 4-2-6 so long as he refrains from any participation in the property sale in his capacity as a DNR employee and he completes the Conflict of Interests-Contracts disclosure form prior to executing any contracts with DNR. The Commission further finds that he would not have a conflict of interests under IC 35-44.1-1-4.

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

VI. Request for Formal Advisory Opinion

2019-FAO-0007 Kevin Moore, Director, Division of Mental Health & Addictions
Latosha N. Higgins, Managing Attorney/Ethics Officer
Family & Social Services Administration

Latosha Higgins is the Ethics Officer for the Indiana Family and Social Services Administration (FSSA). Ms. Higgins requested an advisory opinion on behalf of Kevin Moore, Director for FSSA's Division of Mental Health and Addition (DMHA).

As Director, Mr. Moore's responsibilities include the development, implementation and oversight of programs, operations and policies relating to the provision of information, resources and publicly funded services to individuals with mental illness and addictions. Mr. Moore plans to retire from state service on April 30, 2019. He is interested in pursuing a post-employment opportunity as a Senior Consultant with Health Management Associates (HMA), following his retirement with an anticipated start date of May 13, 2019. He expects that he will be consulting and providing recommendations to states on how they should proceed with certain Medicaid waivers and how they can improve services they provide as related to the criminal justice system and addiction and mental health services, as well as other HMA national projects in this role.

HMA is an independent national research and consulting firm in the healthcare industry. HMA has offices throughout the United States, with its corporate headquarters in Michigan. FSSA currently has a contract with HMA that is set to expire on June 30, 2019. The scope of work for the contract requires HMA to assist the State's Medicaid program in policy development, implementation efforts and operational support. Specifically, the contract requires HMA to: (1) perform tasks for the Healthy Indiana Plan (HIP), such as project management, evaluation and monitoring, etc.; (2) perform tasks for the 1115 waiver; and (3) provide policy support, including ad hoc consulting as requested by FSSA division directors.

Mr. Moore did not have any involvement in the negotiation or administration of HMA's contract with FSSA nor was he in a position to make a discretionary decision affecting the outcome of the negotiation or the nature of the administration.

Ms. Higgins provides that Mr. Moore knows and understands that Indiana's ethics laws will continue to apply to him as a private sector employee. He understands and agrees not to divulge confidential information of FSSA during his post-employment endeavors. Furthermore, Mr. Moore understands and agrees to abide by the one-year restriction regarding registering as an executive branch lobbyist. Ms. Higgins and Mr. Moore are seeking a formal advisory opinion to ask the Commission whether it is permissible for Mr. Moore to be employed by HMA upon leaving state employment.

The advisory opinion stated the following analysis:

Mr. Moore's post-employment opportunity with HMA implicates the provisions of the Code pertaining to confidential information; conflict of interests, decisions and votes; and post-employment. The application of each provision to Mr. Moore's prospective post-employment is analyzed below.

A. Confidential Information

IC 4-2-6-6 prohibits Mr. Moore 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. Moore receives does not result from confidential information, his prospective employment with HMA would not violate IC 4-2-6-6.

B. Conflict of Interests

IC 4-2-6-9(a)(1) prohibits Mr. Moore from participating in any decision or vote, or matter related to that decision or vote, if he has a financial interest in the outcome of the matter. Similarly, IC 4-2-6-9(a)(4) prohibits him from participating in any decision or vote, or matter related to that decision or vote, in which a person or organization with whom he is negotiating or has an arrangement concerning prospective employment has a financial interest in the outcome of the matter. The definition of financial interest in IC 4-2-6-1(a)(11) includes, "an interest arising from employment or prospective employment for which negotiations have begun."

In this case, employment negotiations have already begun. Accordingly, Mr. Moore is prohibited from participating in any decision or vote, or matter related to a decision or vote, in which he, by virtue of his employment negotiations with HMA, or HMA itself would have a financial interest in the outcome of the matter.

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

Ms. Higgins filed a Conflict of Interests: Decisions and Votes disclosure form on behalf of Mr. Moore with the Office of Inspector General on March 19, 2019. Under the screen overseen by FSSA's Deputy Medicaid Director, Mr. Moore is prohibited from participating in any meetings, discussions, votes, or decisions involving HMA.

The Commission finds that Mr. Moore must ensure he continues to refrain from participating in any decisions or votes, or matters relating to any such decisions or votes, in which he or HMA has a financial interest in the outcome of the matter for the remainder of his state employment in order to avoid violating IC 4-2-6-9.

C. Post-Employment

IC 4-2-6-11 consists of two separate limitations: a "cooling off" period and a "particular matter" restriction. The first prohibition, commonly referred to as the cooling off or revolving door period, prevents Mr. Moore from accepting employment from an employer for 365 days from the date that he leaves state employment under various circumstances.

First, Mr. Moore is prohibited from accepting employment as a lobbyist for the entirety of the cooling off period. A lobbyist is defined as an individual who seeks to influence decision making of an agency and who is registered as an executive branch lobbyist under the rules adopted by the Indiana Department of Administration.

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

Second, Mr. Moore is prohibited from accepting employment for 365 days from the last day of his state employment from an employer with whom 1) he engaged in the negotiation or administration of a contract on behalf of a state agency and 2) was in a position to make a discretionary decision affecting the outcome of the negotiation or nature of the administration of the contract.

Based on the information provided, Mr. Moore has not been involved in any negotiation or administration of HMA's contract with FSSA nor was he in a position to make a discretionary decision affecting the outcome of the negotiation or the nature of the administration of the contract.

Accordingly, the Commission finds that Mr. Moore is not prohibited under this provision from accepting employment with HMA immediately upon leaving state employment.

Third, Mr. Moore is prohibited from accepting employment for 365 days from the last day of his state employment from an employer for whom he made a regulatory or licensing decision that directly applied to the employer or its parent or subsidiary.

The Commission finds that Mr. Moore has never made a regulatory or licensing decision that directly applied to HMA during the course of his state employment. Accordingly, Mr. Moore is not prohibited under this provision from accepting employment with HMA immediately upon leaving state employment.

Fourth, Mr. Moore is prohibited from accepting employment from an employer if the circumstances surrounding the hire suggest the employer's purpose is to influence him in his official capacity as a state employee. The information presented to the Commission does not suggest that HMA has extended an offer of employment to Mr. Moore in an attempt to influence him in his capacity as a state employee. Accordingly, the Commission finds that this restriction would not apply to Mr. Moore's employment opportunity with HMA.

Finally, Mr. Moore is subject to the post-employment rule's "particular matter" prohibition in his prospective post-employment. This restriction prohibits him from representing or assisting a person on any of the following twelve matters if he personally and substantially participated in the matter as a state employee: 1) an application, 2) a business transaction, 3) a claim, 4) a contract, 5) a determination, 6) an enforcement proceeding, 7) an investigation, 8) a judicial proceeding, 9) a lawsuit, 10) a license, 11) an economic development project, or 12) a public works project. The particular matter restriction is not limited to 365 days but instead extends for the entire life of the matter at issue, which may be indefinite.

Based on the information provided, Mr. Moore would not be expected to assist or represent HMA on any particular matters in which he personally and substantially participated in as a state employee. The Commission finds that Mr. Moore must ensure compliance with the particular matter restriction and refrain from assisting or representing any person on any of the particular matters listed above that he may have personally and substantially worked on during his state employment.

The Commission found that subject to the foregoing analysis and the application of the one-year restriction regarding executive branch lobbying, Mr. Moore's post-employment opportunity with HMA would not violate the post-employment restrictions found in IC 4- 2-6-11.

