

**MINUTES OF THE MEETING OF
THE INDIANA STATE ETHICS COMMISSION
September 14, 2017**

I. Call to Order

A regular meeting of the State Ethics Commission (“Commission”) was called to order at 10:00 a.m. Members present included James N. Clevenger, Chairperson; Bob Jamison; Daryl Yost; Priscilla Keith, and Peter Nugent. Staff present included Lori Torres, Inspector General; Jennifer Cooper, Ethics Director; Tiffany Mulligan, Chief Legal Counsel; Matthew Savage, Staff Attorney; and Celeste Croft, Legal Assistant, Office of Inspector General.

Others present were Adrienne Brune, Attorney E7/Ethics Officer, State Department of Health; Deana Smith, Attorney E7, State Department of Health; Mark Tidd, Prequalification & Permits Director, Department of Transportation/Ethics Officer; Sarah Kamhi, Deputy General Counsel, Economic Development Corporation; Tammera Glickman, Assistant General Counsel, Department of Administration; David Fleischhacker, Employee Relations Attorney, State Personnel Department; Joan Blackwell, Chief of Staff, Attorney General’s Office; Kendra Leatherman, Legislative Director, Auditor of State; Doug Webber, Chief of Staff, Department of Insurance; Amy Beard, Attorney, Department of Insurance; Stephen Robertson, Commissioner, Department of Insurance; Cathleen Nine-Altevogt, Attorney/Ethics Officer, Department of Insurance; and Tina Korty, former General Counsel, Department of Insurance.

II. Adoption of Agenda and Approval of Minutes

Commissioner Yost moved to adopt the Agenda and Commissioner Keith seconded the motion which passed (5-0). Commissioner Nugent moved to approve the Minutes of the August 10, 2017 Commission Meeting and Commissioner Yost seconded the motion which passed (5-0).

III. Consideration of Post-Employment Waiver

**For Tina Korty, former General Counsel
Presented by Cathleen Nine-Altevogt, Attorney/Ethics Officer
Stephen Robertson, Commissioner
Indiana Department of Insurance**

Attorney/Ethics Officer, Cathleen Nine-Altevogt, presented a post-employment waiver on Tina Korty’s behalf. Ms. Korty previously served General Counsel for the Department. Ms. Korty was before the Commission to request advice and permission to work for Indiana University Health (IUH), a local healthcare system, as Associate General Counsel. The Commission believed that Ms. Korty thoroughly understood the ethics rules, as they related to the previous business relationship between Indiana University Health Risk Retention Group (IHRRG), a subsidiary of IUH, and the State, as Ms. Korty previously reviewed responses to requests for proposals in 2012 that were directly related to IHRRG. After the Commission discussed the

matter, Commissioner Nugent moved to approve the Post-Employment Waiver and Commissioner Keith seconded the motion which passed (5-0).

IV. Consideration of Final Report

**In the Matter of Amanda Alvey/Case Number 2016-08-0170
Jennifer Cooper, State Ethics Director
Office of Inspector General**

Jennifer Cooper, State Ethics Director, presented the Final Report, In the Matter of Amanda Alvey, for the Commission's consideration. Commissioner Yost moved to approve the Final Report In the Matter of Amanda Alvey and Commissioner Jamison seconded the motion, which passed (5-0).

V. Consideration of Final Report

**In the Matter of Leann Walton/Case Number 2016-06-0124
Jennifer Cooper, State Ethics Director
Office of Inspector General**

Jennifer Cooper, State Ethics Director, presented the Final Report, In the Matter of Leann Walton, for the Commission's consideration. Commissioner Keith moved to approve the Final Report In the Matter of Leann Walton and Commissioner Yost seconded the motion, which passed (5-0).

VI. Director's Report

State Ethics Director, Jennifer Cooper, stated that since the last meeting of August 22, 2017, the Office of Inspector General issued 36 informal advisory opinions, the majority of which involved the subjects of ghost employment, conflicts of interest, outside employment, use of state property, post-employment, and gifts.

In addition, Ms. Cooper informed the Commission that Compliance Officer/Staff Attorney, Stephanie Mullaney, was no longer with the Office of Inspector General and that Ms. Mullaney had begun working at the Attorney General's Office, about two weeks prior to the current meeting, as a Deputy General Attorney. Ms. Cooper elaborated, stating that the Office of Inspector General was in the process of hiring a replacement Staff Attorney.

Lastly, Ms. Cooper opened the floor to Inspector General Torres, who presented Commissioner Nugent with a Certificate, thanking him for his multiple years of service as Commissioner. Chairman Clevenger also stated a few kind words regarding Commissioner Nugent's departure. The September 14, 2017 meeting was Commissioner Nugent's last meeting with the Commission, as he has just been appointed a Judge for Johnson Superior Court.

VII. Adjournment

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

The public meeting adjourned at 10:18 a.m.



Eric Holcomb, Governor
State of Indiana

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

November 3, 2017

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

RE: Request for Formal Advisory Opinion for Robert Glass

Dear Chairman Clevenger and members of the Ethics Commission:

The Indiana Family and Social Services Administration ("FSSA"), on behalf of Robert Glass, requests a Formal Advisory Opinion from the State Ethics Commission addressing conflicts of interest and post-employment restrictions for Mr. Glass.

Since December 2014, Robert Glass has worked for FSSA's Office of Medicaid Policy and Planning ("OMPP") as a Government Affairs Analyst. OMPP oversees the administration of Indiana Health Coverage Programs, which include Medicaid, the Children's Health Insurance Program ("CHIP") and the Healthy Indiana Plan ("HIP"). Mr. Glass assists the FSSA Legislative Director and Medicaid Director in executing Medicaid's legislative goals. His duties include analyzing state legislation and federal regulations, responding to external inquiries, and serving as the Medicaid legislation liaison. The purpose of Mr. Glass' position is to effectively manage Medicaid legislation and ensure the program is in compliance with federal law and regulations.

On October 5, 2017, Mr. Glass notified me of his intent to apply for a State Policy & Legislative Affairs Manager position with CareSource and I reviewed the post-employment restrictions that would be applicable. Since Mr. Glass had not commenced negotiations, there was no need for an internal screen. The following week, Mr. Glass was contacted for a first round interview on October 11, 2017. Although Mr. Glass does not oversee CareSource's contract with the State, we agreed that an internal screen would be appropriate to avoid any potential conflicts of interest and the appearance of impropriety during the negotiation process. Mr. Glass' supervisor implemented a screen so that Mr. Glass would not handle any matters related to CareSource.



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CareSource is nonprofit managed care company based in Dayton, Ohio. The company offers Medicaid managed care plans, Medicare Advantage plans and Marketplace insurance plans in multiple states. CareSource is one of the four managed care entities (“MCE”) contracted with FSSA to coordinate care for members enrolled in Indiana Medicaid programs.

Mr. Glass neither engaged in the negotiation or administration of any contract between the State and CareSource, nor was he in a position to make a discretionary decision affecting the outcome of the negotiation or administration of any contract with CareSource.

OMPP’s Quality & Outcomes section maintains oversight of the MCEs and manages their contracts to ensure compliance. Contract managers under the leadership of the Managed Care Compliance Manger and Quality and Outcomes Section Director are the primary point of contact for the MCEs. CareSource has an assigned contract manager.

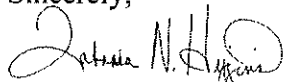
Mr. Glass periodically interacts with policy and government relations staff from all MCEs, including CareSource. Typically, his work involves an occasional email or call to discuss policies or legislation relevant to FSSA’s managed care programs. Mr. Glass has more frequent contact with MCEs when the Indiana General Assembly is in session. Such contact can include weekly policy discussions. According to Mr. Glass, CareSource often participates in these discussions or may contact him directly with questions. His participation in these discussions includes highlighting recent state or federal developments, providing any relevant information on the subject matter and asking for feedback concerning the impact to the members FSSA serves.

Mr. Glass indicates that his role with CareSource would support the company’s government affairs team by developing and implementing advocacy plans, monitoring legislative and governmental activities, analyzing legislation and maintaining relationships with legislative and government officials.

Mr. Glass 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. Glass understands and agrees to abide by the one-year restriction regarding registering as an executive branch lobbyist.

Based on the information presented, we believe Mr. Glass’ plans to return to private sector employment with CareSource are permissible under Indiana’s ethics laws. We appreciate the Ethics Commission’s consideration.

Sincerely,



Latosha N. Higgins

Interim Managing Attorney and Ethics Officer



INDIANA STATE BOARD OF EDUCATION

To: Indiana Ethics Commission
From: Dr. Byron Ernest, Member and Secretary, Indiana State Board of Education
Timothy Schultz, General Counsel & Ethics Officer, Indiana State Board of Education
Date: November 7, 2017
Re: Request for Formal Advisory Opinion for Dr. Byron Ernest

INTRODUCTION

On November 11, 2017, Timothy Schultz submitted a request for an informal advisory opinion on behalf of Dr. Byron Ernest to the Inspector General's Office/Indiana Ethics Commission ("OIG"). In the informal advisory opinion,¹ the OIG requested that Dr. Ernest seek guidance on one discrete issue. Specifically, the informal advisory opinion stated that "[i]n order to determine how extensively Dr. Ernest must be screened from the Board's activities [per IC 4-2-6-9—Conflicts of Interests Pertaining to Decisions and Votes], we recommend that you request a formal advisory opinion from the Commission to get a final and public determination on this question."

Pursuant to the OIG guidance, Dr. Ernest seeks a formal advisory opinion from the OIG with respect to an offer of employment from Noble Education Initiative, Inc. ("NEI") regarding any potential conflicts that could arise under IC 4-2-6-9—Conflicts of Interests Pertaining to Decisions and Votes. For convenience, background information has been provided below detailing: the responsibilities of the Indiana State Board of Education ("Board"), a summary NEI's business and Dr. Ernest's potential responsibilities,² and an analysis of the relevant ethics rules as applied to the facts provided is also included for convenience.

