

**MINUTES OF THE MEETING OF
THE INDIANA STATE ETHICS COMMISSION
May 10, 2018**

I. Call to Order

A regular meeting of the State Ethics Commission (“Commission”) was called to order at 10:00 a.m. Commission members present included James Clevenger, Chairperson; Corinne Finnerty; Sue Anne Gilroy; Priscilla Keith (arrived at 10:04 a.m.); and Katherine Noel. Staff present included Jennifer Cooper, Ethics Director; Tiffany Mulligan, Chief Legal Counsel; Kelly Elliott, Staff Attorney; and Cynthia Scruggs, Director of Administration, Office of Inspector General.

Others present were Kyle Gaddis, Deputy General Counsel, Economic Development Corporation; Manda Clevenger, Attorney E7, State Department of Health; Timothy Hawkins, Program Director E7, Family & Social Services Administration; Chris Kiefer, Chief of Staff, Department of Transportation; Wade Fulford, Deputy General Counsel, Department of Insurance; Cathleen Nine-Altevogt, Attorney/Ethics Officer; Stephen Robertson, Commissioner, Department of Insurance; Chelsea Smith, Administrative Law Judge, Department of Homeland Security; Ryan Edwards, Region 3 Itinerant Counselor, Family & Social Services Administration; Erin Quiring, Broad Band Executive, Family & Social Services Administration; Stephanie Mullaney, Deputy Attorney General, Attorney General’s Office; Matthew Savage, Deputy General Counsel, Department of Workforce Development; Rachel Russell, Ethics Officer/Deputy General Counsel, Department of Child Services; Deana Smith, Attorney, State Department of Health; Beth Green, General Counsel, Department of Workforce Development; Latosha Higgins, Managing Attorney/Ethics Officer, Family & Social Services Administration; Mark Tidd, Ethics Officer/Special Advisor, Department of Transportation; Sylvia Watson, General Counsel, State Library; Jared Prentice, Compliance Director, Department of Revenue; and Michelle Stanley, Legal Specialist, State Board of Accounts.

II. Adoption of Agenda and Approval of Minutes

Commissioner Noel moved to adopt the Agenda and Commissioner Gilroy seconded the motion which passed (4-0). Commissioner Gilroy moved to approve the Minutes of the April 12, 2018 Commission Meeting and Commissioner Noel seconded the motion which passed (4-0).

**III. Consideration of Post-Employment Waiver
For Kevin Hetrick, Former Co-Project Manager
Presented by Chris Kiefer, Chief of Staff
Mark Tidd, Prequalification Director/Ethics Officer
Indiana Department of Transportation**

Both the Prequalification Director/Ethics Officer, Mark Tidd, and the Chief of Staff, Christ Kiefer, presented a post-employment waiver on Kevin Hetrick’s behalf. Mr. Hetrick previously served as

a Co-Project Manager for the Department's I-69 Section Project Team where he screened and reduced alternatives from 14 to 5 from October 1, 2014 through July, 2015, but was not involved in substantial decision-making regarding policies, rules, or contracts. Mr. Hetrick came before the Commission to obtain permission to waive the particular matter restrictions of the post-employment rule as it related to his current position with Clark Dietz, Inc., an engineering consulting firm. At Clark Dietz, Inc., Mr. Hetrick manages roadway and bridge design projects and employees involved with same as well as construction inspection employees, which created the potential for Mr. Hetrick to be directly involved with future and/or current multiple statewide contracts between the Department and Clark Dietz, Inc. The Commission believed that Mr. Hetrick thoroughly understood the related ethics rules and how they applied to the contractual obligations and business relationship between the State and Clark Dietz, Inc. After the Commission discussed the matter, Commissioner Noel moved to approve the Post-Employment Restrictions Waiver and Commissioner Gilroy seconded the motion which passed (5-0).

**IV. Consideration of Post-Employment Restrictions Waiver
For Wade Fulford, Deputy General Counsel
Presented by Stephen Robertson, Commissioner (via telephone)
Cathleen Nine-Altevogt, Attorney/Ethics Officer
Indiana Department of Insurance**

Attorney/Ethics Officer, Cathleen Nine-Altevogt, and Commissioner Stephen Robertson presented a post-employment waiver on Wade Fulford's behalf. Mr. Fulford currently serves as Deputy General Counsel for the Department. Mr. Fulford came before the Commission to obtain permission to waive the cooling off period of the post-employment rule as it related to his potential employment with Lewis Wagner, a law firm. At Lewis Wagner, Mr. Fulford would serve as Senior Counsel in the areas of healthcare, medical malpractice, tort law, insurance defense, and mediation services, which creates the potential for Mr. Fulford to be directly involved with the Patients' Compensation Fund, an excess medical malpractice fund, that he defended cases against for the Department from 2012 through 2018. During that time, Mr. Fulford had no authority over the contracting process, but he did assign and oversee cases in which Lewis Wagner defended the Patients' Compensation Fund. The Commission believed that Mr. Fulford thoroughly understood the related ethics rule and how it applied to the relationships amongst the State, the Department, the Patients' Compensation Fund, and Lewis Wagner. After the Commission discussed the matter, Commissioner Noel moved to approve the Post-Employment Restrictions Waiver and Commissioner Gilroy seconded the motion which passed (5-0).

V. Request for Formal Advisory Opinion

**2018-FAO-0011 Ryan Edwards, Region 3 Itinerant Counselor, Indiana Vocational
Rehabilitation
Latosha Higgins, Managing Attorney/Ethics Officer
Family & Social Services Administration**

Ryan Edwards is a state employee currently serving as an Itinerant Vocational Rehabilitation (VR) Counselor with the Family and Social Services Administration (FSSA). Latosha Higgins is the Ethics Officer for FSSA.

As a VR Counselor with FSSA, Mr. Edwards works with participants with disabilities that are looking to gain employment. He performs a variety of duties, including working directly with consumers in the form of his own caseload. He also assists with training new employees and filling in for supervisors when needed. When working with clients, he helps them develop job goals for employment. He uses a variety of tools to help them come up with a plan for employment. In addition, he assists in identifying any services the client needs, while also providing counseling and guidance. When a service has been identified as needed, he provides the client with an informed choice so that the client can select the best vendor for their needs.

Mr. Edwards is interested in transitioning from state employment to a private company called Portals (the Company). He provides that he has not negotiated any contracts with the Company and that he does not make contract decisions at FSSA. According to Ms. Higgins, FSSA does not have a contract with the Company, but the Company is included on a list of providers from which his clients can choose. Mr. Edwards' clients can select a provider through informed choice for different services that they provide. Specifically, when it is determined that a client is in need of a service, they are given choices of providers from which to select.

The clients may ask questions about the different providers, but Mr. Edwards, as a VR Counselor, does not make the selection for the client. The client must make the selection on his or her own. Mr. Edwards has had clients in previous years that have selected the Company, but Mr. Edwards has not referred a client to the Company in over a year due to not having any clients that needed the service the Company provides.

Mr. Edwards has signed off as a supervisor on authorizations and claims that have been generated by VR counselors, including himself. Ms. Higgins provided that in this role Mr. Edwards has very limited discretion in approving an authorization or signing off on a claim for services. So long as the individual is receiving needed services as identified on their individualized employment plan, an authorization is approved. Likewise, as long as the services authorized were actually delivered to the individual, the claim is approved. Mr. Edwards provides that FSSA does not regulate or license the Company.