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

VII. Request for Formal Advisory Opinion

2019-FAO-0007 Donna Marks, Provider Communications Manager
Latosha N. Higgins, Managing Attorney/Ethics Officer
Family & Social Services Administration

Donna Marks, a former employee of the Indiana Family and Social Services Administration (FSSA), requested a Formal Advisory Opinion regarding her post-employment as a consultant on an FSSA project.

Ms. Marks retired from her position with the State of Indiana on February 1, 2019. At FSSA, Ms. Marks worked as a Provider Communications Manager for the Office of Medicaid Policy and Planning (OMPP). In this position, she was responsible for overseeing OMPP provider communications and provider-facing guidance and resources.

Specifically, she worked with FSSA/OMPP's fiscal agent contractor, DXC Technology (DXC), to process and publish all provider-facing communication regarding Indiana Medicaid. This included reviewing, editing and approving all provider bulletins, banner page articles and website content. As such, she interfaced with OMPP subject matter experts to understand, clarify and communicate provider guidance, and she managed the process for updating provider policy and guidance modules, forms and other provider documents consistent with OMPP policy.

Ms. Marks has been offered an opportunity to subcontract with netlogx LLC (netlogx) to provide consultation services to OMPP related to the new FSSA Provider Enrollment and Credentialing (EnCred) Project. Netlogx contracts with FSSA/OMPP to provide project management assistance and consultation on a number of projects. As related to EnCred, netlogx serves in a project management role for FSSA/OMPP on the design, development and implementation of this project.

As the Provider Communications Manager, Ms. Marks was not involved in the solicitation or selection process for any FSSA vendors nor did she have contracting responsibilities with any FSSA vendors. Accordingly, she was not involved in the solicitation or contracting process with the EnCred vendor, Conduent, or with the solicitation or contracting process with netlogx. Once the design/development for EnCred was underway she was involved on an as-needed basis to address issues related to provider communication or provider interfacing with the new system.

Prior to leaving state employment, Ms. Marks worked on and approved the initial provider communications about EnCred, as she did with all provider communications. With respect to netlogx, she was involved in some agency projects for which netlogx provided project management assistance. Her involvement included project meetings, document reviews and responding to project action items related to provider communications, which in some cases, were coordinated by netlogx. She was not responsible for directing netlogx's work on any projects.

In her potential role as a subcontractor with netlogx, Ms. Marks will be consulting with the OMPP provider enrollment team on the EnCred communication strategy and on configurable provider-facing elements of the EnCred product itself. Consultation will include advising on strategies and timelines for publications, document development and training as well as evaluating the EnCred solution in test mode relative to provider data entry, navigation and other interface issues. Although she will be involved to some degree with provider-facing or stakeholder-facing publications and document development, she will be doing so from the perspective of a subject

matter expert. She will not be responsible for approving publications or documents generated by the project or for overseeing the State's publication of same. Her subcontract would not include executive branch lobbying or require the disclosure of confidential information. Further, Ms. Marks' position with FSSA did not involve making any regulatory or licensing decisions.

Ms. Marks requested an informal advisory opinion from the Office of Inspector General. The OIG advised that she seek a formal advisory opinion from the Commission regarding the post-employment rule's particular matter restriction and its application to her prospective subcontract with netlogx.

The advisory opinion stated the following analysis:

Ms. Marks' post-employment opportunity with netlogx implicates the provisions of the Code pertaining to confidential information and post-employment. The application of each provision to Ms. Marks' prospective post-employment is analyzed below.

A. Confidential Information

IC 4-2-6-6 prohibits Ms. Marks 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. Based on the information provided, it does not appear that Ms. Marks would utilize confidential information in her consultant work with netlogx. So long as any compensation Ms. Marks receives does not result from confidential information, her post-employment opportunity with netlogx 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 Ms. Marks from accepting employment from an employer for 365 days from the date that she leaves state employment under various circumstances. Employer is defined in IC 4-2-6-1(a)(10) as any person from whom a state employee receives compensation.

First, Ms. Marks is prohibited from accepting employment as a lobbyist for the entirety of the cooling off period. A lobbyist is defined as an individual who seeks to influence decision making of an agency and who is registered as an executive branch lobbyist under the rules adopted by the Indiana Department of Administration (IDOA).

Ms. Marks has provided that her subcontract with netlogx would not involve any executive branch lobbying activities. To the extent that Ms. Marks does not engage in executive branch lobbying for one year after leaving state employment, the Commission finds that she would not violate this provision of the post-employment rule.

Second, Ms. Marks is prohibited from accepting employment for 365 days from the last day of her state employment from an employer with whom 1) she engaged in the negotiation or administration of a contract on behalf of a state agency and 2) was in a position to make a discretionary decision affecting the outcome of the negotiation or nature of the administration of the contract.

The Commission finds that Ms. Marks' FSSA position did not involve any contracting responsibility and she did not participate in the negotiation or administration of a contract with netlogx during the course of her state employment. Accordingly, this provision would not apply to Ms. Marks' post-employment opportunity with netlogx.

Third, Ms. Marks is prohibited from accepting employment for 365 days from the last day of her state employment from an employer for whom she made a regulatory or licensing decision that directly applied to the employer or its parent or subsidiary.

The Commission finds that Ms. Marks' duties with FSSA did not include making regulatory or licensing decisions and that she has never made a regulatory or licensing decision that directly applied to netlogx during the course of her state employment. Accordingly, this provision would not apply to Ms. Marks' post-employment opportunity with netlogx.

Fourth, Ms. Marks is prohibited from accepting employment from an employer if the circumstances surrounding the hire suggest the employer's purpose is to influence her in her official capacity as a state employee. The Commission finds that Ms. Marks is already retired from state employment; therefore, any future employer cannot influence her in her official capacity as a state employee.

Finally, Ms. Marks is subject to the post-employment rule's "particular matter" prohibition in her prospective post-employment. This restriction prevents her from representing or assisting a person on any of the following twelve matters if she personally and substantially participated in the matter as a state employee: 1) an application, 2) a business transaction, 3) a claim, 4) a contract, 5) a determination, 6) an enforcement proceeding, 7) an investigation, 8) a judicial proceeding, 9) a lawsuit, 10) a license, 11) an economic development project, or 12) a public works project. The particular matter restriction is not limited to 365 days but instead extends for the entire life of the matter at issue, which may be indefinite.

In this instance, Ms. Marks would be prohibited from representing or assisting netlogx, as well as any other person, in a particular matter in which she personally and substantially participated as a state employee. Based on the information she provided, it appears Ms. Marks had at least some involvement in the EnCred project as an FSSA employee and netlogx has a contract with FSSA to provide project management services to FSSA related to the EnCred project.

The Commission finds that Ms. Marks had no contracting responsibility for FSSA and her involvement in netlogx's contract as related to the EnCred project was not personal

and substantial. Accordingly, she is not prohibited from working as a subcontractor on netlogx's contract with FSSA. The Commission further finds that Ms. Marks must ensure compliance with the particular matter restriction and refrain from assisting or representing any person on any other particular matters that she may have personally and substantially worked on during her state employment.

The Commission found that subject to the foregoing analysis and the application of the one-year restriction regarding executive branch lobbying, Ms. Marks' potential post-employment opportunity with netlogx would not violate the post-employment restrictions found in IC 4-2-6-11.

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

VIII. Director's Report

State Ethics Director, Jen Cooper, stated that the number of informal advisory opinions issued by the Office of Inspector General since the last meeting was 25. She also reported that Adam Jones and Arvin Copeland recently paid their fines in full.

IX. Adjournment

Commissioner Gilroy moved to adjourn the public meeting of the State Ethics Commission and Commissioner Todd seconded the motion, which passed (4-0).

The public meeting adjourned at approximately 11:40 a.m.