I. Background

Recently, Dr. Byron Ernest, a member of the Board appointed by Indiana House Speaker Brian Bosma, was approached about a possible employment opportunity with NEI. Based on the job description provided by NEI, and reproduced below, the focus of this position would be teacher recruitment and teacher professional development.

¹ The informal advisory opinion is attached to this request.

² The complete job description is attached to this request.

There are two areas of law that are of particular relevance for purposes of this request. First, the Board is responsible for intervening in Indiana's lowest performing schools. As part of these responsibilities, the Board may authorize the State of Indiana ("State") to intervene in a school to improve a school's performance, which can result in the Indiana Department of Education ("IDOE") entering into contracts with private entities which the Board approves. Second, pursuant to IC 20-28-2-1, "the department has the sole authority and responsibility for governing teacher education and teacher licensing matters, including professional development."

A. The Indiana State Board of Education

The Board was established by the Indiana General Assembly, and oversees K-12 education policymaking in the State. The bipartisan Board is composed of eleven (11) members, including the Superintendent of Public Instruction. Eight (8) members are appointed by the Governor and must include at least six (6) appointees with professional experience in the field of education, not more than one (1) appointee from a particular congressional district, and not more than five (5) appointees belonging to the same political party. The remaining two (2) Board members are appointed by the Speaker of the Indiana House Representatives and the President Pro Tempore of the Indiana Senate respectively.

IC 20-19-2 enumerates many of the responsibilities of the Board, which include authorizing the distribution of state education funds to local schools, adopting rules to implement various programs and requirements, determining a school's P.L. 221 performance and improvement category designation, accrediting public and nonpublic schools, and implementing interventions to improve school performance. Furthermore, IC 20-19-2-14 ("*Duties of state board*") explains that "the state board shall do the following: (1) establish the educational goals of the state, developing standards and objectives for local school corporations; (2) assess the attainment of the established goals; (3) assure compliance with established standards and objectives; (4) coordinate with the commission for higher education (IC 21-18-1) and the department of workforce development (IC 22-4.1-2) to develop entrepreneurship education programs for elementary and secondary education, higher education, and individuals in the work force; (5) make recommendations to the governor and general assembly concerning the educational needs of the state, including financial needs; (6) provide for reviews to ensure the validity and reliability of the ISTEP program."

1. School Intervention

For purposes of this request, it is necessary to provide a brief summary of the Board's prior intervention decisions regarding three (3) schools, as previous Board's actions are relevant to the analysis of these issues. As referenced above, the Board is statutorily obligated to intervene in Indiana's lowest performing schools. See IC 20-31-9 and IC 20-31-9.5. Under this authority, the Board may authorize the State to intervene in a school to improve school performance. One intervention the Board may prescribe is to assign an operator to manage and operate a school to improve school performance.

In August 2011, pursuant to the authority referenced above, the Board ordered the State to intervene in a number of chronically failing schools, which included three (3) Indianapolis schools: Emma Donnan (“Donnan”), Emmerich Manual High School (“Manual”), and Thomas Carr Howe High (“Howe”), collectively (“Turnaround Academies”). With regard to these Turnaround Academies, the Board directed the IDOE to contract with Charter Schools USA (“CSUSA”) to serve as the operator and voted to approve the requisite contracts to accomplish the intervention. While Dr. Ernest was not a member of the Board at the time of the initial intervention, Dr. Ernest did vote to reaffirm the intervention status of these schools at the April 15, 2016, Board meeting. During subsequent Board meetings, Dr. Ernest voted to approve the CSUSA contract extensions for Donnan, Manual, and Howe.

In addition to reaffirming the intervention status of the Turnaround Academies, as well as, voting to approve operator current contracts, the Board is charged with the responsibility for determining the amounts of state tuition support that are necessary to fund the Turnaround Academies. Except as provided by IC 20-31-9.5-3(c), the manner or methodology by which the Board makes this determination is not otherwise prescribed. Thus, based on IDOE’s recommendation, and consistent with the current statutory framework of IC 20-43-1 et seq., the state tuition support is calculated by utilizing the current child count as the child count multiplier. The Board votes to approve the state tuition support on a biannual basis. The Board, including Dr. Ernest, most recently voted to approve the funding of the Turnaround Academies during the course of its regular business on June 7, 2017, and will vote again in December.

B. Noble Education Initiative

NEI is a Delaware not-for-profit company doing business in Florida and other states across the country.³ NEI provides a wide range of services including leadership, curriculum, career-tech program development, in addition to classroom and grant management, data analysis, auditing/evaluation, eight step process implementation and full school operations. NEI’s mission statement states that it is “our mission is to create a collaborative group of professionals who will boldly rethink education, making success attainable for all students, while preparing the next generation to solve the challenges of tomorrow.” As part of its business model, NEI contracts with CSUSA⁴ to provide services as a subcontractor for CSUSA for its schools in Florida, Georgia, Louisiana, Illinois, North Carolina, South Carolina and Indiana. NEI’s main office is in Florida but maintains a regional office at Howe, one of the Turnaround Academies operated by CSUSA. Although NEI has other work bids circulating, its primary client is CSUSA, with the majority of NEI’s work being performed in CSUSA schools throughout the country.

³ See <https://www.nobleeducationinitiative.com/>

⁴ CSUSA is currently owned and operated by the spouse of NEI’s owner. However, NEI’s owner does not have an ownership interest or a role in the management of CSUSA.

With regard to the Turnaround Academies, NEI performs the day-to-day operations of the schools for which CSUSA operates on contract. This includes providing students with instructional rigor, managing employees within the schools, and general budget oversight.⁵ Though NEI performs the day-to-day operations, CSUSA provides administrative, accounting, budgeting, purchasing, and financial support. Further, CSUSA maintains ultimate authority to accept or deny NEI recommendations regarding the operations of the Turnaround Academies.

Dr. Ernest's potential responsibilities with NEI would not be specific to the Turnaround Academies, or Indiana. Instead, Dr. Ernest would be responsible for educator recruitment and professional development for NEI's nationwide operations. Dr. Ernest's leadership position would be limited to educator recruitment and professional development, and he would not have a management role regarding NEI as an organization. Further, Dr. Ernest would not be responsible for soliciting business on behalf of NEI.

II. Analysis

As set forth in IC 4-2-6-1(a)(18)ⁱ, Dr. Ernest qualifies as a "special state appointee" and is therefore subject to the State's ethics statutes and rules. Pursuant to the OIG's request, Dr. Ernest seeks the Ethic's Commission's Guidance on the extent to which Dr. Ernest must be screened from Board decisions as they relate to CSUSA and/or NEI.

A. Conflict of Economic Interests; Commission Advisory Opinions; Disclosure Statement; Written Determinations/Conflicts of Interest: Decisions & Votes (IC 4-2-6-9ⁱⁱ/42 IAC 1-5-6).

The conflict of interest rule regarding decisions and voting prohibits Board members from participating in decisions and votes, and matters related to such decisions and votes, when certain persons have an interest in the outcome. Specifically, a potential conflict of interest arises if the Board member has knowledge that any of the following has a financial interestⁱⁱⁱ in a decision or vote, or any matter relating to that decision or vote:

- The Board member;
- A member of the immediate family of the Board member;
- A business organization in which the Board member is serving as an officer, a director, a member, a trustee, a partner, or an employee; or
- Any person or organization with whom the Board member is negotiating or has an arrangement concerning prospective employment.

⁵ NEI explained to Board staff that it does not perform these functions for other NEI clients.

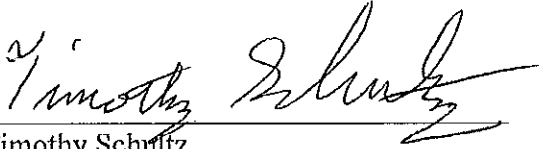
With regard to IC 4-2-6-9 (42 IAC 1-5-6), to the extent Dr. Ernest accepted the position, he is aware of the provision relating to economic conflict of interest. Specifically, if he were to hold the position offered by NEI, he would not participate in any decision or votes, or matter relating thereto, if either he or NEI had a financial interest in the outcome of the matter. To the extent such a potential conflict would arise, Dr. Ernest would immediately notify the Board's appointing authority and ethics officer in writing and follow the procedure set forth in IC 4-2-6. Furthermore, the Board's Ethic's Officer, will ensure that Dr. Ernest's conduct adheres to all restrictions set forth in IC 4-2-6-10.5.

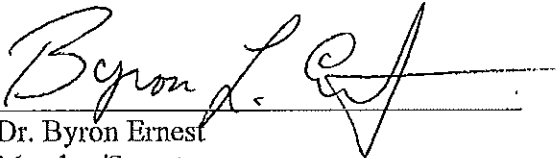
After reviewing the formal opinions on the IGO/IEC's website, it does not appear that there is any guidance for a situation in which a state appointee with contracting responsibilities receives compensation from an entity that is a subcontractor to another entity that has a contract with the appointee's agency and receives funds from that agency. Given the unique nature of this potential employment, NEI has agreed to supply the Board with an affidavit affirming that no funds received from work done on behalf of CSUSA will be used to compensate Dr. Ernest. As Dr. Ernest will not receive any funds from CSUSA, he will not have a financial interest in the CSUSA contracts that the Board is a party to, and therefore, no violation of IC 4-2-6-10.5 will occur.

In addition to requesting the IGO/IEC's guidance regarding the ethical concerns described above, Dr. Ernest affirms that he will continue to abide by all ethics rules not specifically enumerated in this request.