If Mr. Edwards accepts a position with the Company, he would be working in a department that deals with Medicaid programs. He will assist with overseeing home modifications for the elderly. Specifically the program is intended to assist Medicaid recipients in getting an accessible bathroom when needed.

Mr. Edwards requested an informal advisory opinion from the Office of Inspector General on April 13, 2018. The informal advisory opinion raised concerns regarding Mr. Edwards' approvals of referrals to the Company and his position as a supervisor with possible discretionary authority over the administration of a contract. Mr. Edwards is now seeking a Formal Advisory Opinion to determine if the post-employment rule's cooling off period would apply to him or if he can accept the position with the Company immediately after leaving state employment.

Mr. Edwards' post-employment opportunity with the Company implicates the provisions of the Code pertaining to confidential information, conflicts of interests, and post-employment. The application of each provision to Mr. Edwards' prospective post-employment opportunity with the Company is analyzed below.

A. Confidential Information

IC 4-2-6-6 prohibits Mr. Edwards from accepting any compensation from any employment, transaction, or investment that was entered into or made as a result of material information of a confidential nature.

Mr. Edwards confirmed that he would not be required to utilize any confidential information in his potential employment with the Company. So long as any compensation Mr. Edwards receives does not result from confidential information, his potential employment with the Company would not violate IC 4-2-6-6.

B. Conflict of Interests

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

Ms. Higgins provides that Mr. Edwards discussed the possibility of a potential opportunity informally with the owner of the Company, whom he knows on a personal level. She explained that no formal interview has taken place, and Mr. Edwards wanted to ensure that he was in full compliance with all of the ethics rules before pursuing a specific opportunity with the Company.

Once employment negotiations begin, Mr. Edwards would be prohibited from participating in any decision or vote, or matter related to a decision or vote, in which the Company would have a financial interest in the outcome of the matter.

Ms. Higgins provides that as a VR Counselor, Mr. Edwards does not have the discretion to choose a certain provider, such as the Company, for a consumer or encourage a consumer to choose one provider over another. Mr. Edwards only advises consumers on options based on the type of services needed and location, and the consumer chooses the provider. Further, when approving authorizations and claims for services, Mr. Edwards is approving that the service is necessary (based on their individualized plan) when approving authorizations and that the services were delivered when approving claims; in either situation he is not approving any particular provider for the services – the consumer makes that decision.

Accordingly, it does not appear that Mr. Edwards has a potential conflict of interests at this time. Mr. Edwards must ensure that he does not participate in any decision or vote, or matters relating to any such decision or vote, in which the Company would have a financial interest in the outcome of the matter for the remainder of his state employment. Further, if he identifies a potential conflict of interests, he must follow the requirements in IC 4-2-6-9(b) to avoid violating this rule.

C. Post-Employment

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

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

Ms. Higgins provided that Mr. Edwards does not anticipate engaging in any lobbying activities in his prospective employment as a consultant with the Company. To the extent that Mr. Edwards does not engage in executive branch lobbying for one year after leaving state employment, his intended employment with the Company would not violate this provision of the post-employment rule.

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

Based on the information provided by Ms. Higgins, the Company does not have a contract with FSSA. Accordingly, the Commission finds that Mr. Edwards did not negotiate or administer a contract with the Company on behalf of FSSA, and he is not prohibited under this provision from accepting employment with the Company immediately upon leaving state employment.

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

Based on the information provided, FSSA does not regulate or license the Company. Accordingly, the Commission finds that this provision does not apply to Mr. Edwards, and he is not prohibited under this provision from accepting employment with the Company immediately upon leaving state employment.

Fourth, Mr. Edwards is prohibited from accepting employment from an employer if the circumstances surrounding the hire suggest the employer's purpose is to influence him in his official capacity as a state employee. The information provided does not suggest that the Company has extended an offer of employment to Mr. Edwards in an attempt to influence him in his capacity as a state employee.

Finally, Mr. Edwards is subject to the post-employment rule's "particular matter" prohibition in his prospective post-employment. This restriction prevents him from representing or assisting a person on any of the following twelve matters if he personally and substantially participated in the matter as a state employee: 1) an application, 2) a business transaction, 3) a claim, 4) a contract, 5) a determination, 6) an enforcement proceeding, 7) an investigation, 8) a judicial proceeding, 9) a lawsuit, 10) a license, 11) an economic development project, or 12) a public works project. The 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.

Mr. Edwards has not identified any particular matters. The Commission finds that Mr. Edwards must ensure compliance with the particular matter restriction and refrain from assisting or representing any person on any of the particular matters listed above that he may have personally and substantially worked on during his state employment.

Subject to the foregoing analysis and the application of the one-year restriction regarding executive branch lobbying, the Commission finds that Mr. Edwards' potential post-employment opportunity with the Company would not violate the post-employment restrictions found in IC 4- 2-6-11.

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

VI. Request for Formal Advisory Opinion

**2018-FAO-0012 Timothy Hawkins, Program Director E7
Latosha Higgins, Managing Attorney/Ethics Officer
Family & Social Services Administration**

Latosha Higgins, Ethics Officer for the Indiana Family and Social Services Administration (FSSA), is requesting a Formal Advisory Opinion on behalf of Timothy Hawkins.

Mr. Hawkins began working for FSSA as a contractor through Knowledges Services in March 2017 in the Office of Medicaid Policy and Planning (OMPP). OMPP oversees the administration of Indiana Health Coverage Programs (IHCP), which include Medicaid, the Children's Health Insurance Program (CHIP) and the Healthy Indiana Plan (HIP). Mr. Hawkins became an FSSA employee in February 2017. His duties include ensuring that Medicaid reimbursement rates and payments are established and implemented in accordance with the State Plan, as well as state and federal laws and regulations. The purpose of his position is to effectively manage the Medicaid

and CHIP state plan amendment process ensuring compliance with all IHCP programs, the Code of Federal Regulations, Indiana Code, and Centers for Medicare and Medicaid Services (CMS) requirements. He collaborates with FSSA and CMS staff to ensure amendments are submitted timely and tracks pending state plan amendments to ensure compliance with CMS deadlines. He also maintains the OMPP Civil Rights Plan and provides assistance to the OMPP Government Affairs Analyst and Manager of State Plans and Projects, among other duties.

On April 24, 2018, Mr. Hawkins notified Ms. Higgins that he applied for a consultant position with Public Consulting Group (PCG) on April 6, 2018. He completed a phone interview on April 10, 2018 and an in person interview on April 25, 2018. Ms. Higgins reviewed the post-employment restrictions with Mr. Hawkins. Additionally, his supervisor has put in place an internal screen so that Mr. Hawkins does not have any involvement with matters related to PCG.

PCG is a for profit company providing management consulting and technology services to public sector education, health, human services, and other government. The company is headquartered in Boston, Massachusetts with offices in the United States, Canada, England and Poland. FSSA currently has contracts with PCG-Indiana, Inc. through the Division of Aging and Division of Disability and Rehabilitative Services. These PCG contracts are administered at the division level by the respective divisions. Mr. Hawkins does not have any involvement with these contracts.