Name: Jeffery Matthew Brown

Email: mbrown@idem.IN.gov

Phone: (317) 727-6911

State Agency: IDEM (Office of Land Quality)

Description of
Your State
Occupation: Confined Feeding Operation Compliance Inspector

What is your
ethics
question?:

I, Jeffery Matthew Brown, am an IDEM employee who owns and operates a small cattle operation, as well as harvests hay for livestock consumption in a county of Indiana. As an IDEM employee, I serve as a Confined Feeding Operation Inspector. Therefore, I was wondering if there would be a conflict of interest in 1) selling either a harvested or standing crop of hay to a permitted Confined Feeding Operation, or 2) selling calves or cattle to individuals who own or have an association with a permitted Confined Feeding operation. I would like a formal opinion as to whether or not this could potentially be in violation of State ethics laws.

Jeffery Matthew Brown



April 29, 2019 – Submitted via email to info@ig.in.gov

State of Indiana Ethics Commission
315 W. Ohio St. Room #104
Indianapolis, IN 46202

REQUEST FOR FORMAL ADVISORY OPINION

I served as the Special Projects Coordinator for the Lake Michigan Coastal Program (LMCP) from July 31, 2017 to October 19, 2019. My position was within the Department of Natural Resources' (DNR's) Division of Nature Preserves. I worked in an office located within the Indiana Dunes State Park in Chesterton Indiana. As Special Projects Coordinator, I managed several projects as detailed in the attached Informal Advisory Opinion request. Two of those projects included negotiating a contract extension or developing and negotiating subcontracts and then administering and overseeing the contract work. I also supervised the Lake Michigan Coastal Program's Outreach and Education Assistant and served as a team member of the Lake Michigan Lake-wide Action and Management Plan (LAMP) working closely with IDEM's LAMP Coordinator.

A smaller and intermittent part of my job was to provide support to other LMCP program efforts, including the LMCP grant program. In this capacity all LMCP staff in the Chesterton office, including me served as technical resources to the decision-making bodies and grants staff to answer questions and provide technical perspective on the viability and quality of projects proposed in all grant applications submitted at the pre proposal level and full proposal level. In this capacity I was not directly involved in ranking proposals or in making funding decisions. Similarly I was not involved in negotiating contracts associated with funded grantees. Additional context that is relevant to my primary Post Employment Restrictions Ethics question and details can be found both in the attachments and clarifying narrative provided below.

I requested an Informal Advisory Opinion on April 10, 2019 related to a recent inquiry from the City of Gary's Green Urbanism and Environmental Affairs department regarding the possibility of serving as a private consultant, though my firm (Backhus Consulting LLC), to step in while one of their part-time staff is on maternity leave. As noted in my attached Informal Advisory Opinion request, the Green Urbanism and Environmental Affairs department's needs crossed a broad range of ongoing environmental, green infrastructure and urban agriculture projects.

One of the many projects the Director of the department conveyed as possible elements of the consulting scope of work was a project funded in part by the Lake Michigan Coastal Program that I did have a loose connection to during my employment with DNR.

I received my Informal Advisory Opinion from Chief Legal Counsel Tiffany Mulligan on April 12, 2019. The Informal Opinion provided sound guidance with regard to my inquiry regarding whether engaging in this private consulting opportunity would violate any Post Employment Restrictions but left one question open regarding the definition of "personally and substantially participated". Chief Legal Counsel Mulligan indicated that I should request a Formal Advisory Opinion from State of Indiana Ethics Commission on this matter.

I've attached my Informal Advisory Opinion Request, as well as, Chief Legal Counsel Mulligan's Informal Advisory Opinion to provide background information and details regarding the roles I played as the Special Projects Coordinator with the Lake Michigan Coastal Program.

I'm providing a few more details here for context regarding the Lake Michigan Coastal Programs Grant process to supplement and clarify the information provided in the Informal Opinion attachments.

The LMPC's grant program is a bit different from many grant programs in that it encourages potential grant applicants to reach out to and work with the grants staff and technical staff to discuss their project ideas, ask questions to ensure that projects they submit are eligible, consistent with needs in the LMCP area and are not duplicative and otherwise seek feedback to strengthen their grant proposals. This approach helps the grants program achieve an overall goal to fund high quality, viable, sustainable projects that advance the LMCP's mission.

While the City of Gary had the opportunity to reach out to me before and during the proposal application process, they chose to seek advice from the grants staff instead. Accordingly, there was no direct communication between City of Gary grant applicant and I about their pre or full proposal that was ultimately funded.

As noted in the attached Informal Advisory Opinion files, my role in the grants process during the 2017/2018 cycle was limited to 1) talking to any potential applicants who reached out to me for assistance (only one of the 15 or so applicants sought my advice and feedback), 2) reading all of the pre-proposals submitted and serving as a technical resource to the grants staff, particularly the Grants Assistant, and to the Grants Committee during their pre-proposal review meeting and 3) reading all full proposals submitted and serving as a technical resource for the Technical Advisory Board during their full proposal review meeting. I've attached the cover page and a grants process diagram that outlines the process and refers to the decision-making bodies involved throughout the process. A link to the entire current Grant Pre-Proposal Guidance is noted in that file for additional details if needed.

I am requesting a Formal Advisory Opinion regarding potential post-employment restrictions relative to a private consulting opportunity with the City of Gary. In particular I'm seeing your Formal Opinion on the "particular matters" section of **I.C. 4-2-6-11**. Does my limited involvement in the LMCP grant process rise to the level of "personally and substantially participating" in the grant related matter described above and consequently prevent me from working as a consultant with the City of Gary which might include assistance in implementing some aspects of the LMCP grant funded project.

I'd also appreciate a Formal Advisory Opinion on whether the Commission concurs with Chief Counsel Mulligan's other post-employment restriction conclusions conveyed in her Informal advisory Opinion.

Sincerely,



Debera Backhus

RE: Ethics Informal Advisory Opinion; Backhus; DNR; post-employment

From: Mulligan, Tiffany M (TMulligan@ig.IN.gov)

To: [REDACTED]

Date: Monday, April 15, 2019, 7:13 AM CDT

Thank you, Debera. Let us know if you have questions regarding the process.

Tiffany Mulligan

Chief Legal Counsel

Office of Inspector General/State Ethics Commission

315 West Ohio Street, Room 104

Indianapolis, IN 46202

tmulligan@ig.in.gov

Phone: (317) 232-0708

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From: Deb Backhus [mailto:[REDACTED]]
Sent: Friday, April 12, 2019 5:20 PM
To: Mulligan, Tiffany M <TMulligan@ig.IN.gov>
Subject: Re: Ethics Informal Advisory Opinion; Backhus; DNR; post-employment

**** This is an EXTERNAL email. Exercise caution. DO NOT open attachments or click links from unknown senders or unexpected email. ****

Thank you Ms. Mulligan,

I will look into the Formal Advisory Opinion process as a next step.

Have a great weekend,

Debera

On Fri Apr 12 2019 15:45:46 GMT-0500 (CDT), Mulligan, Tiffany M <TMulligan@ig.IN.gov> wrote:

Debera,

Thank you for contacting the Indiana Office of Inspector General and for providing me with additional information. I understand you are a former employee of the Indiana Department of Natural Resources (DNR) Division of Nature Preserves, Lake Michigan Coastal Program (LMCP).