- 1) ¹ IC 4-2-6-1(a)(18) Definitions
 - i) "Special state appointee" means a person who is:
 - (A) not a state officer or employee; and
 - (B) elected or appointed to an authority, a board, a commission, a committee, a council, a task force, or other body designated by any name that:
 - (i) is authorized by statute or executive order; and
 - (ii) functions in a policy or an advisory role in the executive (including the administrative) department of state government, including a separate body corporate and politic.
- 2) ¹¹ IC 4-2-6-9 (42 IAC 1-5-6) Conflict of economic interests; commission advisory opinions; disclosure statement; written determinations
 - a) Sec. 9. (a) A state officer, an employee, or a special state appointee may not participate in any decision or vote, or matter relating to that decision or vote, if the state officer, employee, or special state appointee as knowledge that any of the following has a financial interest in the outcome of the matter:
 - (1) The state officer, employee, or special state appointee.
 - (2) A member of the immediate family of the state officer, employee, or special state appointee.
 - (3) A business organization in which the state officer, employee, or special state appointee is
 - ii) serving as an officer, a director, a member, a trustee, a partner, or an employee.
 - iii) (4) Any person or organization with whom the state officer, employee, or special state appointee is negotiating or has an arrangement concerning prospective employment.
 - b) (b) A state officer, an employee, or a special state appointee who identifies a potential conflict of
 - c) interest shall notify the person's appointing authority and ethics officer in writing and do either of
 - d) the following:
 - (1) Seek an advisory opinion from the commission by filing a written description detailing the
 - ii) nature and circumstances of the particular matter and making full disclosure of any related
 - iii) financial interest in the matter. The commission shall:
 - (A) with the approval of the appointing authority, assign the particular matter to
 - (1) another person and implement all necessary procedures to screen the state officer, employee, or
 - (2) special state appointee seeking an advisory opinion from involvement in the matter; or

- (B) make a written determination that the interest is not so substantial that the
- (3) commission considers it likely to affect the integrity of the services that the state expects from
- (4) the state officer, employee, or special state appointee.
- iv) (2) File a written disclosure statement with the commission that:
 - (A) details the conflict of interest;
 - (B) describes and affirms the implementation of a screen established by the ethics
 - (1) officer;
 - (C) is signed by both:
 - (i) the state officer, employee, or special state appointee who identifies the
 - (b) potential conflict of interest; and
 - (c) (ii) the agency ethics officer;
 - (D) includes a copy of the disclosure provided to the appointing authority; and
 - (E) is filed not later than seven (7) days after the conduct that gives rise to the conflict. A written disclosure filed under this subdivision shall be posted on the inspector general's Internet web site.
 - (d) A written determination under subsection (b)(1)(B) constitutes conclusive proof that it is not a violation for the state officer, employee, or special state appointee who sought an advisory opinion under this section to participate in the particular matter. A written determination under subsection (b)(1)(B) shall be filed with the appointing authority.
- 3) ⁱⁱⁱ IC 4-2-6-1(a)(11)
- 4) "Financial interest" means an interest:
 - a) in a purchase, sale, lease, contract, option, or other transaction between an agency and any person; or
 - b) involving property or services.
 - i) The term includes an interest arising from employment or prospective employment for which negotiations have begun. The term does not include an interest of a state officer or employee in the common stock of a corporation unless the combined holdings in the corporation of the state officer or the employee, that individual's spouse, and that individual's unemancipated children are more than one percent (1%) of the outstanding shares of the common stock of the corporation. The term does not include an interest that is not greater than the interest of the general public or any state officer or any state employee.


 Timothy Schultz
 General Counsel/Ethics Officer
 Indiana State Board of Education


 Dr. Byron Ernest
 Member/Secretary
 Indiana State Board of Education

Thank you for contacting us for advice regarding Dr. Byron Ernest's potential employment with Noble Education Initiative, Inc. (NEI). Dr. Ernest is a member of the Indiana State Board of Education (Board), and NEI recently approached him about a possible employment opportunity with NEI. As General Counsel and Ethics Officer for the Board, you requested an informal advisory opinion on behalf of Dr. Ernest. We appreciate that you provided us with a detailed recitation of the facts and your analysis of the applicable ethics rules.

The Board is composed of eleven members including the Superintendent of Public Instruction, and it oversees K-12 education policymaking in the State. You write that pursuant to IC 20-19-2, the Board's responsibilities include authorizing the distribution of state education funds to local schools, adopting rules to implement various programs and requirements, determining a school's P.L. 221 performance and improvement category designation, accrediting public and nonpublic schools, and implementing interventions to improve school performance. In addition, IC 20-19-2-14 explains that "the state board shall do the following: (1) establish the educational goals for the state, developing standards and objectives for local school corporations; (2) assess the attainment of the established goals; (3) assure compliance with established standards and objectives; (4) coordinate with the commission for higher education (IC 21-18-1) and the department of workforce development (IC 22-4.1-2) to develop entrepreneurship education programs for elementary and secondary education, higher education, and individuals in the work force; (5) make recommendations to the governor and general assembly concerning the educational needs of the state, including financial needs; (6) provide for reviews to ensure the validity and reliability of the ISTEP program." You note that the Board is not responsible for teacher licensing matters because IC 20-28-2-1 vests the Indiana Department of Education (IDOE) with "sole authority and responsibility for governing teacher education and teacher licensing matters, including professional development."

You explain that the Board is responsible for intervening in Indiana's lowest performing schools, and the Board may authorize the State to intervene in a school to improve a school's performance. One intervention the Board may prescribe is to assign an operator to manage and operate a school to improve school performance. As a result, IDOE enters into contracts with private entities that the Board approves.

In August 2011, the Board ordered the State to intervene in a number of chronically failing schools, which included three Indianapolis schools (the Turnaround Academies). The Board directed IDOE to contract with Charter Schools USA (CSUSA) to serve as the operator, and the Board voted to approve the requisite contracts to accomplish the intervention. Dr. Ernest was not a Board member at the time of the initial intervention, but Dr. Ernest did vote to reaffirm the intervention status of the Turnaround Academies at the April 15, 2016 Board meeting. During subsequent Board meetings, Dr. Ernest voted to approve the CSUSA contract extensions for the Turnaround Academies.

The Board is also responsible for determining the amounts of state tuition support that are necessary to fund the Turnaround Academies. Except as provided by IC 20-31-9.5-3(c), the manner or methodology by which the Board makes this determination is not otherwise prescribed. Thus, based on IDOE's recommendation, the state tuition support is calculated by utilizing the current child count as the child count multiplier. The Board votes to approve the state tuition support on a biannual basis. The Board, including Dr. Ernest, most recently voted to approve funding for the Turnaround Academies on June 7, 2017, and the Board will vote again in December.

NEI is a Delaware not-for-profit company that does business in Florida and other states across the country. NEI provides a wide range of services including leadership, curriculum, career-tech program development, classroom and grant management, data analysis, auditing/evaluation, eight step process implementation, and full school operations. NEI's mission statement states, "our mission is to create a

collaborative group of professionals who will boldly rethink education, making success attainable for all students, while preparing the next generation to solve the challenges of tomorrow.” NEI contracts with CSUSA to provide services as a subcontractor for CSUSA for its schools in seven states including Indiana. You note that CSUSA is owned and operated by the spouse of NEI’s owner; however, neither spouse has an ownership interest or a role in the management of the other spouse’s business. Moreover, there is no parent-subsidiary relationship between CSUSA and NEI. NEI’s main office is in Florida, but it maintains a regional office at one of the Turnaround Academies. Although NEI has other work bids circulating, its primary client is CSUSA, with NEI performing the majority of its work in CSUSA schools throughout the country.

NEI performs day-to-day operations for the Turnaround Academies that CSUSA operates. This includes providing students with instructional rigor, managing employees within the schools, and general budget oversight. Though NEI performs the day-to-day operations, CSUSA provides administrative, accounting, budgeting, purchasing, and financial support. Further, CSUSA maintains ultimate authority to accept or deny NEI recommendations regarding the operations of the Turnaround Academies.

You explain that Dr. Ernest’s potential responsibilities with NEI are not specific to the Turnaround Academies or Indiana. Instead, Dr. Ernest would be responsible for educator recruitment and professional development for NEI’s nationwide operations. Dr. Ernest’s leadership position would be limited to educator recruitment and professional development, and he would not have a management role regarding NEI as an organization. Further, he would not be responsible for soliciting business on behalf of NEI. You provided our office with a more detailed job description for Dr. Ernest’s potential position.

These circumstances primarily involve the State Ethics Code’s (Code) rules on outside employment and conflicts of interests that pertain to decisions and votes. I included all relevant rules at the end of this opinion for your reference.

1. Conflicts of Interests Pertaining to Decisions and Votes, IC 4-2-6-9

IC 4-2-6-9 prohibits a special state appointees from participating in any decision or vote, or matter related to that decision or vote, if he has knowledge that various persons have a financial interest in the outcome of the matter, including a business organization in which he serves as an employee or a person or organization with whom he is negotiating employment or has an arrangement concerning prospective employment. The State Ethics Commission (Commission) has determined that employment negotiations begin when there is a back and forth exchange. If Dr. Ernest negotiates or accepts employment with NEI, this rule would prohibit him from participating in any matter related to a decision/vote in which NEI has a financial interest. Please note that NEI could have a financial interest in matters that directly apply to NEI or in matters that only incidentally affect NEI. For example, if the Board votes on a matter that directly applies to its contract with CSUSA, but which would financially impact NEI as a subcontractor, Dr. Ernest would need to abstain from participating in that matter. Matters in which Dr. Ernest would be prohibited from participating include decisions/votes regarding the intervention status of the Turnaround Academies, operator contracts for the Turnaround Academies, and funding of the Turnaround Schools. This restriction goes beyond the actual decision/vote and prohibits his participation in any matter related to the decision/vote, such as the Board’s discussions about the matter.

A potential conflict of interests would exist if Dr. Ernest negotiates or accepts employment with NEI. As a result, subsection (b) would require him to notify his appointing authority and ethics officer in writing and either 1) seek a formal advisory opinion from the Commission, or 2) file a written disclosure statement with the Commission. If Dr. Ernest requests a formal advisory opinion, the Commission would have the option to find that the interest is not so substantial that it would likely affect the integrity of the services that the State expects from Dr. Ernest. Otherwise, either option would require the Board to

implement a screen that would prohibit Dr. Ernest from participating in any matter related to a decision/vote in which NEI has a financial interest.