Mr. Hawkins has neither engaged in the negotiation or administration of any contract between the FSSA and PCG. Further, Mr. Hawkins was not in a position to make any discretionary decisions affecting the outcome of the negotiation or administration of any contract with PCG. Mr. Hawkins' only involvement with matters related to PCG was in 2017 for three months when he assisted a team of two FSSA employees reviewing the FSSA Home and Community Based Services Statewide Transition Plan for grammar and structure while working as a contractor to FSSA through Knowledges Services. He has not worked on any matters related to any contract with PCG since that time. Furthermore, his supervisor is currently screening him by not assigning any Home and Community Based Services Statewide Transition Plan work to him.

Mr. Hawkins' role as a consultant with PCG would include tasks on a variety of consulting and operational projects; including travel to client sites for meetings, observations, focus groups, and data collection. He would be expected to complete a wide range of work assignments that may include data collection, quantitative analysis, report design, report drafting, and preparation of various materials for client presentations.

Ms. Higgins provides that Mr. Hawkins 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. Hawkins understands and agrees to abide by the one-year restriction regarding registering as an executive branch lobbyist.

Given that FSSA believes Mr. Hawkins would not use confidential information in his potential employment with PCG; that he did not make any regulatory or licensing decisions that directly related to PCG who is not regulated by FSSA; that as an employee he did not personally or substantially work on any matter identified as a particular matter under IC 4-2-6-11; that there is

no evidence that PCG offered him the position to influence him in his capacity as an FSSA employee; and that he has not participated in any decision vote or other matter related to such decision or vote in which he, by virtue of his employment negotiations with PCG, or PCG would have any financial interest, FSSA believes Mr. Hawkins's prospective employment is permissible under Indiana's ethics laws and that he should be able to accept a position with PCG immediately upon leaving employment.

Mr. Hawkins' post-employment opportunity with PCG implicates the provisions of the Code pertaining to confidential information, conflicts of interests, and post-employment. The application of each provision to Mr. Hawkins' prospective post-employment opportunity with PCG is analyzed below.

A. Confidential Information

IC 4-2-6-6 prohibits Mr. Hawkins from accepting any compensation from any employment, transaction, or investment that was entered into or made as a result of material information of a confidential nature. Mr. Hawkins confirmed that he would not utilize confidential information in his potential employment with PCG. So long as any compensation Mr. Hawkins receives does not result from confidential information, his potential employment with PCG would not appear to violate IC 4-2-6-6.

B. Conflicts of Interests

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

In this case employment negotiations have already begun, as Mr. Hawkins completed a phone interview on April 10, 2018 and an in-person interview on April 25, 2018. Accordingly, a conflict of interests would arise for Mr. Hawkins if he participates in a decision or vote, or matter related to such decision or vote, in which PCG would have a financial interest in the outcome.

Ms. Higgins provides that Mr. Hawkins' normal job responsibilities with FSSA do not include participating in decisions or votes, or matters related to such decisions or votes, in which PCG would have a financial interest in the outcome. PCG-Indiana Inc. has contracts with FSSA through the Division of Aging and Division of Disability and Rehabilitative Services. These PCG contracts are administered at the division level by the respective divisions, and Mr. Hawkins does not have any involvement in these contracts.

Mr. Hawkins informed Ms. Higgins of the employment opportunity with PCG, and Mr. Hawkins' supervisor has implemented an internal screen to ensure that Mr. Hawkins does not have any involvement with matters related to PCG as a precautionary measure.

The Commission finds that Mr. Hawkins does not have a potential conflict of interests at this time. However, Mr. Hawkins must continue to ensure he does not participate in any decisions or votes, or matters relating to any such decisions or votes, in which PCG has a financial interest in the outcome of the matter for the remainder of his state employment. Further, if he identifies a potential conflict of interests, he must follow the requirements in IC 4-2-6-9(b).

C. Post-Employment

IC 4-2-6-11 consists of two separate limitations: a "cooling off" period and a "particular matter" restriction. The first prohibition, commonly referred to as the cooling off or revolving door period, prevents Mr. Hawkins from accepting employment from an employer for 365 days from the date that he leaves state employment under various circumstances. Employer is defined in IC 4-2-6-1(a)(10) as any person from whom a state employee receives compensation and therefore includes a client or customer of a self-employed individual.

First, Mr. Hawkins is prohibited from accepting employment as a lobbyist for the entirety of the cooling off period. A lobbyist is defined as an individual who seeks to influence decision making of an agency and who is registered as an executive branch lobbyist under the rules adopted by the Indiana Department of Administration (IDOA). The information provided by Ms. Higgins indicates that Mr. Hawkins understands this restriction and has agreed to abide by the one-year restriction regarding registering as an executive branch lobbyist.

Mr. Hawkins does not anticipate engaging in any lobbying activities in his prospective employment with PCG. To the extent that Mr. Hawkins does not engage in executive branch lobbying for one year after leaving state employment, his intended employment with PCG would not violate this provision of the post-employment rule.

Second, Mr. Hawkins is prohibited from accepting employment for 365 days from the last day of his state employment from an employer with whom 1) he engaged in the negotiation or administration of a contract on behalf of a state agency and 2) was in a position to make a discretionary decision affecting the outcome of the negotiation or nature of the administration of the contract. Based on the information provided, Mr. Hawkins neither engaged in the negotiation or administration of any contract between the State and PCG, nor was he in a position to make a discretionary decision affecting the outcome of the negotiation or administration of any contract with PCG.

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

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

This provision does not apply to Mr. Hawkins' role with FSSA, as PCG is not regulated by FSSA and Mr. Hawkins did not make any regulatory or licensing decisions that directly applied to PCG as a state employee. Accordingly, he is not prohibited under this provision from accepting employment with PCG immediately upon leaving state employment.

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

Finally, Mr. Hawkins is subject to the post-employment rule's "particular matter" prohibition in his prospective post-employment. This restriction prevents him from representing or assisting a person on any of the following twelve matters if he personally and substantially participated in the matter as a state employee: 1) an application, 2) a business transaction, 3) a claim, 4) a contract, 5) a determination, 6) an enforcement proceeding, 7) an investigation, 8) a judicial proceeding, 9) a lawsuit, 10) a license, 11) an economic development project, or 12) a public works project. The 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.

Mr. Hawkins has not identified any particular matters. The Commission finds that Mr. Hawkins must ensure compliance with the particular matter restriction and refrain from assisting or representing any person on any of the particular matters listed above that he may have personally and substantially worked on during his state employment.

Subject to the foregoing analysis and the application of the one-year restriction regarding executive branch lobbying, the Commission finds that Mr. Hawkins' potential post-employment opportunity with PCG would not violate the post-employment restrictions found in IC 4- 2-6-11.

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

VII. Request for Formal Advisory Opinion

**2018-FAO-0014 Erin Quiring, Assistant Deputy Director, Quality Improvement
Latosha Higgins, Managing Attorney/Ethics Officer**

Family & Social Services Administration

Erin Quiring is a state employee with the Indiana Family and Social Services Administration (FSSA). Latosha Higgins serves as FSSA's Managing Attorney and Ethics Officer and has submitted a Formal Advisory Opinion request on behalf of Ms. Quiring.