You write that you served as the Special Projects Coordinator for the LMCP from July 31, 2017 to October 19, 2018. In that capacity, you served as project manager for several projects. These projects included:

- 1.) A NOAA funded Section 309 project focused on developing a suite of outreach materials to better convey the services LMCP can provide to local decision makers. On this project, you worked closely with LMCP staff and the contractor, DJ Case of South Bend. You also administered the associated contract. This project ended in June of 2018.
- 2.) A NOAA funded Section 309 project focused on updating the inventory of wetlands across the Lake Michigan Coastal region, developing a functional assessment of the wetlands and working toward development of a decision support tool. This project is focused on aiding decision-makers in assessing the value of wetlands, which in turn could lead to better land-use decisions across the Lake Michigan Coastal Region.
- 3.) An IDEM Section 319 Watershed grant focused on septic system mapping, molecular source tracking and related neighborhood based septic system outreach and education program development and implementation. This latter project involved bringing several subcontractors onboard and developing contracts with the Northwestern Indiana Regional Planning Commission (NIRPC) and Save the Dunes. You oversaw the contract with NIRPC, which ended on December 31, 2018. You were also involved in the beginning discussions and efforts in developing a contract with a faculty member at Indiana University NW. You also worked together with and supervised the LMCP Outreach and Education Assistant as part of this project, as well as other initiatives to improve and develop new outreach strategies and materials.

You write that you also served as a team member of the Lake Michigan Lake-wide Action and Management Plan (LAMP), working closely with Indiana's LAMP Coordinator housed in IDEM's NW Indiana Office. As part

of this work, you served as the interface to many NW Indiana environmental organizations by attending the regular monthly meetings. As a related responsibility, you also served as coordinator for completion and EPA/NOAA approval of Indiana's Coastal Nonpoint Pollution Control.

A smaller and intermittent part of your job was to provide support to other LMCP program efforts, including the grant program. In this capacity all LMCP staff in the Chesterton office, including yourself, served as technical resources to the decision-making bodies and grants staff to answer questions and provide technical perspective on all grant applications submitted at the pre-proposal level and full proposal level. At the pre-proposal level all staff read all pre-proposals and then attended the LMCP Grants Committee meeting to provide technical support as needed and answer questions based on your areas of expertise. The Grants Committee, which is composed largely of appointees on the Coastal Advisory Board, then voted on which proposals should be recommended to the full LMCP Coastal Advisory Board for their approval and voted to move the recommended pre-proposals to the full proposal level.

At the full proposal level a similar process was in place where technical staff read the proposals and attended the Technical Advisory Board meeting (an appointed group of DNR employees/leaders from different DNR Divisions). This board ranked, discussed and voted on which proposals should be recommended for funding. This list of recommendations was then compiled and assessed by the grants program staff that in turn presented the recommendations to the Director of DNR for final decisions and approval before sending the final approved project list to NOAA for their review. The technical staff's role in this process was limited to being technical resources in the process. As described above, the technical staff, including yourself, had no direct voting or decision-making role.

You write that the City of Gary's Green Urbanism and Environmental Affairs Department recently asked if you would be interested in helping them as a private consultant (Backhus Consulting LLC) on a long list of environmental projects that would need attention while one of their current employees is on temporary maternity leave. You had previously worked with the City of Gary (City) as a consultant (Backhus Consulting LLC) on Green Infrastructure projects from late 2015 – early 2017 prior to being hired as the LMCP Special Projects Coordinator.

You explain that although you were involved in some contracts as a DNR employee, you were not involved in any contracts with the City while you were with DNR. The LMCP Grants Specialist is the staff member that deals with contracting for all grants. You also note that you were not involved in any regulatory or licensing decision involving the City, and you are not aware of LMCP having any regulatory or licensing authority. You also note that you do not plan on doing any executive branch lobbying if you perform work for the City.

One of the projects that they mentioned to you as you discussed the potential scope of work for this consulting project is funded in part by a LMCP grant. As described above, as a technical staff member, you served as a technical resource for the Grants Committee (September/October 2017), Technical Advisory Board (January 2017) and Grants Program staff when this particular project pre-proposal and then full proposal was evaluated by these decision-making bodies who discussed, ranked and voted on all pre- and full proposals submitted in late 2017.

You ask whether your limited technical resource input involvement in the overall grant selection process rises to the level of "personally and substantially participated" in the project and prevents you from working with the City in implementing some elements of this particular project. You also ask whether working on this particular project as a consultant would violate any other post-employment restrictions and whether there are any other red flags of which you should be aware and to which you should adhere in future consulting work.

Your inquiry primarily invokes consideration of IC 4-2-6-11, which is the post-employment rule. I have included all relevant rules and definitions at the end of this opinion for your reference. The post-employment rule consists of two separate limitations: a "cooling off" period and a particular matter restriction.

1. The Post-Employment Rule's Cooling Off Provision

The first prohibition, commonly referred to as the cooling off or revolving door period, prevents you from accepting employment: 1) as a lobbyist, 2) from an employer with whom you engaged in the negotiation or administration of a contract on behalf of any state agency and were in a position to make a discretionary decision affecting the outcome of the negotiation or nature of the administration, or 3) from an employer for whom you made a regulatory or licensing decision that directly applied to the employer or its parent or subsidiary, until the lapse of 365 days from when you leave state employment. In addition, you are prohibited altogether from accepting employment from an employer if the circumstances surrounding the hire suggest the employer's purpose is to influence you in your official capacity as a state employee.

Regarding subsection 1) of the cooling off provision, you indicate that you do not plan on doing any executive branch lobbying when you work for the City; therefore, this provision would not apply to you. A lobbyist for purposes of the Code is defined as an individual who seeks to influence decision making of an agency and who is registered as an executive branch lobbyist under the rules adopted by the Indiana Department of Administration (IDOA). You may wish to review IDOA's [Executive Branch Lobbying Manual](#) to learn about the types of interactions with members of the executive branch (including DNR) that are considered executive branch lobbying. So long as your intended position would not require executive branch lobbying, then this portion of the cooling off period would not apply.

Regarding subsections 2) and 3) of the cooling off provision, you indicate that you have not been involved in any agreements or contracts between the City and the State during your employment with DNR and that you were not involved in any regulatory or licensing decisions involving the City while with DNR. As a result, these subsections would not apply to your potential post-employment with the City. Further, so long as the position with the City is not offered to you to influence you in your official capacity as a state employee, then this prospective opportunity would not be in violation of the last part of this rule.

As a result, the post-employment rule's cooling off provision would not apply to your potential employment with the City.

2. The Post-Employment Rule's Particular Matter Restriction

In addition to the cooling off period, you are also subject to the post-employment rule's "particular matter" restriction. This restriction prohibits you from representing or assisting a person on any of the following twelve matters if you 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. The term does not include the proposal or consideration of a legislative matter or the proposal, consideration, adoption, or implementation of a rule or administrative policy or practice of general application.

In this instance, you would be prohibited from representing or assisting the City, as well as any other person, in a particular matter that you personally and substantially participated in as a state employee. Based on the information you provided, it appears you had at least some involvement in one project funded by the LMCP grant on which the City would like work. It is unclear whether the State Ethics Commission (Commission) would consider your involvement personal and substantial.

If you would like to work on the project with which you were involved at DNR, I would advise you to seek a Formal Advisory Opinion from the Commission for a public and final determination on this question. The Commission will hold its next meeting on May 9, 2019, and all requests for opinions must be received no later than April 29, 2019. You 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>. You also have the option of seeking a post-employment waiver for this position. Your agency's appointing authority, Cameron Clark, has the discretion on whether to issue a waiver. If he chooses to do so, he must present the waiver to the Commission at one of its monthly meetings for final approval. You can find out more information about the waiver process by following up with our office or by contacting DNR's ethics officer, Samantha DeWester. A sample post-employment waiver can be found at: <http://www.in.gov/ig/2589.htm>.