You note that Dr. Ernest is aware of this rule and that, if he were to hold the position offered by NEI, he would not participate in any matter related to a decision/vote if he or NEI had a financial interest in the outcome of the matter. In addition, you write that Dr. Ernest will immediately comply with the rule's notification requirements if a potential conflict arises. So long as Dr. Ernest acts accordingly, he would not violate IC 4-2-6-9.

Decisions/votes that directly target the Turnaround Schools, CSUSA, or NEI (and which impact NEI's financial interests) would trigger this rule. However, it is unclear whether the Commission would find that more broad decisions/votes of general application could be considered decisions/votes in which NEI has a financial interest. In Formal Advisory Opinion 17-1-3, the Commission found that a state "employee would have a potential conflict of interests if she were to participate in decisions or votes, or matters related to such decisions or votes, that would *uniquely affect*" (emphasis added) a business organization with which the state employee was affiliated. Although this formal advisory opinion appears to imply a decision/vote must uniquely affect NEI in order to trigger this rule, this is a fact sensitive issue and we cannot be certain how the Commission would decide the matter.

In order to determine how extensively Dr. Ernest must be screened from the Board's activities, we recommend that you request a formal advisory opinion from the Commission to get a final and public determination on this question. 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>. The next Commission meeting is on Wednesday, November 15, and all requests for a formal advisory opinion were due on Monday, November 6th. However, we will still accept a request from Dr. Ernest today, November 7th.

2. Outside Employment, IC 4-2-6-5.5

The rule on outside employment and professional activity prohibits a special state appointee from:

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

As an NEI employee, Dr. Ernest would be responsible for educator recruitment and professional development, and this appears compatible with his responsibilities as a Board member. The Board is not responsible for teacher licensing or professional development, and no other information indicates that the potential job with NEI is inherently incompatible with his state duties. However, Dr. Ernest's employment with NEI would require his recusal from certain Board activities as discussed above. Whether that results in a violation of IC 4-2-6-5.5 depends on the extent of the matters from which he must be recused and whether those matters are so central/critical to the performance of his

official duties that his ability to perform them would be materially impaired. As noted in the preceding section, it is unclear whether Dr. Ernest would need to be screened only from matters that uniquely affect NEI's financial interests or whether he would also need to be screened from decisions/votes of general application that affect NEI's financial interests. As a result, it is also unclear whether the resulting screen would materially impair his ability to perform his official duties, thereby causing him to violate subsection (1). So long as Dr. Ernest's recusal is not so extensive that it would materially impair his ability to serve on the Board, employment with NEI would not violate subsection (1).

The information you provided does not indicate that the NEI job would require Dr. Ernest to disclose confidential information or that Dr. Ernest would use his position on the Board to secure unwarranted privileges/exemptions that are of substantial value and not properly available to similarly situated individuals outside state government. Therefore, Dr. Ernest's acceptance of the NEI job will not violate subsections (2) or (3).

3. Financial Interests in Contracts, IC 4-2-6-10.5

This rule prohibits special state appointees from knowingly having a financial interest in a contract unless the special state appointee 1) does not participate in or have contracting responsibility for the contracting agency and 2) files a disclosure statement with our office. Dr. Ernest participates in contracting and has contracting responsibility for the Board, so he is entirely prohibited from having a financial interest in any contract with the Board. Although NEI does not have a contract with the Board, NEI has a financial interest in CSUSA's contract to operate the Turnaround Schools. However, Dr. Ernest does not have a financial interest in this contract because any compensation he receives from NEI will not be derived from the contract. In addition, you provide that NEI has agreed to supply the Board with an affidavit affirming that no funds received from work done on behalf of CSUSA will be used to compensate Dr. Ernest. As a result, Dr. Ernest's employment with NEI will not violate IC 4-2-6-10.5.

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

Rules on confidential information prohibit Dr. Ernest from benefitting from, permitting another person to benefit from, or divulging information of a confidential nature except as permitted by law. To the extent that Dr. Ernest possesses information of a confidential nature by virtue of his position on the Board that could be used to benefit himself, NEI, or any other person, he should ensure that he complies with these rules.

5. Use of State Property and Ghost Employment, 42 IAC 1-5-12 and 42 IAC 1-5-13

The use of state property rule provides that a state employee may not use state materials, funds, property, personnel, facilities, or equipment for purposes other than official state business unless the use is expressly permitted by a general written agency, departmental, or institutional policy or regulation that has been approved by the Commission. The ghost employment rule provides that a state employee shall not engage in work other than the performance of official duties during working hours, except as permitted by general written agency, departmental, or institutional policy or regulation. In this case, Dr. Ernest should not use state property for NEI matters, and activities related to his employment with NEI may not be completed on State time.

Thank you again for submitting your inquiry. Please let me know if you have any questions regarding this opinion. Please note that this response does not constitute an official advisory opinion. Only the Commission may issue an official advisory opinion. This informal advisory opinion allows us to give you quick, written advice. The Commission will consider that an employee or former employee acted in good faith if it is determined that the individual committed a violation after receiving an informal advisory

opinion, 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,

Matt Savage
Indiana Office of Inspector General

IC 4-2-6-1

Definitions

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

(2) "Agency" means an authority, a board, a branch, a bureau, a commission, a committee, a council, a department, a division, an office, a service, or other instrumentality of the executive, including the administrative, department of state government. The term includes a body corporate and politic set up as an instrumentality of the state and a private, nonprofit, government related corporation. The term does not include any of the following:

- (A) The judicial department of state government.
- (B) The legislative department of state government.
- (C) A state educational institution.
- (D) A political subdivision.

(3) "Appointing authority" means the following:

- (A) Except as provided in clause (B), the chief administrative officer of an agency. The term does not include a state officer.
- (B) For purposes of section 16 of this chapter, "appointing authority" means:
 - (i) an elected officer;
 - (ii) the chief administrative officer of an agency; or
 - (iii) an individual or group of individuals who have the power by law or by lawfully delegated authority to make appointments.

(5) "Business relationship" includes the following:

- (A) Dealings of a person with an agency seeking, obtaining, establishing, maintaining, or implementing:
 - (i) a pecuniary interest in a contract or purchase with the agency; or
 - (ii) a license or permit requiring the exercise of judgment or discretion by the agency.
- (B) The relationship a lobbyist has with an agency.
- (C) The relationship an unregistered lobbyist has with an agency.

(6) "Commission" refers to the state ethics commission created under section 2 of this chapter.

(9) "Employee" means an individual, other than a state officer, who is employed by an agency on a full-time, a part-time, a temporary, an intermittent, or an hourly basis. The term includes an individual who contracts with an agency for personal services.

(10) "Employer" means any person from whom a state officer or employee or the officer's or employee's spouse received compensation.

(11) "Financial interest" means an interest:

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

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

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

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

(B) which:

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

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

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

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

42 IAC 1-5-5

Outside Employment

Sec. 5. Outside employment restrictions are set forth in IC 4-2-6-5.5.

IC 4-2-6-5.5

State officers and employees; incompatible outside employment; use of position to secure unwarranted privileges

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

(1) Accept other employment involving compensation of substantial value if the responsibilities of that employment are inherently incompatible with the responsibilities of public office or require the individual's recusal from matters so central or critical to the performance of the individual's official duties that the individual's ability to perform those duties would be materially impaired.

(2) Accept employment or engage in business or professional activity that would require the individual to disclose confidential information that was gained in the course of state employment.

(3) Use or attempt to use the individual's official position to secure unwarranted privileges or exemptions that are:

(A) of substantial value; and

(B) not properly available to similarly situated individuals outside state government.

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

42 IAC 1-5-6

Conflicts of interest; decisions and voting

Sec. 6. Decision and voting restrictions are set forth in IC 4-2-6-9.

IC 4-2-6-9

Conflict of economic interests; commission advisory opinions; disclosure statement; written determinations

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

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

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

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

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

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

42 IAC 1-5-7

Conflicts of interest; contracts

Sec. 7. Contracting restrictions are set forth in IC 4-2-6-10.5.

IC 4-2-6-10.5

State officers and employees; financial interest in contract made by agency; exceptions

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

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

- (1) does not participate in or have contracting responsibility for the contracting agency; and
- (2) files a written statement with the inspector general before the state officer, employee, or special state appointee executes the contract with the state agency.

(c) A statement filed under subsection (b)(2) must include the following for each contract:

(1) An affirmation that the state officer, employee, or special state appointee does not participate in or have contracting responsibility for the contracting agency.

(2) An affirmation that the contract:

(A) was made after public notice and, if applicable, through competitive bidding; or

(B) was not subject to notice and bidding requirements and the basis for that conclusion.

(3) A statement making full disclosure of all related financial interests in the contract.

(4) A statement indicating that the contract can be performed without compromising the performance of the official duties and responsibilities of the state officer, employee, or special state appointee.

(5) In the case of a contract for professional services, an affirmation by the appointing authority of the contracting agency that no other state officer, employee, or special state appointee of that agency is available to perform those services as part of the regular duties of the state officer, employee, or special state appointee.

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

(d) A state officer, employee, or special state appointee who:

(1) fails to file a statement required by rule or this section; or

(2) files a deficient statement;

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

42 IAC 1-5-10 Benefiting from confidential information

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

42 IAC 1-5-11 Divulging confidential information

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



NEI Job Category/Description#: A-1057

Job Title: Director of Educator Development and Partnerships
Location: NEI Central Office - Ft. Lauderdale, FL
Reports To: Director of School Accountability and Educator Performance
Salary Range: [REDACTED]

What This Person Does:

The Director of Educator Development and Partnerships is a member of upper management that:

- Leads NEI's effort to recruit, inspire, motivate and support new K-12 educators and assist them in attaining appropriate teaching certifications, continuing education credits and maximize teacher effectiveness.
- Creates and oversees NEI's Teacher Effectiveness Programs, PLCs (Professional Learning Communities), Content based Leadership and similar cohorts with the support of professional development facilitators.
- Serves as the coach and mentor supporting School Administrators and Instructional staff in their acquisition of knowledge, skills, and practices that emphasize teacher growth and Education Leadership development.
- Effectively collaborates with all stakeholders and the Board of Directors to carry out NEI's mission, vision, values, and the Instructional plan for short and long term student achievement goals.
- Oversee the work of NEI's professional development program facilitators.
- Creates and maintains University Partnerships focusing on K-12 educator training and professional development programs that provide top notch development, provide guidance in obtaining advanced degrees in Education, leadership opportunities and support for a successful career in the field of Education.
- Collaborates with other team members in securing professional development grants and other funding such as AmeriCorp Education Award in alignment with NEI's mission and vision.
- Ability to effectively and persuasively convey NEI's professional development program outcomes and impact to university partners, business leaders, school districts, supporters, and the overall community through a wide variety of communication tools.
- Establish NEI's Professional Development program evaluation process and report outcomes to the executive team.
- Manages budgets and multiple priorities, lead and supervise staff, adapt to change, and meet timelines.