Ms. Quiring joined the Division of Mental Health and Addiction (DMHA) within FSSA in December of 2012 as a Provider & Community Liaison. In July of 2015, Ms. Quiring was promoted to the position of Assistant Deputy Director for Quality Improvement. In that role, she is responsible for managing the team that conducts audits and reviews complaints regarding DMHA's certified community mental health centers (CMHCs), licensed private mental health institutions, and certified addiction service providers. Ms. Quiring oversees a contract with Intecare, Inc. (Intecare), a nonprofit healthcare management service that conducts annual consumer satisfaction surveys of consumers of mental health and addiction services provided by DMHA certified entities. Her responsibilities include processing Intecare's claims under the contract.

Ms. Quiring also works part-time for C2H, a non-for-profit organization that provides consumers community resources to address their basic needs, including information regarding mental health and addiction treatment facilities such as the CMHCs, licensed private mental health institutions and certified addiction services providers that Ms. Quiring's team audits. C2H is a member of the Indiana 2-1-1 Partnership (IN211), an independent nonprofit organization that convenes all 2-1-1 centers in Indiana around various topics that impact the 2-1-1 system in Indiana. IN211 contracts with state agencies for state-wide projects. IN211 contracts for the following three different divisions in FSSA: Supplemental Nutrition Assistance Program through the Division of Family Resources; the Adult Protective Services reporting hotline through the Division of Aging; and the Open Beds project through DMHA. IN211 also has a contract with the Indiana State Department of Health. C2H has a business relationship with IN211 wherein C2H is reimbursed for providing services related to the aforementioned contracts. Ms. Quiring's compensation is not directly billed to any FSSA contract or other state contract to her knowledge. Rather the source of her compensation is C2H's general operating funds.

Ms. Quiring worked for C2H from February of 2005 to February of 2007. She returned to C2H in October of 2010 and worked full-time at C2H until she began employment with FSSA. Since December of 2012, Ms. Quiring has worked part-time as a supervisor and hiring specialist. She currently serves as a supervisor an average of one day per week and as needed when the C2H is hiring. When serving as a supervisor, Ms. Quiring ensures Information and Referral Specialists (I&R Specialists) are receiving breaks. She also answers questions related to the calls I&R Specialists receive. Occasionally, she may take a call when the agency is short-staffed, there is a call in Spanish, or when a caller requests to speak to a supervisor.

When she takes a call, her duties include serving as the point of contact for individuals calling for information about available resources for their various needs. She uses a database at C2H to provide information about resources to callers. She provides only basic information to callers. Additionally, she adheres to C2H policies and procedures, which may include a script depending on the type of call.

There is the potential that in performing her duties as a supervisor and hiring specialist for C2H that Ms. Quiring may receive a call regarding a resource that includes the CMHCs, licensed private mental health institutions and certified addiction services providers that her FSSA team audits. In that circumstance, Ms. Quiring would be required to provide the appropriate information to the individual. However, Ms. Quiring has no discretion in selecting the resources that she provides to callers. Rather the information provided is based on the location of the caller. For example, when a caller requests resources, Ms. Quiring gathers information including the zip code for the caller. She enters the information into the database and the database populates the available resources. Ms. Quiring is required to provide the information populated by the database, unless the consumer requests a resource outside of their area.

In the past Ms. Quiring has also provided updated DMHA provider information to the 211 Database. Aside from providing this information to the 211 Database, she has no other interaction or involvement with C2H or the IN211 in her position at FSSA.

FSSA believes that Ms. Quiring's part-time employment with C2H does not conflict with her duties at FSSA. Ms. Higgins also provides that, in her role as Assistant Deputy Director for Quality Improvement, Ms. Quiring is not in a position to participate in decisions or votes or other matters related to a decision or vote where C2H would have a financial interest.

Given that Ms. Quiring's part-time employer C2H has a business relationship where it receives payments from a contractor with multiple contracts with the State, and Ms. Quiring's position as supervisor and hiring specialist may include providing services related to those contracts, Ms. Quiring seeks a formal advisory opinion regarding whether she may continue her part-time employment without violating IC 4-2-6-10.5 and its prohibitions against an employee knowingly having a financial interest in a contract made by a state agency, unless the employee does not have contracting responsibilities and files a written disclosure. Ms. Quiring also seek a formal opinion on the applicability of IC 35-44.1-1-4, which prohibits certain public servants from having a pecuniary interest in or deriving a profit from a contract with the public servant's agency, to her circumstances.

The Commission does not provide advice regarding past conduct; therefore, it cannot advise whether Ms. Quiring's outside employment with C2H was in compliance with the Code of Ethics prior to seeking this opinion. Accordingly, this opinion only addresses Ms. Quiring's outside employment with C2H going forward.

A. Outside employment

An outside employment or professional activity opportunity creates a conflict of interests under IC 4-2-6-5.5(a) if it results in the employee: 1) receiving compensation of substantial value when the responsibilities of the employment are inherently incompatible with the responsibilities of public office or require the employee's recusal from matters so central or critical to the performance of his or her official duties that his or her ability to perform them would be materially impaired; 2) disclosing confidential information that was gained

in the course of state employment; or 3) using or attempting to use his or her official position to secure unwarranted privileges or exemptions of substantial value that are not properly available to similarly situated individuals outside state government.

The Commission generally defers to an agency's Ethics Officer regarding outside employment opportunities since it views them as being in the best position to determine whether a conflict of interests might exist between an employee's state duties and an outside employment opportunity.

Ms. Higgins, FSSA's Ethics Officer, provides that Ms. Quiring's part-time employment as a supervisor for C2H is not incompatible with her FSSA duties, nor does it require recusal from her official responsibilities. Besides providing DMHA provider information to the 211 Database, she has no other interaction or involvement with C2H or the IN211 in her position at FSSA. While there is a potential that Ms. Quiring, while serving in her role as supervisor for C2H, may receive a call regarding a resource that includes the CMHCs, licensed private mental health institutions and certified addiction services providers that her FSSA team audits, Ms. Quiring has no discretion in selecting the resources that she provides to callers. Rather the information provided is based on the location of the caller; the caller's zip code is entered into the database and the database populates the available resources.

The Commission confirmed that Ms. Quiring understands that she is prohibited from disclosing confidential information she gained from FSSA in her position with C2H and that she must not use or attempt to use her official position to secure unwarranted privileges or exemptions of substantial value that are not properly available to similarly situated individuals outside state government.

Accordingly, the Commission finds that Ms. Quiring's outside employment with C2H would not violate IC 4-2-6-5.5.

B. Conflict of interests-decisions and votes

IC 4-2-6-9 (a)(1) prohibits Ms. Quiring from participating in any decision or vote, or matter relating to that decision or vote, if she has a financial interest in the outcome of the matter. Similarly, IC 4-2-6-9(a)(3) prohibits Ms. Quiring from participating in any decision or vote, or matter relating to that decision or vote, if a business organization in which she is serving as an employee has a financial interest in the matter. The definition of "financial interest" in IC 4-2-6-1(a)(11) includes, in part, "an interest arising from employment."

Ms. Quiring currently works as an Assistant Deputy Director for Quality Improvement for FSSA and is seeking to maintain her outside employment with C2H. Accordingly, she would be prohibited from participating in any decisions or votes, or matter relating to those decisions or votes, in which C2H would have a financial interest in the outcome.

Ms. Higgins provides that Ms. Quiring is not in a position at FSSA to participate in any decisions or votes, or matters related to a decision or vote, in which C2H would have a

financial interest in the outcome. Accordingly, the Commission finds that a potential conflict of interests does not currently exist for Ms. Quiring.