3. The Confidential Information Rule

You should also be aware of the rule regarding confidential information. IC 4-2-6-6 prohibits you from accepting any compensation from any employment, transaction, or investment, which was entered into or made as a result of material information of a confidential nature. So long as any compensation you earn from the City does not result from information of a confidential nature, any such post-employment 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 Ethics 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 I understand them. If this e-mail misstates facts in a material way, or omits important information, please bring those inaccuracies to my attention.

Sincerely,

Tiffany Mulligan

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:

(4) "Assist" means to:

(A) help;

(B) aid;

(C) advise; or

(D) furnish information to; a person. The term includes an offer to do any of the actions in clauses (A) through (D).

(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.

...

(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.

...

(17) "Represent" means to do any of the following on behalf of a person:

(A) Attend an agency proceeding.

(B) Write a letter.

(C) Communicate with an employee of an agency.

...

IC 4-2-7-1

Definitions

Sec. 1. The following definitions apply throughout this chapter:

...

(5) "Lobbyist" means an individual who seeks to influence decision making of an agency and who is registered as an executive branch lobbyist under rules adopted by the Indiana department of administration.

IC 4-2-6-11

One year restriction on certain employment or representation; advisory opinion; exceptions; waivers; disclosure statements; restrictions on inspector general seeking state office

Sec. 11. (a) As used in this section, "particular matter" means any of the following:

- (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.
- (12) A public works project.

The term does not include 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.

(b) A former state officer, employee, or special state appointee may not accept employment or receive compensation:

- (1) as a lobbyist;

(2) from an employer if the former state officer, employee, or special state appointee was:

(A) engaged in the negotiation or the administration of one (1) or more contracts with that employer on behalf of the state or an agency; and

(B) in a position to make a discretionary decision affecting the:

(i) outcome of the negotiation; or

(ii) nature of the administration; or

(3) from an employer if the former state officer, employee, or special state appointee made a regulatory or licensing decision that directly applied to the employer or to a parent or subsidiary of the employer; before the elapse of at least three hundred sixty-five (365) days after the date on which the former state officer, employee, or special state appointee ceases to be a state officer, employee, or special state appointee.

(c) A former state officer, employee, or special state appointee may not represent or assist a person in a particular matter involving the state if the former state officer, employee, or special state appointee personally and substantially participated in the matter as a state officer, employee, or special state appointee, even if the former state officer, employee, or special state appointee receives no compensation for the representation or assistance.

(d) A former state officer, employee, or special state appointee may not accept employment or compensation from an employer if the circumstances surrounding the employment or compensation would lead a reasonable person to believe that:

(1) employment; or

(2) compensation;

is given or had been offered for the purpose of influencing the former state officer, employee, or special state appointee in the performance of the individual's duties or responsibilities while a state officer, an employee, or a special state appointee.

(e) A written advisory opinion issued by the commission certifying that:

(1) employment of;

(2) consultation by;

(3) representation by; or

(4) assistance from;

the former state officer, employee, or special state appointee does not violate this section is conclusive proof that a former state officer, employee, or special state appointee is not in violation of this section.

(f) Subsection (b) does not apply to the following:

(1) A special state appointee who serves only as a member of an advisory body.

(2) A former state officer, employee, or special state appointee who has:

(A) not negotiated or administered any contracts with that employer in the two (2) years before the beginning of employment or consulting negotiations with that employer; and

(B) any contract that:

(i) the former state officer, employee, or special state appointee may have negotiated or administered before the two (2) years preceding the beginning of employment or consulting negotiations; and

(ii) is no longer active.

(g) An employee's or a special state appointee's state officer or appointing authority may waive application of subsection (b) or (c) in individual cases when consistent with the public interest. A waiver must satisfy all of the following:

(1) The waiver must be signed by an employee's or a special state appointee's:

(A) state officer or appointing authority authorizing the waiver; and

(B) agency ethics officer attesting to form.

(2) The waiver must include the following information:

(A) Whether the employee's prior job duties involved substantial decision making authority over policies, rules, or contracts.

(B) The nature of the duties to be performed by the employee for the prospective employer.

(C) Whether the prospective employment is likely to involve substantial contact with the employee's former agency and the extent to which any such contact is likely to involve matters where the agency has the discretion to make decisions based on the work product of the employee.

(D) Whether the prospective employment may be beneficial to the state or the public, specifically stating how the intended employment is consistent with the public interest.

(E) The extent of economic hardship to the employee if the request for a waiver is denied.

(3) The waiver must be filed with and presented to the commission by the state officer or appointing authority authorizing the waiver.

(4) The waiver must be limited to an employee or a special state appointee who obtains the waiver before engaging in the conduct that would give rise to a violation of subsection (b) or (c).

The commission may conduct an administrative review of a waiver and approve a waiver only if the commission is satisfied that the information provided under subdivision (2) is specifically and satisfactorily articulated. The inspector general may adopt rules under IC 4-22-2 to establish criteria for post employment waivers.

(h) Subsection (b) applies, subject to waiver under subsection (g), to a former state officer, employee, or special state appointee who:

(1) made decisions as an administrative law judge; or

(2) presided over information gathering or order drafting proceedings; that directly applied to the employer or to a parent or subsidiary of the employer in a material manner.

(i) A former state officer, employee, or special state appointee who forms a sole proprietorship or a professional practice and engages in a business relationship with an entity that would otherwise violate this section must file a disclosure statement with the commission not later than one hundred eighty (180) days after separation from state service. The disclosure must:

(1) be signed by the former state officer, employee, or special state appointee;

(2) certify that the former state officer, employee, or special state appointee is not an employee of the entity; and

(3) state in detail the treatment of taxes, insurance, and any other benefits between the entity and the former state officer, employee, or state appointee.

(j) The inspector general may not seek a state elected office before the elapse of at least three hundred sixty-five (365) days after leaving the inspector general position.

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.

Tiffany Mulligan

Chief Legal Counsel

Office of Inspector General/State Ethics Commission

315 West Ohio Street, Room 104

Indianapolis, IN 46202

tmulligan@ig.in.gov

Phone: (317) 232-0708

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From: Deb Backhus [<mailto:> 

Sent: Thursday, April 11, 2019 12:57 PM
To: Mulligan, Tiffany M <TMulligan@ig.IN.gov>
Subject: Re: New IAO 2019-IN-0100 in DoGSIO

**** This is an EXTERNAL email. Exercise caution. DO NOT open attachments or click links from unknown senders or unexpected email. ****

Good afternoon Tiffany,

Thank you for the update and your questions. I've provided my responses in red text within your email below.

Thanks for the opportunity to provide this additional clarification. Please don't hesitate to contact me if you have any other questions.

Kind regards,

Debera Backhus

On Thu Apr 11 2019 11:13:49 GMT-0500 (CDT), Mulligan, Tiffany M <TMulligan@ig.IN.gov> wrote:

Debera,

Thank you for contacting the Indiana Office of Inspector General to request ethics advice. I am working on an informal advisory opinion in response to your request, but I have a few questions. Can you provide responses to the following?

1. As a DNR employee, were you involved in any contracting for the agency?

Yes I was involved in the contracting process between DNR LMCP and NIRPC as well as Save the Dunes. I also worked on a contract amendment to an existing contract with DJ Case.

a. If so, were you involved in any contracts with the City of Gary?

I was not involved in any contracts with the City of Gary while I was a DNR employee. The LMCP Grants Specialist is the staff member that deals with contracting for all grants.

b. If so, what was your involvement?

Not Applicable

2. Did you participate any regulatory or licensing decisions as a DNR employee involving the City of Gary?
I was not involved in any regulatory or licensing decision involving the City of Gary. In general, I am not aware of any regulatory or licensing authority that the LMCP has.

a. If so, what were the decisions?

Not applicable

b. If so, what was your participation?