What We Essentially Need:

Essential Job Functions -

- Plans and directs the development and/or establishment of a unified network-wide K-12 Professional and Leadership Development Program, ensuring that it is rigorous, culturally responsive, and reflects current research and theory in instruction.
- Creates NEI's professional and leadership development programs, calendars, agendas, assigns venues/facilitators and identifies the best training materials that will ensure that NEI's teachers and school based leaders are or become highly qualified educators.
- Promotes a professional development curriculum and teaching practices that engage the learner in tasks that require analytical and critical thinking, problem-solving and creativity; that address each student's needs, interests and skill levels; that encourage the student to define individual goals and accept responsibility for learning; and that provide a variety of methods for the student to demonstrate performance and achievement.
- Provides leadership in the implementation of programs throughout the network including the evaluation of classroom instruction of NEI's training and development program participants.
- Coordinates with Educational Support Services and SPED staff to design and implement innovative Professional Development programs that address the needs of students with identified learning challenges.
- In collaboration with building administrators, observes classroom instruction to evaluate the implementation of curriculum training and development including content, materials, pedagogy, pace and standards, student performance and curricular effectiveness.
- Collects and analyzes NEI schools performance data including, but not limited to, benchmarks, state and District assessments regarding the achievement of students, work samples, and other pertinent information affecting the design and evaluation of instructional practices.
- Prepares reports and presentations reflecting the strengths and needs of NEI's Professional Development programs and formulates recommendations for improvement, with specific focus on practices that raise student achievement.



- Directs the annual review and revision of NEI's K-12 Teacher and Leadership Professional Development programs and ensures alignment with required state standards.
- May provide hands-on support to School Administrators and Instructional staff in the development or adoption and implementation of NEI's K-12 curriculum, as required.
- Collaborates with other Directors regarding Research, Planning, and Technology to ensure that appropriate software and online resources are available to support the programs, and that teachers are adept at integrating technology into their professional development and career advancement training.
- Ensures that the professional development programs are focused on how students learn, encompasses both content and pedagogical knowledge and skills, promotes collegial learning, and includes job-embedded opportunities for growth.
- Assists in the development and management of budgets for Professional Development, Business and Education Partnerships and other projects within the scope of responsibilities.
- Ability to work under pressure, plan personal workload effectively and delegate.
- Contributes to team effort by accomplishing related results as needed.
- Maintain high level of confidentiality.
- Assignment of other duties as needed.

What We Offer:

NEI offers exceptional opportunities for:

- Professional growth and career advancement opportunities.
- Becoming an integral part of providing K-12 academic excellence to support Education Reform and School Choice in your community and across the U.S.
- Competitive compensation, Health Benefits, 401B Retirement Plan STD, LTD and other optional employment incentives.

What's Needed to Succeed: Minimum Job Requirements:

- Master's degree in K-12 Education and Education Leadership Certification. Doctorate degree or advanced coursework preferred.
- 10 years professional experience as follows:
 - 6+ years experience as a successful certified classroom teacher at multiple levels and
 - 4+ years District/Central Office-level administrative/leadership experience, including experience as a building principal and/or area director.
- Administrative experience in Educator and Leadership Training and development at the central office level required.
- Demonstrated knowledge of research-based curriculum development, program implementation and evaluation, child growth and development K-12, effective instructional strategies, classroom management, and learning assessment and diagnosis.
 - Experience in designing and leading professional development programs.
 - Highly proficient with computers and software (Microsoft Office).
 - Ability to travel up to 50% within the US.

Disclaimer and Other Important Details:

Disclaimer:

The above information provided is a generalization of the job and is not inclusive of all duties and/or responsibilities that may be required for the position.

Work Environment:

Professional office environment and working conditions.

Terms of Employment:

Compensation will be paid according to NEI's HR policies and procedures.



FLSA Overtime Category:

This position is exempt from overtime provisions of the Fair Labor Standards Act.

Evaluations:

Performance Evaluations will be conducted according to NEI's HR policies and procedures.

Physical Demands:

No physical exertion required, but minimal exertion may be needed to move objects up to 20 pounds and/or up to 10 pounds of force, as needed.

Declaration:

NEI's HR department reserves the sole right and discretion to make any changes to NEI's Job Descriptions. Employees are not authorized to make any changes without formal HR approval. Violators of this declaration may be subject to disciplinary action up to and including termination.

Lam, Doug (IFA)

From: Mulligan, Tiffany M
Sent: Wednesday, October 04, 2017 4:07 PM
To: Lam, Doug (IFA)
Subject: Ethics Informal Advisory Opinion; Lam; IDEM; Post-employment

James,

Thank you for contacting our office and for providing me with additional information. I understand that you currently serve as an Indiana Department of Environmental Management (IDEM) employee working under the IFA as a Petroleum Brownfields Team Leader. You have been in that position for one year. You work on Petroleum Orphan Site Initiative (POSI) cleanups, utilizing grant funds to remediate orphaned gas stations. You request bids from a list of seventeen state approved vendors and select one based on cost and technical merit. POSI contracts can range from \$50,000 to \$250,000. Within the one year you have been in this role, you have helped in the technical decision to select vendors at approximately six to eight sites. Another aspect of the work is to draft technical letters for Brownfields across the State.

Prior to working in your current position, you were with the IDEM Voluntary Remediation Program (VRP) in the Office of Land Quality for over four years. In VRP you managed multiple sites and provided technical guidance to applicants and consultants based on state and federal guidelines. Upon remedial completion, the applicant was provided a Covenant Not to Sue by the Office of the Governor.

You are writing to our office because you have accepted a position with an environmental consultant, Patriot Engineering and Environmental (Patriot). You write that your title at Patriot will be Project Geologist. In this role, you will be involved with all aspects of environmental projects that are overseen by Senior Managers. This includes setting up site investigations (drilling, sampling, lab work, subcontractors), evaluating remedial strategy, and providing long term monitoring and risk analysis. These projects could be for private individuals or corporations/industries as part of state or federal enforcement guidance. You will also be doing environmental due diligence in the form of Phase I and Phase II work for private, commercial, and municipal clients for property transfers (potential Brownfields). This is the same type of work you did prior to coming to the State five years ago.

You write that you managed Patriot during your time at VRP and Brownfields. More specifically, Patriot was awarded two POSI contracts during your time working with the POSI program. You explain that during this time, you would draft the Request for Proposal, outlining the history of the site (usually small gas stations) and include certain required elements of investigation or reporting that you needed to see in their bids. After your supervisor approved the draft RFP, you would email it to seventeen approved State vendors for their bids. Patriot was one of the seventeen. Upon receiving the bids by the RFP's deadline, you would evaluate the bids for technical merit, cost, and value added services (if any) to determine the selected vendor. In Patriot's case, you were not involved in the selection on one of the bids. Your supervisor and another senior staff member evaluated the bids and made the choice to select Patriot for this contract. You did make the selection on your own for the next bid for which Patriot was selected. You reported back to your supervisor with the technical and cost analysis of why Patriot was selected (usually a verbal communication at her desk).

You write that you were also the Project Manager for both sites. Since both sites were relatively new, only one site has been active in remedial efforts (excavation of contaminated soil). During that time, you were in communication with the Patriot Task Manager to track the effort. In that project, an unknown underground storage tank was discovered and required removal. This was beyond the original scope of the work, which was

only soil removal, so a contract change order was needed to adjust for additional labor and disposal costs. You approved the change order via email. Both of these contracts were awarded prior to you being offered a position with Patriot (September 19th) and you accepting the offer (September 22nd).

You also explain that you were a project manager for VRP prior to working with the POSI contracts, and you were assigned a legacy site where Patriot was the consultant for the VRP applicant. It had already been managed by others in VRP prior to your arrive in 2012, and the majority of the remedial work and reporting had been completed by that point. Over the span of four years, you worked with Patriot to close gaps in their reporting so that the IDEM technical staff in the Risk group could determine if future vapor intrusion was not going to be a problem. As you left VRP to join Brownfields, the site had not yet completed the tasks to finalize an Institutional Control and had not achieved closure. You believe the site is now under a new VRP Manager.

You submitted your resignation notice on September 25th and immediately surrendered all material to your supervisor upon notice of your resignation to mitigate any future conflict of interests. You will be firewalled off from the projects you worked on for the duration of the projects while you are at Patriot. You will have no further involvement moving forward. You write that Patriot already understands that you cannot/will not work on any contract or project that you were involved with during your tenure with the State, either with VRP or POSI.

You write that the new position with Patriot is open on Monday, October 9th. You write that if Patriot is required to submit an affidavit outlining restrictions to your employment that isolate your work from all state projects you have managed previously, that can be done. You want to make sure that you are doing what you can to ensure that a conflict of interests does not exist. You ask what the next steps are in providing the State with the required information to determine if this is acceptable.

Your inquiry primarily invokes consideration of IC 4-2-6-11 (42 IAC 1-5-14), 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.