If Ms. Quiring's circumstances change and a potential conflict of interests is identified in the future, she must follow the disclosure requirements in IC 4-2-6-9(b), including notifying her appointing authority and seeking an advisory opinion from or filing a written disclosure statement with the Commission.

C. Conflict of interests – contracts

Pursuant to IC 4-2-6-10.5, a state employee may not knowingly have a financial interest in a contract made by any state agency. The Code defines "financial interest" to include an interest arising from employment. The Commission has interpreted this rule to apply when a state employee derives compensation from a contract between a state agency and a third party. This prohibition however does not apply to an employee that does not participate in or have official responsibility for any of the activities of the contracting agency, provided certain statutory criteria are met.

Ms. Quiring's part-time outside employer, C2H, has a business relationship with IN211 through which C2H is reimbursed for providing services related to the contracts that IN211 has with FSSA. However, Ms. Higgins provides that Ms. Quiring's compensation is not directly billed to any FSSA contract or other state contract. The source of her compensation is C2H's general operating funds.

Accordingly, the Commission finds that Ms. Quiring would not have a financial interest in a state contract through her position at C2H and would not be in violation of this rule.

D. Criminal conflict of interests statute

In the Formal Advisory Opinion request, Ms. Higgins also asked whether IC 35-44.1-1-4, which prohibits certain public servants from having a pecuniary interest in or deriving a profit from a contract with the public servant's agency, would apply to Ms. Quiring's circumstances.

IC 35-44.1-1-4, is the criminal statute that prohibits any public servant from knowingly or intentionally having a pecuniary interest in or deriving a profit from a contract/purchase connected with an action by the agency served by the public servant. The statute contains certain exceptions in subsection (c). One of these exceptions applies to an individual who obtains written approval from the Commission that the individual will not or does not have a conflict of interests in connection with a contract or purchase under IC 4-2-6 and IC 35-44.1-1-4.

The Commission confirmed with Ms. Higgins that Ms. Quiring does not have a pecuniary interest in any contracts with the agency she serves (FSSA), as the salary she receives for her part-time employment at C2H is not derived from any FSSA or other state contracts.

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

E. Confidential information

Ms. Quiring is prohibited under 42 IAC 1-5-10 and 42 IAC 1-5-11 from benefitting from, permitting any other person to benefit from, or divulging information of a confidential nature except as permitted or required by law. Similarly, IC 4-2-6-6 prohibits Ms. Quiring from accepting any compensation from any employment, transaction, or investment which is entered into or made as a result of material information of a confidential nature. The term “person” is defined in IC 4-2-6-1(a)(13) to encompass both an individual and a corporation. In addition, the definition of “information of a confidential nature” is set forth in IC 4-2-6-1(a)(12).

To the extent Ms. Quiring is exposed to or has access to such confidential information in her position with FSSA, she would be prohibited not only from divulging that information, but from ever using it to benefit any person, including her outside employer, in any manner.

F. Use of state property and Ghost employment

IC 4-2-6-17 prohibits Ms. Quiring from using state property for any purpose other than for official state business unless the use is expressly permitted by a general written agency, departmental, or institutional policy or regulation. Likewise, 42 IAC 1-5-13 prohibits Ms. Quiring from engaging in, or directing others to engage in, work other than the performance of official duties during working hours, except as permitted by general written agency, departmental, or institutional policy or regulation.

To the extent that Ms. Quiring observes these provisions in her employment with FSSA, such outside professional activity would not violate these ethics laws.

Subject to the foregoing analysis, the Commission finds that Ms. Quiring’s outside employment would not be contrary to the Code of Ethics

Commissioner Noel moved to approve the Commission’s findings, and Commissioner Keith seconded the motion which passed (5-0).

VIII. Request for Formal Advisory Opinion

**2018-FAO-0015 Melissa Carroll, Program Director 1, Projects for Assistance in Transition from Homelessness
Latosha Higgins, Managing Attorney/Ethics Officer
Family & Social Services Administration**

Melissa Carroll is a state employee with the Indiana Family and Social Services Administration (FSSA). Latosha Higgins serves as FSSA's Managing Attorney and Ethics Officer and has submitted a Formal Advisory Opinion request on behalf of Ms. Carroll.

Ms. Carroll joined the Division of Mental Health and Addiction (DMHA) within FSSA in November 2013. In February 2018, Ms. Carroll was promoted to the position of Program Manager for Projects for Assistance in Transition from Homelessness (PATH). PATH is a federal grant program that allows funding to be distributed for homeless outreach teams at selected local, public, or not-for-profit organizations. These teams are responsible for outreach to individuals who have Serious Mental Illness and/or substance use disorder and who are chronically homeless or at imminent risk of becoming homeless.

Under the PATH program, DMHA contracts with the following 13 Community Mental Health Center ("CMHC") providers: Adult & Child, Aurora, Centerstone, Health & Hospital, Hamilton Center, LifeSpring, Meridian, MHA of Vigo County, Oaklawn, Park Center, Porter-Starke, Swanson and Wabash. Each CMHC has homeless outreach workers that go out into the community to engage, assess and enroll potential consumers into the PATH program. The CMHCs submit their claims monthly with deliverables. These deliverables are supportive documents provided by the CMHC as proof of services provided and salaries paid to PATH staff. Ms. Carroll's duties include reviewing claims submissions for reimbursement services provided, responding to CMHC questions regarding PATH, providing education and conducting annual quality assurance site visits. Ms. Carroll's recommendations regarding the payment of claims are subject to two levels of review by DMHA Deputy Directors. Pursuant to the Health Insurance Portability and Accountability Act, the claims that Ms. Carroll reviews do not include individual names of consumers.

Ms. Carroll also works part-time (every other Friday, Saturday and Sunday) as an information and referral specialist (I&R Specialist) for C2H, a non-for-profit organization that provides consumers community resources to address their basic needs, including information regarding mental health and addiction treatment facilities, such as the CMHCs, licensed private mental health institutions and certified addiction services providers that Ms. Carroll's team audits. C2H is a member of the Indiana 2-1-1 Partnership (IN211), an independent nonprofit organization that convenes all 2-1-1 centers in Indiana around various topics that impact the 2-1-1 system in Indiana. IN211 contracts with state agencies for state-wide projects. IN211 contracts for the following programs through three different divisions in FSSA: Supplemental Nutrition Assistance Program through the Division of Family Resources; the Adult Protective Services reporting hotline through the Division of Aging; and the Open Beds project through DMHA. IN211 also has a contract with the Indiana State Department of Health. C2H has a business relationship with IN211 wherein C2H is reimbursed for providing services related to the aforementioned contracts. Ms. Carroll's compensation is not directly billed to any FSSA contract or other state contract to her knowledge. Rather the source of her compensation is C2H's general operating funds. Ms. Carroll provides that per Marilyn Cummins, Accounting & Human Resources Manager for C2H, I&R Specialists are not paid directly from any state contract.

Ms. Carroll's duties as an I&R Specialist at C2H include serving as the point of contact for individuals calling for information about available resources for their various needs. She uses a

database at C2H to provide information about resources to callers. She does not have any input or control over which resources are included in the database. As an I&R Specialist she is required to provide only basic information to callers. Additionally, she generally adheres to a script and is subject to quality assurances review to ensure that she is adhering to C2H policies and procedures.