Not applicable

3. Do you plan on doing any executive branch lobbying for the City of Gary?

I do not, but would appreciate any clarification as to what "executive branch lobbying" covers just to make sure my statement is correct.

I know you specifically ask about the post-employment rule's particular matter provision, but I want to make sure I have all of the information so I can provide an opinion that covers all aspects of the rule.

Thank you,

Tiffany

Tiffany Mulligan

Chief Legal Counsel

Office of Inspector General/State Ethics Commission

315 West Ohio Street, Room 104

Indianapolis, IN 46202

tmulligan@ig.in.gov

Phone: (317) 232-0708

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From: noreply@formstack.com [<mailto:noreply@formstack.com>]
Sent: Wednesday, April 10, 2019 12:36 PM
To: IG Info <info@ig.IN.gov>; ccarrasco@ig.in.gov; Cooper, Jennifer <JCooper@ig.IN.gov>
Subject: Advice

**** This is an EXTERNAL email. Exercise caution. DO NOT open attachments or click links from unknown senders or unexpected email. ****



Formstack Submission For: [ig_2334](#)

Submitted at 04/10/19 12:36 PM

Name: Debera Backhus

Email: [REDACTED]

Phone: [REDACTED]

State Agency: Former employee of the DNR, Division of Nature Preserves, Lake Michigan Coastal Program

Description of Your State Occupation: I served as the Special Projects Coordinator for the Lake Michigan Coastal Program from July 31, 2017 to October 19, 2018. In that Capacity I served as project manager for several projects. These included:
1) A NOAA funded Section 309 project focused on developing a suite of outreach materials to better convey the services LMPC can provide to local decision makers: On this project, I worked

closely with LMPC staff and the contractor DJ Case of South Bend. I also administered the associated contract. This project ended in June 2018.

2) A NOAA funded Section 309 project focused on updating the inventory of wetlands across the Lake Michigan Coastal region, developing a functional assessment of the wetlands and working toward development of a decision support tool: This project is focused on aiding decision-makers in assessing the value of wetlands, which in turn could lead to better land-use decisions across the Lake Michigan Coastal Region.

3) An IDEM Section 319 Watershed grant focused on septic system mapping, molecular source tracking and related neighborhood based septic system outreach and education program development and implementation: This latter project involved bringing several subcontractors onboard and developing contracts with the Northwestern Indiana Regional Planning Commission (NIRPC) and Save the Dunes. The contract with NIRPC, which I oversaw, ended on December 31, 2018. I was also involved in the beginning discussions and efforts in developing a contract with a faculty member at Indiana University NW. I also worked together with and supervised the LMCP Outreach and Education Assistant as part of this project, as well as other initiatives to improve and develop new outreach strategies and materials.

I also served as a team member of the Lake Michigan Lake-wide Action and Management Plan (LAMP) working closing with Indiana's LAMP Coordinator housed in IDEM's NW Indiana Office. As part of this work, I served as the interface to many NW Indiana environmental organizations by attending the regular monthly meetings. As a related responsibility, I also served as coordinator for completion and EPA / NOAA approval of Indiana's Coastal Nonpoint Pollution Control.

A smaller and intermittent part of my job was to provide support to other LMCP program efforts, including the grant program. In this capacity all LMCP staff in the Chesterton office, including me served as technical resources to the decision-making bodies and grants staff to answer questions and provide technical perspective on all grant application submitted at the pre proposal level and full proposal level. At the pre-proposal level all staff read all pre-proposals and then attended the LMCP Grants Committee meeting to provide technical support as needed and answer

questions based on our areas of expertise. The Grants Committee, which is composed largely of appointees on the Coastal Advisory Board, then voted on which proposals should be recommended to the full LMCP Coastal Advisory Board for their approval and vote to move the recommended pre-proposals to the full proposal level.

At the full proposal level a similar process was in place with technical staff read the proposals and attended the Technical Advisory Board meeting (an appointed group of DNR employees/leader from different DNR Divisions). This board ranked, discussed and voted on which proposals should be recommended for funding. This list of recommendations was then compiled and assessed by the grants program staff that in turn presented the recommendations to the Director of the DNR for final decisions and approval before sending the final approved project list to NOAA for their review. The technical staff's role in this process was limited to being technical resources in the process. As described above, the technical staff, including me had no direct voting or decision-making role.

I was recently asked by the City of Gary's Green Urbanism and Environmental Affairs department if I would be interested in helping them as a private consultant (Backhus Consulting LLC) on a long list of environmental projects that would need attention while one of their current employees is on temporary maternity leave. I had previously worked with the City of Gary as a consultant (Backhus Consulting LLC.) on Green Infrastructure projects from late 2015 – early 2017 prior to being hired as the LMCP Special Projects Coordinator.

What is your ethics question?:

One of the projects that was mentioned in my recent conversations with the City of Gary, as we discussed the potential scope of work for this consulting project, is funded in part by a Lake Michigan Coastal Program grant. As described above, as a technical staff member I did read and serve as a technical resource for the Grants Committee (September/October 2017), Technical Advisory Board (January 2017) and Grants Program staff when this particular project pre-proposal and then full was evaluated by these decision-making bodies who discussed, ranked and voted on all pre and full proposal submitted in late 2017.

Does this limited technical resource input involvement in the overall grant selection process rise to the level of “personally and substantially participated” and prevent me from working with the City in implementing some elements of this particular project? Would working on this particular project as a consultant violate any other post-employment restrictions? Do you see any other red flags that I need to be aware of to adhere to the post employment restrictions in future consulting work?

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INDIANA LAKE MICHIGAN COASTAL PROGRAM