In this case, you plan to work as a Project Geologist and do not plan to serve as a lobbyist for Patriot. 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). I would encourage you to review IDOA's Executive Branch Lobbying Manual to learn about the types of interactions with members of the executive branch that are considered executive branch lobbying. Please note that you would be prohibited from lobbying the executive branch of the Indiana state government for one year after leaving state employment. To the extent that your potential work with Patriot would not require you to serve as an executive branch lobbyist during the cooling off period, the restriction in subsection 1) would not apply.

However, it appears the restrictions in subsection 2) of the cooling off provision likely applies to your employment with Patriot. You write that you were involved in the technical decision to select vendors for POSI work and that you made the selection to choose Patriot in one instance on your own. As a result, it appears that you were involved in the negotiation of a contract with Patriot and were in a position to make a discretionary decision affecting the negotiation. You also note that you were the Project Manager for two sites on which Patriot worked, and you approved a change order on one of these sites. The State Ethics Commission interprets administration of a contract broadly, and your work as a Project Manager would likely be considered part of the administration of Patriot's contract. Furthermore, your ability to approve change orders makes it likely that you were in a position to make a discretionary decision affecting the nature of the administration of Patriot's contract.

Therefore, based on the information provided, your employment opportunity with Patriot likely triggers the one-year cooling off period. You should consider seeking a post-employment waiver from IDEM's appointing authority. Please note that the waiver would need to be presented to and approved by the Commission at one of their public meetings before you begin employment with Patriot. The requirements for a waiver are set forth in IC 4-2-6-11(g). I recommend you consult with IDEM's ethics officer, Kathy Mills, about the possibility of a waiver. I am happy to answer any additional questions you or Ms. Mills may have about the waiver process.

You also have the option of seeking a formal advisory opinion from the State Ethics Commission to get a public and final determination on this matter. Only the Commission can provide a formal advisory opinion. The next Commission meeting for which you can request advice is Wednesday, November 15, and all requests for a formal advisory opinion are due on Monday, November 6th. You can find more information on this process at the following link: <http://www.in.gov/ig/2334.htm>. Formal advisory opinions provide the ultimate ethics advice. If you follow the advice given in a formal advisory opinion, it is considered conclusive proof that you acted in accordance with the Code of Ethics.

Also, based on the information you provided, it does not appear that subsection 3) applies to your prospective opportunity with Patriot, as nothing in the information you provided indicates that you made a regulatory or licensing decision that affected Patriot or its parent or subsidiary. If any of the technical letters you drafted directly applied to Patriot or its parent or subsidiary, then this subsection may apply. Further, so long as this position 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.

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 Patriot, as well as any other organization or person, in a particular matter that you personally and substantially participated in as a state employee. You indicate that you were involved in contracts; therefore, you would be prohibited from representing or assisting Patriot with those contracts that you specifically worked on or any other particular matter you identify. You note that you will be screened from these contracts and projects while you are

working at Patriot. Please note that this restriction extends beyond the one-year cooling off period previously discussed and instead applies for the life of the matter. This restriction would not prevent you from working on new contracts or projects involving Patriot in the future. If you have any questions regarding your work after reviewing the twelve matters listed above, please feel free to follow up with our office.

3. The Conflicts of Interests/Decisions and Voting Rule

Your question also involves IC 4-2-6-9 (42 IAC 1-5-6), the conflicts of interests/decisions and voting rule. This rule prohibits you from participating in any decision or vote, or matter related to any such decision or vote, if you have knowledge that various persons may have a "financial interest" in the outcome of the matter, including yourself or an organization with whom you are negotiating or have an arrangement concerning prospective employment. Please note that this prohibition extends beyond merely the decision or vote on the matter to encompass any participation in that decision or vote. Furthermore, the State Ethics Commission has determined that negotiations commence for purposes of this rule as soon as an employer and state employee begin discussing potential employment, regardless of who initiates the contact.

You indicate that you have accepted the position with Patriot, and you turned over all material involving projects with Patriot to your supervisor when you resigned. Along with screening yourself from matters involving Patriot while you are with IDEM, you will need to follow the steps prescribed in IC 4-2-6-9(b) and notify your agency appointing authority and ethics officer of the potential conflict of interests in writing and either seek a formal advisory from the State Ethics Commission or file a written disclosure with the Commission. You can find information on filing the disclosure statement online at: <http://in.gov/ig/2782.htm>. The disclosure must include a screen and be approved by your agency ethics officer, Kathy Mills.

4. The Confidentiality 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 Patriot that you work for 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

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 (42 IAC 1-5-14)

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.

42 IAC 1-5-6 Conflicts of interest; decisions and voting

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

Affected: IC 4-2-6-9; IC 4-2-7

Sec. 6. Decision and voting restrictions are set forth in IC 4-2-6-9.

IC 4-2-6-9

Conflict of economic interests; commission advisory opinions; disclosure statement; written determinations

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

(1) The state officer, employee, or special state appointee.

(2) A member of the immediate family of the state officer, employee, or special state appointee.

(3) A business organization in which the state officer, employee, or special state appointee is serving as an officer, a director, a member, a trustee, a partner, or an employee.

(4) Any person or organization with whom the state officer, employee, or special state appointee is negotiating or has an arrangement concerning prospective employment.

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

(1) Seek an advisory opinion from the commission by filing a written description detailing the nature and circumstances of the particular matter and making full disclosure of any related financial interest in the matter. The commission shall:

(A) with the approval of the appointing authority, assign the particular matter to another person and implement all necessary procedures to screen the state officer, employee, or special state appointee seeking an advisory opinion from involvement in the matter; or

(B) make a written determination that the interest is not so substantial that the commission considers it likely to affect the integrity of the services that the state expects from the state officer, employee, or special state appointee.

(2) File a written disclosure statement with the commission that:

(A) details the conflict of interest;

(B) describes and affirms the implementation of a screen established by the ethics officer;

(C) is signed by both:

(i) the state officer, employee, or special state appointee who identifies the potential conflict of interest; and

(ii) the agency ethics officer;

(D) includes a copy of the disclosure provided to the appointing authority; and

(E) is filed not later than seven (7) days after the conduct that gives rise to the conflict.

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

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

IC 4-2-6-6

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
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tmulligan@ig.in.gov
Phone: (317) 232-0708
Fax: (317) 232-0707

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From: Lam, Doug (IFA)
Sent: Wednesday, October 04, 2017 10:06 AM
To: Mulligan, Tiffany M <TMulligan@ig.IN.gov>
Subject: RE: IAO Lam

Good morning Tiffany,

I have provided you with answers below, and will continue to give you any information that you require.

From: Mulligan, Tiffany M
Sent: Wednesday, October 04, 2017 9:14 AM
To: Lam, Doug (IFA) <Dtam@ifa.IN.gov>
Subject: IAO Lam

James,

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

1. If you go to work with Patriot, what type of work will you be performing?
I will have the title of Project Geologist (similar to a Task Manager). I will be involved with all aspects of environmental projects that are overseen by Senior Managers. Setting up site investigation (drilling, sampling, lab work, subcontractors), evaluating a remedial strategy, and long term monitoring or risk analysis. These projects could be for private individuals or corporations/industries as part of state or federal enforcement or guidance. I will also be doing environmental due diligence in the form of Phase I and Phase II work for private/commercial/municipal clients for property transfers (potential Brownfields). This is the same type of work that I did prior to coming to the state 5 years ago (about 20 years of experience).
2. You write that Patriot was awarded 2 POSI contracts during your time working in the POSI program. What was your involvement in these contracts? Did you make any decisions involving these contracts? If so, please describe.
I would draft the Request for Proposal, outlining the history of the site (usually small gas stations) and include certain required elements of investigation or reporting that we needed to see in the Proposal. After the draft was approved by my supervisor (Andrea Habeck), I would email the RFP to 17 approved State vendors for their bids. Patriot was one of the 17. A deadline was always established for submittal of the bids. Upon receiving the bids by the deadline, I would evaluate by technical merit, cost, and value added services (if any) to determine the selected vendor to award. In Patriots case, I was not involved with the selection on one of the bids. Andrea and another senior staff member evaluated the bids and made the choice (I was out sick that day). The next bid they were selected for, I did make the selection on my own and report back to Andrea

with the technical and cost analysis of why they were selected (usually a verbal communication at her desk). I was also the Project Manager for both sites. Since both were relatively new, only one site has been active in remedial efforts (excavation of contaminated soil), during which time I was in communication with the Patriot Task Manager to track the effort. In that project, an unknown underground storage tank was discovered, and required removal. This was beyond the original scope of work (only soil removal), so a contract change order was needed to adjust for additional labor and disposal costs. I approved that change order via email. Both of these contracts (I can't remember the values) were awarded prior to me being offered a position at Patriot (Sept 19) and me accepting the offer (late Sept 22). All material (hardcopy and efiles) were immediately surrendered to Andrea upon my resignation notice on Monday, September 25, to mitigate any future conflict. These projects will also be firewalled off from me for the duration of the projects while I am at Patriot. I have no further involvement moving forward at all.

3. Did you ever make a regulatory or licensing decision that applied to Patriot?
See above for the best possible response.
4. You write that when you were with VRP you managed multiple sites and provided technical guidance to applicants. Did you ever work with Patriot in this role? If so, what was your involvement with Patriot? Did you make any decisions involving Patriot? If so please describe. I was a project manager in VRP, and was assigned a legacy site where Patriot was the consultant for the VRP applicant. It had already been managed by others in VRP prior to my arrival in 2012, and the majority of the remedial work and reporting had been completed by that point. Over the span of 4 years, I worked with them to close data gaps in their reporting so that the IDEM technical staff in the Risk group could determine if future vapor intrusion was not going to be a problem. As I left VRP to join Brownfields, the site had not yet completed the tasks to finalize an Institutional Control, and had not achieved closure. I believe that site is now under a new VRP Manager. That site will also be isolated from me moving forward.

Please provide your responses to these questions so I can provide you with thorough advice as soon as possible.

Thank you,

Tiffany

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INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

We Protect Hoosters and Our Environment.