C2H places I&R Specialists in specific groups that allow them to have access to certain type of calls from individuals requesting assistance. The groups include: Crisis calls (i.e. suicide hotline), Open Beds, the Energy Assistance Program, and Vermont211. Open Beds is the only group Ms. Carroll currently is not in. Although Ms. Carroll has been briefed about the Open Beds project, she has not received any training through C2H. Therefore, she is not permitted to handle calls regarding inquiries about the Open Beds project at this time.

Open beds is a DMHA program used to help address the opioid crisis. It is another resource for anyone looking for treatment for an opioid addiction. The purpose of the program is to be able to see available beds at selected locations in real time. The program is administered by the DMHA addictions team. Ms. Carroll is not a member of the DMHA addiction team. The PATH program is separate and distinct from Open Beds. Furthermore, Ms. Carroll's duties at FSSA do not include any involvement with the Open Beds project.

There is the potential that in performing her duties as an I&R Specialist for C2H that Ms. Carroll may receive a call requesting a resource that includes the CMHCs that she oversees for the PATH program. In which instance, Ms. Carroll would be required to provide the appropriate information to the individual. However, Ms. Carroll has no discretion in selecting the resources that she provides to callers. Rather the information provided is based on the location of the caller. For example, when a caller requests resources, Ms. Carroll gathers information including the zip code for the caller. She enters the information into the database and the database populates the available resources. Ms. Carroll is required to provide the information populated by the database, unless the consumer requests a resource outside of their area.

FSSA believes that Ms. Carroll's part-time employment with C2H does not conflict with her duties at FSSA. Ms. Higgins also provides that, in her role as the Program Director, Ms. Carroll is not in a position to participate in any decisions or votes or other matters related to a decision or vote where C2H would have a financial interest.

Given that Ms. Carroll's part-time employer C2H has a business relationship where it receives payments from a contractor with multiple contracts with the State, and Ms. Carroll's position as an I&R Specialist may include providing services related to those contracts, Ms. Carroll seeks a formal advisory opinion regarding whether she may continue her part-time employment without violating IC 4-2-6-10.5 and its prohibitions against an employee knowingly having a financial interest in a contract made by a state agency, unless the employee does not have contracting responsibilities and files a written disclosure. Ms. Carroll also seek a formal opinion on the applicability of IC 35-44.1-1-4, which prohibits certain public servants from having a pecuniary interest in or deriving a profit from a contract with the public servant's agency, to her circumstances.

The Commission cannot provide advice regarding past conduct; therefore, it cannot advise whether Ms. Carroll's outside employment with C2H was in compliance with the Code of Ethics prior to seeking this opinion. Accordingly, this opinion only addresses Ms. Carroll's outside employment with C2H going forward.

G. Outside employment

An outside employment or professional activity opportunity creates a conflict of interests under IC 4-2-6-5.5(a) if it results in the employee: 1) receiving compensation of substantial value when the responsibilities of the employment are inherently incompatible with the responsibilities of public office or require the employee's recusal from matters so central or critical to the performance of his or her official duties that his or her ability to perform them would be materially impaired; 2) disclosing confidential information that was gained in the course of state employment; or 3) using or attempting to use his or her official position to secure unwarranted privileges or exemptions of substantial value that are not properly available to similarly situated individuals outside state government.

The Commission generally defers to an agency's Ethics Officer regarding outside employment opportunities since it views them as being in the best position to determine whether a conflict of interests might exist between an employee's state duties and an outside employment opportunity.

Ms. Higgins, FSSA's Ethics Officer, provides that Ms. Carroll's part-time employment as an I&R Specialist for C2H is not incompatible with her FSSA duties, nor does it require recusal from her official responsibilities. The PATH program she oversees is separate and distinct from the Open Beds program through DMHA, and she has no interaction or involvement with C2H or the IN211 in her position at FSSA. While there is a potential that Ms. Carroll, while serving in her role as I&R Specialist for C2H, may receive a call regarding a resource that includes the CMHCs that she oversees for the PATH program, Ms. Carroll has no discretion in selecting the resources that she provides to callers. Rather the information provided is based on the location of the caller; the caller's zip code is entered into the database and the database populates the available resources.

The Commission confirmed that Ms. Carroll understands that she is prohibited from disclosing confidential information she gained from FSSA in her position with C2H and that she must not use or attempt to use her official position to secure unwarranted privileges or exemptions of substantial value that are not properly available to similarly situated individuals outside state government.

Accordingly, the Commission finds that Ms. Carroll's outside employment with C2H would not violate IC 4-2-6-5.5.

H. Conflict of interests-decisions and votes

IC 4-2-6-9 (a)(1) prohibits Ms. Carroll from participating in any decision or vote, or matter relating to that decision or vote, if she has a financial interest in the outcome of the matter.

Similarly, IC 4-2-6-9(a)(3) prohibits Ms. Carroll from participating in any decision or vote, or matter relating to that decision or vote, if a business organization in which she is serving as an employee has a financial interest in the matter. The definition of “financial interest” in IC 4-2-6-1(a)(11) includes, in part, “an interest arising from employment”.

Ms. Carroll currently works as a Program Director for the PATH program and is seeking to maintain her outside employment with C2H. Accordingly, she would be prohibited from participating in any decisions or votes, or matter relating to those decisions or votes, in which C2H would have a financial interest in the outcome.

Ms. Higgins provides that Ms. Carroll is not in a position at FSSA to participate in any decisions or votes, or matters related to a decision or vote, in which C2H would have a financial interest in the outcome. Accordingly, the Commission finds that a potential conflict of interests does not currently exist for Ms. Carroll.

If Ms. Carroll’s circumstances change and a potential conflict of interests is identified in the future, she must follow the disclosure requirements in IC 4-2-6-9(b), including notifying her appointing authority and seeking an advisory opinion from or filing a written disclosure statement with the Commission.

I. Conflict of interests – contracts

Pursuant to IC 4-2-6-10.5, a state employee may not knowingly have a financial interest in a contract made by any state agency. The Code defines “financial interest” to include an interest arising from employment. The Commission has interpreted this rule to apply when a state employee derives compensation from a contract between a state agency and a third party. This prohibition however does not apply to an employee that does not participate in or have official responsibility for any of the activities of the contracting agency, provided certain statutory criteria are met.

Ms. Carroll’s part-time outside employer, C2H, has a business relationship with IN211 through which C2H is reimbursed for providing services related to the contracts that IN211 has with FSSA. However, Ms. Higgins provides that Ms. Carroll’s compensation is not directly billed to any FSSA contract or other state contract. The source of her compensation is C2H’s general operating funds.

Accordingly, the Commission finds that Ms. Carroll would not have a financial interest in a state contract through her position at C2H and would not be in violation of this rule.

J. Criminal conflict of interests statute

In the Formal Advisory Opinion request, Ms. Higgins also asked whether IC 35-44.1-1-4, which prohibits certain public servants from having a pecuniary interest in or deriving a profit from a contract with the public servant’s agency, would apply to Ms. Carroll’s circumstances.

IC 35-44.1-1-4 is the criminal statute that prohibits any public servant from knowingly or intentionally having a pecuniary interest in or deriving a profit from a contract/purchase connected with an action by the agency served by the public servant. The statute contains certain exceptions in subsection (c). One of these exceptions applies to an individual who obtains written approval from the Commission that the individual will not or does not have a conflict of interests in connection with a contract or purchase under IC 4-2-6 and IC 35-44.1-1-4.