INDIANA LAKE MICHIGAN COASTAL PROGRAM

PRE-PROPOSAL GUIDANCE

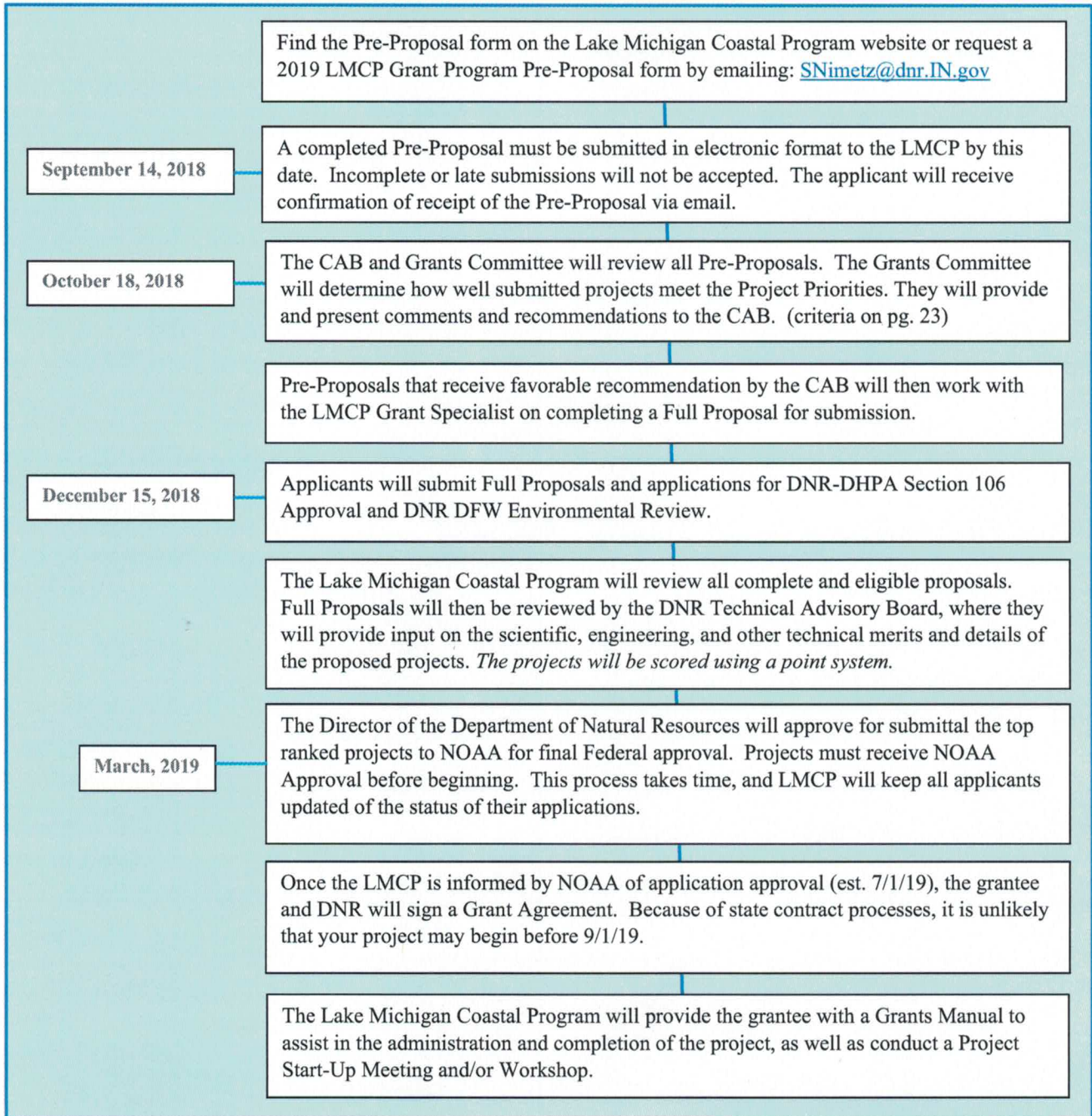
Updated May, 2018



Dates noted in the chart below refer to the 2019/2020 Grants Cycle.
 The 2017/2018 Grants Process dates referred to in the Informal and Formal Advisory
 Opinions followed a similar pattern during 2018 and 2019.

PRE-PROPOSAL PROCESS

The following outlines the process for Pre-Proposal submission, reviews, approvals, and procedures.



Request for Formal Opinion of the Indiana State Ethics Commission

APPLICABLE LAW: Ind. Code § 4-2-6-11(c) (“Particular Matter Restriction”)

QUESTIONS: (1) Whether the particular matter restriction prohibits INDOT employee, Lora Phillippe, from assisting future employers with Local Public Agency (LPA) projects in which she participated as a Project Manager for the Department. (2) Whether Lora Phillippe’s participation in assigned LPA projects is “personal and substantial” for the purposes of Ind. Code § 4-2-6-11(c).

BACKGROUND:

Lora Phillippe is a project manager for the Vincennes District of the Indiana Department of Transportation. Ms. Phillippe is responsible for ensuring federal funds awarded to Local Public Agency (LPA) projects are utilized consistent with federal guidelines. Once federal funds are awarded by INDOT or an authorized Metropolitan Planning Organization (MPO), Ms. Phillippe is required to ensure that the LPA uses the money in a manner that complies with Federal Highway Administration standards; specifically, the requirements provided in INDOT’s Local Public Agency Project Development Process Guidance Document for Local Federal-Aid Projects. Ms. Phillippe is also charged with ensuring that funds awarded for each phase of project development are utilized in the fiscal year awarded.

A flow chart outlining the development process for LPA projects is attached as Exhibit A. Ms. Phillippe’s role is to ensure that each step listed in the flow chart is completed by the LPA. She is not responsible for the actual delivery of these steps and plays no part in their development or implementation.

Ms. Phillippe’s duties are formulaic and do not involve day-to-day project management. The employee’s obligations are executed early in the life of a project. Ms. Phillippe’s responsibilities remain constant across assigned projects and do not change based on project-specific conditions. As illustrated in Exhibit A, the employee’s duties are confined to ensuring the LPA completes a check-list of required steps.

Ms. Phillippe’s duties do not include or otherwise relate to contract negotiation, scoping, design, or delivery. Her responsibilities do not involve negotiating, determining, or implementing change orders, and she has no discretionary authority with regard to establishing the nature or value of contracts. In fact, Ms. Phillippe’s duties have no relationship to the specific nature and value of the contracts she helps administer. The employee does not make regulatory or licensing decisions and has no discretionary authority in that regard. All compliance decisions made by the employee are administrative in nature and based on clearly defined dictates enacted by the Federal Highway Administration, and set forth in INDOT’s Local Public Agency Project Development Process Guidance Document for Local Federal-Aid Projects.

The purpose of this formal opinion request is to determine if Lora Phillippe’s participation in assigned LPA projects is “personal and substantial” for the purposes of Ind. Code § 4-2-6-11(c), and in turn, whether the particular matter restriction prevents her from assisting future employers with LPA projects she participated in as a project manager for INDOT. While an LPA project is assuredly a “particular matter” under Ind. Code § 4-2-6-11(a), and while traditional project managers, who administer the development and day to day implementation of assigned contracts, are generally covered by the particular matter restriction under Ind. Code § 4-2-6-11(c), Lora Phillippe’s position within INDOT is unique and the direction of the State Ethics Commission is required to determine the applicability of the subject ethics rule.

Respectfully submitted this 30th day of April, 2019, by:



Christopher B. Serak, Ethics Officer & Prequalification Director
Indiana Department of Transportation

Indiana Department of Transportation (TOP DOT) Project Development Process (PDP) for Minor Projects