100 N. Senate Avenue • Indianapolis, IN 46204
(800) 451-6027 • (317) 232-8603 • www.idem.IN.gov

Eric J. Holcomb
Governor

Bruno L. Plgott
Commissioner

October 26, 2017

Ms. Tiffany Mulligan
Chief Legal Counsel
Office of the Inspector General
315 West Ohio
Room 104
Indianapolis, IN 46202

Dear Ms. Mulligan,

Thank you for taking the time to speak with me last week regarding IDEM and Mr. Doug Lam's concerns about his informal advisory opinion.

Mr. Lam had been kind enough to share the informal advisory opinion including his response to your information request with me.

After reviewing his responses, I can see why you reached the conclusion you did. Based on his explanation of his responsibilities and workflow to me, I am not sure you have received an accurate picture from him as to his scope of responsibility and his discretionary decision-making capability.

Based on our discussion, I have told him that you would be willing to look at any additional information he may wish to provide for clarification. I have attached to this letter an additional statement by Mr. Lam as well as further explanations from his then supervisor Andrea Robertson and Director of Environmental Programs for the Indiana Finance Authority, James P. McGoff.

If I can be of further assistance, please don't hesitate to ask.

Sincerely,

Kathleen Mills
Ethics Officer



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Eric J. Holcomb
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October 26, 2017

Ms. Tiffany Mulligan
Chief Legal Counsel
Office of the Inspector General
315 West Ohio
Room 104
Indianapolis, IN 46202

Ms. Mulligan,

To clarify our communications from October 3rd and 4th, below please find some additional explanation of my position within IFA and the level of involvement with the POSI contracts.

My involvement in the selection of the POSI contract winner was limited to being the first of several steps to actually awarding the contract. I would review all incoming proposals (usually 6 or 7) that were sent to the list of approved state vendors (17). The review included checking that all technical aspects of the bid request were met (number of USTs, soil tonnage, number of samples and methods, ect), then using my experience to determine if the cost proposed was within reasonable expectations for that level of effort. If the cost seemed extremely low for the effort (ie, \$20,000 for the removal of 4 USTs and 2,000 tons of soil) I would try and determine if it was a typo or if the vendor didn't match the technical minimums. If the lowest bidder met the technical requirements for the work, I would inform my supervisor and the financial manager of the vendor. The IFA board would be informed of the bid and vendor at the next meeting to vote/determine if the contract would be approved for release of grant funds.

My change order involvement was along the same lines. If a technical requirement based on IDEM guidance or regulation needed to be addressed, I would inform my supervisor that the scope had changed and a change order would be initially reviewed by me as work was performed in the field. During invoicing, the change order request would be submitted along with my initial opinion as PM and forwarded to the financial manager. The invoice was approved and paid by other IFA personnel or by the board, not just by me.

As stated in the October 3rd communication, the POSI work (either the two current contracts, or potentially all future POSI work) will be firewalled or screened from me to mitigate possible conflict.

Sincerely,

James Douglas Lam



Indiana Brownfields Program
an Indiana Finance Authority Environmental Program

100 North Senate Avenue, Room 1275
Indianapolis, Indiana 46204
www.brownfields.in.gov

Andrea Robertson Habeck
Technical Staff Coordinator
(317) 234-0968
aroberts@ifa.in.gov

October 26, 2017

Ms. Tiffany Mulligan
Chief Legal Counsel
Office of the Inspector General
315 West Ohio
Room 104
Indianapolis, IN 46202

Re: Doug Lam – Prospective Employment

Dear Ms. Mulligan,

James (Doug) Lam was a project manager for the Indiana Brownfields Program (Program) from a start date of October 10, 2016 until he turned in his resignation on September 25, 2017 to work for Patriot Engineering and Environmental Inc. (Patriot). This letter clarifies Doug's duties as it relates to the Patriot contracts. I was his direct supervisor for his tenure of less than a year.

Doug was being trained to draft Comfort and Site Status Letters and manage petroleum remediation sites. Part of managing petroleum remediation sites is to modify a boilerplate request for proposal (RFP) per site specific information and issue the RFP to our pre-qualified consultant list. The two Patriot-awarded sites that Doug was assigned to manage were Good Earth Market and Hayworth Property. Doug drafted the technical work scope for both projects and I reviewed and approved them to be put out for bid to the consultant list. The bids for Good Earth came back for review on May 2, 2017. I reviewed the bids and selected Patriot to be retained by the Program (Doug was unable to review the bids due to time constraints). Hayworth Property bids were due on August 14, 2017. Doug reviewed those bids and recommended that Patriot be awarded the project. We discussed the bids submitted and Patriot's was the lowest cost, technically accurate bid received, so the project was awarded to them. Doug was the assigned project manager of both sites to provide oversight of the remediation work.

Good Earth completed soil removal on September 5-7, 2017 and Doug subsequently drafted two work scope modifications to the contract for additional soil sampling for landfill approval and to remove an additional underground storage tank (UST) that was discovered during soil removal. Both of these changes orders were discussed with me at length and the necessary additional costs were within industry standards and approved to be incurred by our Financial Resources Coordinator. The report for the soil removal and tank removal was submitted on October 3, 2017 after Doug turned in his resignation and the site had been removed from his duties. Therefore, Doug did not provide any regulatory decisions pertaining to closure of environmental decisions at the site.

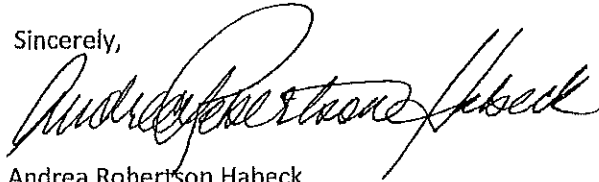


Remediation activities at the Hayworth Property were not as far along as the Good Earth project. As mentioned, the award was issued on August 14th and UST removal was scheduled for October 9th, after Doug's last day of employment with the Program. Another staff member was reassigned the site after Doug's resignation and reviewed the work plan for the site and provided field oversight. Therefore, Doug did not provide any regulatory decisions pertaining to closure of environmental conditions at the site.

From August 2017 through Doug's resignation, I was meeting with Doug every 2 weeks to review his workload of petroleum and letter sites. I knew the status of the sites and we discussed issues associated with each one. All aspects of Doug's sites were discussed with me and he did not make any unilateral regulatory technical decisions during his short time with the Program. Doug was not working in the Program for a long enough timeframe to gain the experience needed to allow independent work.

Please let me know if you have any additional questions or concerns.

Sincerely,

A handwritten signature in black ink, appearing to read "Andrea Robertson Habeck". The signature is fluid and cursive, with a large initial "A" and "R".

Andrea Robertson Habeck
Technical Staff Coordinator
Indiana Brownfields Program



Indiana Finance Authority

Environmental Programs

James P McGoff
Environmental Programs Director
jmcgoff@ifa.in.gov
(317) 233-4337

100 North Senate Avenue, Room 1275
Indianapolis, Indiana 46204
www.srf.in.gov

October 26, 2017

Ms. Tiffany Mulligan
Chief Legal Counsel
Office of the Inspector General
315 West Ohio
Room 104
Indianapolis, IN 46202

Re: Doug Lam - Prospective Employment

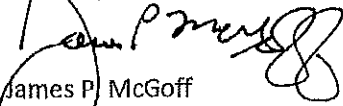
Dear Ms. Mulligan:

The Indiana Finance Authority (IFA) is the contracting agency on the two contracts at issue in evaluating Mr. Doug Lam's post-employment scenario. The IFA manages the Indiana Brownfields Program for which Doug worked as a Project Manager (Petroleum Team Leader) until October 6, 2017. The IFA does not view Doug's or any Project Manager position as having contracting authority. A Project Manager's recommendation for the IFA (Indiana Brownfields Program) to enter into a contract requires supervisor/Senior Staff concurrence (both the Technical Staff Coordinator (Doug's direct supervisor) and Program General Counsel, plus the Financial Resources Coordinator) and contracts are executed by me in my capacity as IFA's Director of Environmental Programs. Technical decisions made by Doug pertaining to contract work scope are based on the Indiana Department of Environmental Management's *Remediation Closure Guide* objective criteria and other objective, applicable guidelines. Any change to work scope and budget following contract execution also require Technical Staff Coordinator and Financial Resources Coordinator (Senior Staff) approval. In neither instance of the two Patriot Engineering & Environmental contracts at issue did Doug unilaterally make discretionary decisions binding the State.

The IFA believes there is no public harm associated with Doug taking his experience working with the State's brownfield redevelopment program to the private sector. In fact, we believe his experience can facilitate proper due diligence practices on the part of prospective purchasers of contaminated sites and direct a buyer's attention to environmental risks when redeveloping a brownfield site.

If the IFA can provide any additional information regarding Mr. Lam's role in the Program's contracting process, please do not hesitate to contact me.

Sincerely,


James P. McGoff
Director of Environmental Programs



Lam, James (Doug)

From: MILLS, KATHLEEN
Sent: Wednesday, November 01, 2017 12:29 PM
To: Lam, James (Doug)
Subject: FW: Ethics Informal Advisory Opinion; Mills/Tachtiris (Lam); IDEM; post-employment

I realized you may not have been included in Ms. Mulligan's response.

From: Mulligan, Tiffany M
Sent: Monday, October 30, 2017 9:06 AM
To: Tachtiris, Valerie <VTachtir@idem.IN.gov>
Cc: MILLS, KATHLEEN <KMILLS@idem.IN.gov>
Subject: Ethics Informal Advisory Opinion; Mills/Tachtiris (Lam); IDEM; post-employment

Kathy, Valerie,

Thank you for providing additional information regarding the informal advisory opinion we issued to Mr. Lam. We certainly appreciate receiving the letters from Mr. Lam, Ms. Habeck, and Mr. McGoff that more fully explain Mr. Lam's scope of responsibility and discretionary decision-making capability at IDEM. We reviewed these letters carefully and considered all of the additional facts provided.