The Commission confirmed with Ms. Higgins that Ms. Carroll does not have a pecuniary interest in any contracts with the agency she serves (FSSA), as the salary she receives for her part-time employment at C2H is not derived from any FSSA or other state contracts.

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

K. Confidential information

Ms. Carroll is prohibited under 42 IAC 1-5-10 and 42 IAC 1-5-11 from benefitting from, permitting any other person to benefit from, or divulging information of a confidential nature except as permitted or required by law. Similarly, IC 4-2-6-6 prohibits Ms. Carroll from accepting any compensation from any employment, transaction, or investment which is entered into or made as a result of material information of a confidential nature. The term “person” is defined in IC 4-2-6-1(a)(13) to encompass both an individual and a corporation. In addition, the definition of “information of a confidential nature” is set forth in IC 4-2-6-1(a)(12).

To the extent Ms. Carroll is exposed to or has access to such confidential information in her position with FSSA, she would be prohibited not only from divulging that information but from ever using it to benefit any person, including her outside employer, in any manner.

L. Use of state property and Ghost employment

IC 4-2-6-17 prohibits Ms. Carroll from using state property for any purpose other than for official state business unless the use is expressly permitted by a general written agency, departmental, or institutional policy or regulation. Likewise, 42 IAC 1-5-13 prohibits Ms. Carroll from engaging in, or directing others to engage in, work other than the performance of official duties during working hours, except as permitted by general written agency, departmental, or institutional policy or regulation.

To the extent that Ms. Carroll observes these provisions in her employment with FSSA, such outside professional activity would not violate these ethics laws.

Subject to the foregoing analysis, the Commission finds that Ms. Carroll’s outside employment would not be contrary to the Code of Ethics.

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

IX. Director's Report

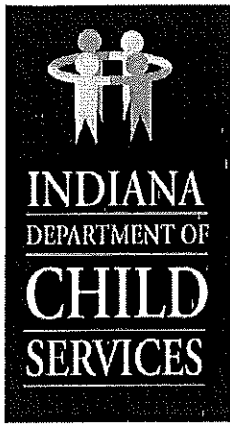
State Ethics Director, Jen Cooper, stated that the number of informal advisory opinions issued by the Office of Inspector General since the last meeting was 35, which covered post-employment restrictions, conflicts of interests, and outside employment.

Ms. Cooper also announced the upcoming 2018 Auditor & Investigator Conference, set to take place on June 5, 2018, which would include speakers from the State Examiner's Office, the Indiana State Police, and the Office of Inspector General.

X. Adjournment

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

The public meeting adjourned at 10:50 a.m.



Eric J. Holcomb, Governor
Terry J. Stigdon, MSN, RN, Director

Indiana Department of Child Services
Room E308 – MS47
302 W. Washington Street
Indianapolis, Indiana 46204-2738

317-234-KIDS
FAX: 317-234-4497

www.in.gov/dcs

Child Support Hotline: 800-840-8757
Child Abuse and Neglect Hotline: 800-800-5556

June 1, 2018

State Ethics Commission
Office of the Inspector General
315 W. Ohio St., Rm. 104
Indianapolis, IN 46202
Via email: info@ig.in.gov

Re: Request for Formal Advisory Opinion for Sam Charbonneau

Dear Chairman Clevenger and members of the State Ethics Commission:

The Department of Child Services (DCS), on behalf of Sam Charbonneau, requests a formal advisory opinion from the State Ethics Commission (SEC) addressing several ethical considerations as they relate to Mr. Charbonneau.

Mr. Charbonneau is currently employed as a family case manager in Floyd County. In November of last year, Mr. Charbonneau reached out to the former DCS Ethics Officer to advise her he may run for a political office. In February of this year, Mr. Charbonneau confirmed to me by email he planned to run for an Indiana State Representative seat. I advised him to seek an informal opinion from the Inspector General, which he did. He shared that opinion with me on April 19th, and he has agreed that opinion can be included for your review with this letter. In May, Mr. Charbonneau ran in the primary and won his party's seat for Indiana State Representative; the election will be held in November.

Attached to this letter are several items, including a letter sent to Mr. Charbonneau November 16, 2017 from the former DCS ethics officer regarding state employees running for political office, Mr. Charbonneau's job description as a family case manager, a map titled "Indiana Department of Child Services Regional Managers", DCS Policy HR-3-5 titled "Supplemental Employment", DCS Policy HR-3-3 titled "Political Activity", and the informal advisory opinion Mr. Charbonneau received from the Inspector General's Office that he forwarded to me by email.

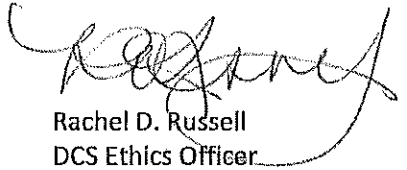


Protecting our children, families and future

DCS asks to be heard at the June 14th board meeting, and for the SEC to provide a formal advisory opinion as it relates to several ethics considerations, in particular those considerations involving Mr. Charbonneau maintaining state employment while running for political office, and if he can retain his position as a family case manager if he is elected as an Indiana State Representative.

Thank you for your consideration.

Sincerely,



Rachel D. Russell
DCS Ethics Officer

cc: Sam Charbonneau via email



Protecting our children, families and future



Eric J. Holcomb, Governor
Mary Beth Bonaventura, Director

Indiana Department of Child Services
Room E306 – MS47
302 W. Washington Street
Indianapolis, Indiana 46204-2738

317-234-KIDS
FAX: 317-234-4497
www.in.gov/dcs

Child Support Hotline: 800-840-8757
Child Abuse and Neglect Hotline: 800-800-5556

November 16, 2017

Mr. Sam P. Charbonneau,

This letter serves as recognition by DCS that you intend to run for political office. Please be advised that you are still bound by the State Code of Ethics, the DCS Code of Conduct, and all DCS policies and procedures. As a reminder, you must abide by the following restrictions and **MAY NOT**

- Use official authority to influence a decision or vote;
- Benefit from or divulge confidential information gained in the course of your employment with DCS;
- Participate in a vote in which you have conflict of interest, financial or otherwise;
- Solicit political contributions from other employees;
- Engage in political activity while working at DCS;
- Use State time to engage in other employment or for individual profit;
- Directly or indirectly coerce, attempt to coerce, command, or advise a state or local officer or employee to pay, lend, or contribute anything of value to a party, committee, organization, agency, or person for political office;
- Directly or indirectly request that subordinates assist with your duties related to your supplemental employment or assist, in any way, with a campaign for a political party or candidate.

If you are elected, please notify me immediately and we will evaluate.

Please let me know if you have any questions.

Best,

Erica Sullivan
Chief Counsel, Legal & Internal Affairs
Ethics Officer
Indiana Department of Child Services



Protecting our children, families and future

INDIANA DEPARTMENT OF CHILD SERVICES ADMINISTRATIVE POLICIES AND PROCEDURES		
Policy Number: HR 3-3	Effective Date: August 1, 2014	Version: 3.0
[REVISED] POLICY TITLE: POLITICAL ACTIVITY		
<p>[REVISED] OVERVIEW: In accordance with state law, DCS employees may not engage in any political activities when on duty or acting in an official capacity. Furthermore, state law restricts an employee's participation in certain political activities that might interfere with job performance and/or the provision of services under certain circumstances. Questions surrounding political activity should be directed to the DCS Ethics Officer, the Indiana Inspector General, or the State Ethics Commission.</p>		

I. DEFINITIONS

[REVISED] The Hatch Act: The Hatch Act is a federal statute that restricts the political activity of an individual whose principal employment is in connection with an activity which is funded completely by federal funds or grants.