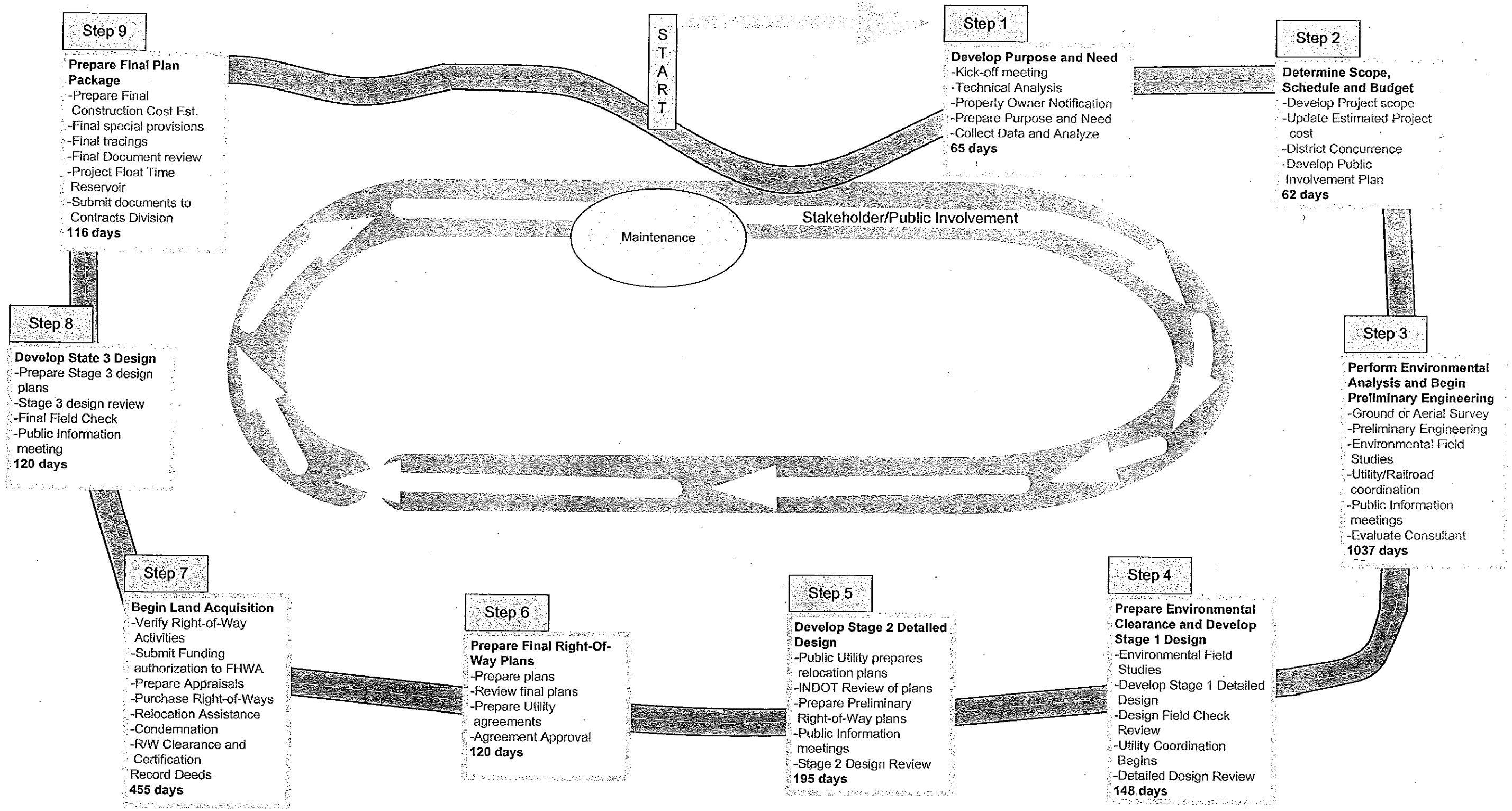


Exhibit A

STATE OF INDIANA)
) SS: INDIANA STATE ETHICS COMMISSION
COUNTY OF MARION) CASE NO: 2018-08-0233

IN RE THE MATTER OF JADA MOCABY,

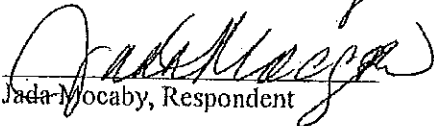
Respondent,

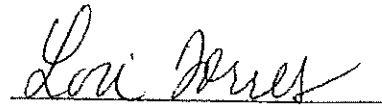
AGREED SETTLEMENT

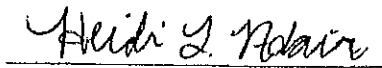
1. Respondent admits to the facts as alleged in the complaint filed herein by the Inspector General and admits to a violation of Ind. Code § 4-2-6-11(b)(3), the ethics rule pertaining to the cooling off provision of the post-employment rule. (See Ethics Complaint filed on March 18, 2019, attached hereto as Exhibit A.)
2. Respondent agrees to pay a fine in the amount of Seven Thousand Five Hundred Dollars (\$7,500.00). The State Ethics Commission (Commission) will not impose any further penalties under Ind. Code § 4-2-6-12. Respondent shall make payment to the "Indiana State Ethics Commission" in no more than four installments of at least One Thousand Eight Hundred and Seventy-Five Dollars (\$1,875) within two hundred and forty (240) days from the date that the Commission accepts this agreement. Respondent shall make her first installment payment within sixty (60) days from the date that the Commission accepts this agreement and shall make the next three installment payments every sixty (60) days thereafter.

The four installment payment due dates are as follows:
 - First installment payment of \$1,875 due July 8, 2019.
 - Second installment payment of \$1,875 due September 6, 2019.
 - Third installment payment of \$1,875 due November 5, 2019.
 - Fourth installment payment of \$1,875 due January 4, 2020.
3. The parties acknowledge that this agreement reflects the entire agreement between the parties, that approval of these terms by the Commission shall result in the final disposition of this proceeding and that Respondent is waiving an alternative statutory right to a public hearing as provided in Ind. Code § 4-2-6-4 to contest the complaint.

Dated this 1 of May, 2019.


Jada Mocaby, Respondent


Lori Torres, Inspector General


Heidi L. Adair, Staff Attorney
Office of Inspector General

Approved this ____ day of _____, 2019, by the State Ethics Commission in a public meeting by a vote of ____ to ____.

State Ethics Commission Chair

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

INDIANA STATE ETHICS COMMISSION
CASE NO: 2018-08-0233

IN RE THE MATTER OF JADA MOCABY,

INDIANA
STATE ETHICS COMMISSION

Respondent.

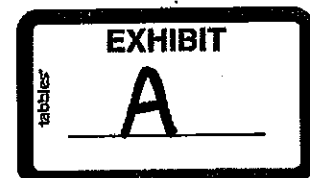
MAR 18 2019

ETHICS COMPLAINT

FILED

Comes now Lori A. Torres, Inspector General of the State of Indiana, by counsel, Heidi Adair, and alleges and says that Jada Mocaby, Respondent, has violated the Indiana Code of Ethics, as follows:

1. The Indiana State Department of Health (ISDH) is an executive branch agency pursuant to Ind. Code § 4-2-7-1(1).
2. ISDH's Division of Long Term Care (Division) is responsible for state licensing and federal certification programs for long term care facilities.
3. Respondent, Jada Mocaby, was an employee, as defined by Ind. Code § 4-2-7-1(3) and 40 IAC 2-1-4(h), of ISDH and the Division at all times referenced herein and thus subject to the jurisdiction of the Office Inspector General (OIG) and the Indiana State Ethics Commission.
4. Respondent was a Public Health Nurse Surveyor (Surveyor) in the Division from August 8, 2016, to July 27, 2018. Respondent's responsibilities as a Surveyor included conducting annual and complaint on-site surveys of nursing and assisted living homes within her designated region. The purpose of these surveys was to determine compliance with federal certification and state licensure requirements. Surveyors issue citations against facilities if they determine that a facility failed to meet certain guidelines.




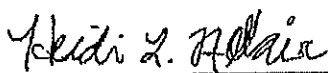
5. Aperion Care (Aperion) is an assisted living, skilled nursing and therapy company. Aperion has a number of facilities throughout the State, but most are located in the northern region.
6. As a part of Respondent's duties as a Surveyor, she surveyed Aperion facilities within her designated region, which included Michigan City Arbors, Demotte, Tolleston Park, and Valparaiso. During her time as a Surveyor, she personally issued citations to at least three out of the four Aperion facilities referenced above.
7. On July 27, 2018, Respondent left state employment. On August 6, 2018, Respondent began working for Aperion as a Regional Nurse Consultant.
8. Respondent violated Ind. Code § 4-2-6-11(b)(3) by accepting employment and receiving compensation from Aperion less than 365 days after leaving state employment after making a regulatory or licensing decision that directly applied to Aperion during her employment with ISDH.

Wherefore, the Inspector General prays that the Indiana State Ethics Commission set this matter for hearing, find Respondent in violation of the Code of Ethics as stated herein, and impose an appropriate sanction.

Respectfully submitted,

DATED: 3/18/19


Lori A. Torres, Inspector General


Heidi L. Adair, Attorney #35082-32
Counsel for the Inspector General

Office of the Inspector General
315 W. Ohio Street, Room 104
Indianapolis, IN 46202
Telephone: (317) 232-3850
Email: HAdair@ig.in.gov

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing "Ethics Complaint" has been served upon
Respondent by U.S. Mail at the address listed below, on this 18 day of March,
2019.

Jada Mocaby
10041 N. 1200 W.
Demotte, IN 46310

Heidi L. Adair
Heidi L. Adair, Staff Attorney #35082-32