As noted in our original informal advisory opinion, the cooling off period of the post-employment rule prohibits a former state employee from accepting employment from an employer if he engaged in the negotiation or administration of a contract with that employer for his state agency and if he was "in a position to make a discretionary decision affecting the: (1) outcome of the negotiation; or (2) nature of the administration" of a contract for one year after leaving state employment. The State Ethics Code does not define "discretionary," and the State Ethics Commission has not provided clear guidance on how it would interpret the term. Instead, whether a decision is discretionary is evaluated on a case-by-case basis.

The information originally provided by Mr. Lam and in the additional letters you sent us indicates that Mr. Lam had some involvement in negotiating and administering a contract with Patriot. It also indicates he had some discretion to make decisions that affected the outcome of the negotiation and the nature of the administration of one of Patriot's contracts with IDEM. For example, regarding negotiation of contracts, Mr. Lam writes that with incoming proposals, he checked "that all technical aspects of the bid request were met." He also writes that he used his experience "to determine if the cost proposed was within reasonable expectations for level of effort." Similarly Ms. Habeck writes that "Doug reviewed those bids and recommended that Patriot be awarded the project." Regarding administration of contracts, Mr. Lam writes that he would conduct the initial review of a change order request and his opinion as PM would be submitted to the financial manager. Likewise, Ms. Habeck writes "Doug was the assigned project manager of both sites to provide oversight of the remediation work."

Whether this type and level of decision making is considered discretionary decision making under the post-employment rule is a question that is best answered by the State Ethics Commission (the Commission). In the past, the Commission has found that scoring an RFP by itself may not amount to making a discretionary decision in the negotiation of a contract, but any participation beyond that could trigger the application of the one-year cooling-off period. Furthermore, the post-employment rule does not necessarily require that an individual have unilateral decision making authority for the cooling off period to apply; therefore, we cannot be sure of how the State Ethics Commission would decide this matter. As a result, we highly recommend that Mr.

Lam seek a formal advisory opinion from the Commission or a post-employment waiver for his potential post-employment.

If Mr. Lam would like a formal advisory opinion on this matter, he can find instructions for submitting a request for a formal advisory opinion from the Commission on our website: <http://www.in.gov/ig/2334.htm>. **The next Commission meeting for which he may submit a request will be held on Wednesday, November 15th, and all requests for opinions to be issued at this meeting must be received by Monday, November 6th.**

If the IDEM Commissioner issues a waiver, he would need to present the waiver to the Commission for approval at its monthly meeting. The requirements for a post-employment waiver are set out in IC 4-2-6-11(g). Please feel free to contact our office if either you or Mr. Lam have any further questions about the formal advisory opinion process or waiver process.

Again, thank you for providing the additional information.

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
Fax: (317) 232-0707

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From: Tachtiris, Valerie
Sent: Thursday, October 26, 2017 12:51 PM
To: Mulligan, Tiffany M <TMulligan@ig.IN.gov>
Cc: MILLS, KATHLEEN <KMILLS@idem.IN.gov>
Subject: Additional Information Regarding Doug Lam

Ms. Mulligan,

Attached please find additional information regarding Doug Lam, which I am providing on behalf of Kathy Mills, who is out of the office today. Please let me know if you have any issues with the attachment. Thank you.

Valerie Tachtiris
Deputy Assistant Commissioner
Office of Legal Counsel
Indiana Department of Environmental Management
ph (317)234-8884

INDIANA
STATE ETHICS COMMISSION

OCT 17 2017

Cooper, Jennifer

From: Steven Fulk <steve.fulk@yahoo.com>
Sent: Monday, October 16, 2017 11:59 PM
To: Cooper, Jennifer; Mulligan, Tiffany M; Mulligan, Tiffany M
Subject: Petition for Stay of Effectiveness

FILED

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

Dear Jennifer:

Please enter the following as the Petition of Respondent Leann Walton to Stay Effectiveness:

Petitioner Leann Walton, by counsel Steven Fulk, respectfully requests the Commission to enter an order staying the effectiveness of any action taken at or after the prior meeting of the Commission September 14, 2017, regarding Petitioner Leann Walton, due to the following reasons:

1. Although Petitioner had, prior to the Commission's September meeting, received a proposed final draft "that the State Ethics Commission will be considering for approval during their meeting...September 14th", Petitioner has not received (either individually or by counsel) any final order of the Ethics Commission regarding this issue, even though such was expected in some order to issue on or about September 14, 2017.
2. Moreover, if an order issued substantially in the form indicated in the proposed "Final Report", such order fails to comply with statute in terms of failing to state any procedures and time limit for review of the order, and failed to provide copies for service as indicated (4-21.5-3-27).
3. Further, as the matter continues under administrative review with SEAC, Petitioner continues to exhaust her administrative remedies, which fact should be acknowledged by an order staying the effectiveness of the ISEC order pending final outcome of related administrative review.

Thank you, and respectfully submitted,

Steven T. Fulk
Counsel for Leann Walton, Respondent

STATE OF INDIANA)
) SS: INDIANA STATE ETHICS COMMISSION
)
COUNTY OF MARION) CASE: 2016-06-0124

INDIANA
STATE ETHICS COMMISSION

IN RE THE MATTER OF LEANN WALTON,
Respondent

OCT 24 2017

FILED

PETITIONER'S OBJECTION TO
RESPONDENT'S REQUEST FOR A STAY OF EFFECTIVENESS

Petitioner, the Inspector General, Lori A. Torres, by and through Tiffany Mulligan, Chief Legal Counsel, respectfully submits this Objection to Respondent's Request for a Stay of Effectiveness and says as follows:

1. The Office of Inspector General confirmed with the State Ethics Commission (Commission) that the Commission mailed its Final Report in the above referenced case to Respondent's counsel via certified mail on September 15, 2017. The Commission sent the Report to the following mailing address: 320 Massachusetts Avenue; Indianapolis, IN 46204. This is the same mailing address that Respondent's counsel had on file with the Commission and that is currently on file with the Indiana Roll of Attorneys. The U.S. Postal Service returned the mailing to the Commission as unclaimed on October 19, 2017, after the U.S. Postal Service made attempts to deliver the Report to Respondent's counsel.
2. The Commission's Final Report contains all of the elements required under Ind. Code § 4-21.5-3-27 for a final order. Subsection (b) of this statute requires the order to contain "separately stated, findings of fact for all aspects of the order, including the remedy prescribed and, if applicable, the action taken on a petition for stay of effectiveness." The Final Report included both separately stated findings of fact and the remedy prescribed, and at the time the Commission issued its Final Report, no stay of effectiveness had been filed. Subsection (b) also requires "a concise statement of the underlying basic facts of record to support the findings." This is included in the Final Report as well. Finally, subsection (b) requires the order to include "a statement of the available procedures and time limit for seeking administrative review of the order (if administrative review is available)." Here no further administrative review was available; therefore, the statute does not require any additional information to be included in the Final Report.

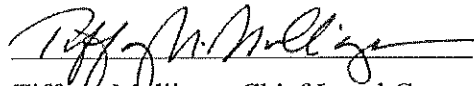
Furthermore, subsection (c) only applies to an order of the ultimate authority entered under IC 13, IC 14, or IC 25. An order issued by the Commission is made under Ind. Code 4-2-6, not under IC 13, 14, or 15, which deal with the Environment, Natural and Cultural Resources, and Professions and Occupations, respectively. As a result the Commission must comply with subsection (b) of the statute rather than subsection (c). The Commission's Final Report fully complied with the applicable statute.

3. The Respondent's administrative review with the State Employee Appeals Commission (SEAC) should not affect the proceedings before the Commission. In *Ghosh v. Indiana State Ethics Commission*, 930 N.E.2d 23 (Ind. 2010), the Indiana Supreme Court found that SEAC had the authority to consider ethical violations among other grounds for a state employee's termination; however, the State Ethics Commission has the exclusive jurisdiction to interpret the Code of Ethics. In other words, the Court treats SEAC proceedings and Commission proceedings separately and does not limit the Commission's ability to issue orders within its jurisdiction when a related proceeding is before SEAC.
4. As noted in Respondent's Request for a Stay of Effectiveness, Respondent's counsel expected to receive a Final Report from the Commission on or about September 14, 2017; however, Respondent's Counsel waited until October 16, 2017, more than thirty days after the Commission issued the Report, to alert Commission staff that he had not yet received a copy of the Final Report. Furthermore, Respondent's counsel provided the media with a written statement in response to the Commission's ruling the day after the ruling was issued

We respectfully request the Commission deny the Respondent's Request for a Stay of Effectiveness.

Dated this 24th day of October, 2017.

Respectfully submitted,



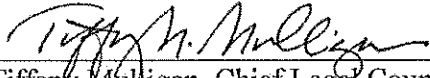
Tiffany Mulligan, Chief Legal Counsel; #26518-49
Office of the Inspector General, Lori A. Torres

CERTIFICATE OF SERVICE

I certify that I served a copy of this document to Respondent's counsel by email and U.S. mail delivery this 24th day of October, 2017:

Steven T. Fulk; #18991-53
320 Massachusetts Avenue
Indianapolis, IN 46204
Steve.fulk@yahoo.com

Respectfully submitted,

By: 
Tiffany Mulligan, Chief Legal Counsel
Office of the Inspector General, Lori A. Torres
315 West Ohio Street, Room 104
Indianapolis, IN 46202
(317) 232-3850

IG Report to Commission for 11-15-17 Public Meeting

1. IAOs: Q3 July 1 to September 30:
 - a. 91 IAOs in this second quarter
 - b. Compared to 101 in Q2
 - c. Q1 – Q3 = 269
 - d. 2016 we issued 318
 - e. Average turnaround time = 1.2 days
2. Investigations: Q3 July 1 to September 30 :
 - a. 83 Requests to Investigate
 - b. Compared to 70 in Q2.
 - c. 18 new investigations opened by our office
 - d. Brought 3 before the board.
 - e. 15 cases closed
 - f. As of Sept. 29, 2017, 33 open investigation cases
3. 2017 Legal & Ethics Conference
 - a. Held November 14, 2017 at 1:00 p.m.
 - b. New format reduced taxpayer cost by more than \$30,000 and was more strategically directed.
 - c. Report on attendance and feedback