II. REFERENCES

1. 42 IAC 1-5-4 Political Activity
2. 5 U.S.C. § 7321 – 7326 Federal Hatch Act
3. IC 4-2-6-5.5
4. IC 4-15-10-2
5. Indiana State Ethics Commission: Political Activities of State Employees

III. POLICY

- A. DCS employees must comply with the requirements governing political activity found in the Indiana Administrative Code, state law and federal law.

Note: Although some activities may be permitted under the Hatch Act, they may not be permitted under Indiana law or administrative code, so employees considering political activity should contact their DCS Ethics Officer, the Indiana Inspector General or State Ethics Commission. (For example, although the Hatch Act permits state employees to work on campaigns for public officials, 42 IAC 1-5-4 prohibits any employee who has purchasing or procurement authority from soliciting political contributions on behalf of any candidate for public office.)

- B. Employees must also consider the possibility that political activity may involve other Ethics Rules including, but not limited to, use of state time and equipment, conflicts of interest, prohibitions on accepting gifts, and confidentiality.
- C. **[REVISED]** Under the Hatch Act, a state employee may not:
1. Be a candidate for public office in a partisan election if the salary of the employee is paid completely by federal loans or grants,
 2. Use official authority or influence to interfere with or affect the results of an election or nomination,

3. Use his or her DCS title or represent themselves as a DCS employee when engaging in any political activities, or
 4. Directly or indirectly coerce, attempt to coerce, command, or advise a state or local officer or employee to pay, lend, or contribute anything of value to a party, committee, organization, agency, or person for political purposes.
- D. In addition to those activities listed under section C above, a DCS employee may not:
1. Engage in any political activity when on duty or acting in an official capacity,
 2. Solicit political contributions from other employees,
 3. Post or display political materials in DCS offices or other DCS facilities, wear political buttons or attire at work, or use state equipment, resources owned by DCS or other employees for any political activity,
 4. Solicit political contributions at any time from persons or entities whom the employee knows to have a business relationship with DCS, or
 5. Directly or indirectly request that subordinates assist, in any way, with a campaign for a political party or candidate.
- E. Outside of work hours, DCS employees may:
1. Express political opinions by voting, wearing political buttons, displaying stickers and posters on personal property,
 2. Campaign for and hold an office in political clubs and organizations, subject to the restrictions outlined in section C, and
 3. Contribute money to political organizations and attend political fundraising functions.
- F. Outside of work hours, DCS employees who do not have purchasing or procurement authority may:
1. **[REVISED]** Run for public office in an election; and/or
 2. **[REVISED]** Actively campaign for candidates for public office in an election as long as they do not reference their DCS employment.
- G. No employee will be appointed to, demoted, or dismissed from any position, or in any way be favored or discriminated against with respect to employment because of his or her political opinions or affiliations.
- H. Failure to comply with the above policies may violate state and/or federal law, and may result in disciplinary action, up to and including dismissal.

IV. [REVISED] PROCEDURE

- A. An employee running for an elected office or formally involved in partisan politics will immediately:
1. Notify the DCS Ethics officer at ethics@dcs.in.gov;
 2. Confirm with the fiscal department that his or her position is not completely federally funded;
 3. Seek Hatch Act advisory opinion by contacting:
Hatch Act Unit

US Office of Special Counsel
1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
Telephone: (800) 85-HATCH
Email: hatchact@osc.gov;

4. Seek an advisory opinion from the DCS Ethics Officer, Indiana Inspector General or State Ethics Commission if the circumstances dictate a formal ethics opinion and abide by any restrictions;
5. Fill out a request for supplemental employment and comply with all supplemental employment requirements; and
6. Ensure a supplemental authorization form is on file with the DCS Ethics Officer if elected to an office. If he or she intends to continue working for DCS the employee should seek an advisory opinion from the Attorney General regarding whether he or she would be considered a dual office holder.

B. All employees will:

1. Seek guidance from the DCS Ethics Officer if a political activity is not specifically referenced in this policy.
2. **[REVISED]** Report any violations of this policy to his/her work unit manager and DCS Internal Affairs.

- C. It is the responsibility of managers and supervisors to intervene, and, if necessary, engage in corrective and/or disciplinary action if an employee is in violation of this policy.

DATE: August 1, 2014
Mary Beth Bonaventura
Department of Child Services

A signed copy is on file.

INDIANA DEPARTMENT OF CHILD SERVICES ADMINISTRATIVE POLICIES AND PROCEDURES		
Policy Number: HR-3-5	Effective Date: July 1, 2005	Version: 1
POLICY TITLE: SUPPLEMENTAL EMPLOYMENT		
OVERVIEW: DCS employees may engage in supplemental employment subject to applicable conflict of interest laws, rules and policy. Employees must get supervisory approval prior to engaging in such outside employment.		

I. DEFINITIONS

- a. Supplemental (outside) employment: Receiving compensation for services rendered from an employer other than the State of Indiana.
- b. Conflict of interest: A situation in which regard for private interest tends to lead to disregard of a public duty or interest.
- c. State property: Materials, supplies, equipment, funds, and facilities that are owned by the State of Indiana.

II. REFERENCES

- a. 42 IAC 1-5
- b. 42 IAC 1-5-5 "Moonlighting"
- c. IC 4-2-6-1(9) and IC 4-2-6-9 "Ethics and conflicts of interest"

III. POLICY

- a. No employee of DCS shall have any outside employment or hold any contractual relationship that is:
 - i. With any business entity, agency or individual that is subject to regulation by, or is doing business with, DCS; **or**
 - ii. Capable of causing a continuing or recurring conflict between his/her private interests and the performance of his/her responsibilities to DCS, or that would impede the full and faithful discharge of his/her public duties.
- b. DCS employees wishing to engage in other employment outside their respective positions with DCS must assure that such additional employment does not interfere with their ability and availability to perform their job responsibilities with DCS, including scheduled work time and overtime requirements.
- c. Any supplemental employment shall not constitute a real or apparent conflict of interest and shall not require the use of State space, property, personnel, time, equipment or supplies. DCS employees may not solicit for-profit and non-profit products/services, or charitable contributions during work hours. Supervisors may not solicit their direct reports under any circumstances. The display of promotional materials (flyers, brochures) is limited to break areas.

IV. PROCEDURE

- a. All DCS full-time employees considering supplemental employment (including temporary employment) must complete the Supplemental Employment Authorization and submit it to their immediate DCS supervisor prior to accepting a position with an outside employer.
- b. The DCS supervisor will review the form and either:
 - i. Approve the request and notify the employee; or
 - ii. Deny the request based on a perceived conflict of interest and provide a brief explanation on the form; or
 - iii. Forward the form to the DCS ethics officer for determination. The ethics officer will may approve or deny the employee's request, or escalate the request to the Indiana State Ethics Commission for an advisory opinion.
- c. In the event a DCS Employee is presently engaged in supplemental employment that was not previously approved, that employee is to immediately complete the Supplemental Employment Authorization and seek approval. Should the request be denied, the employee would be advised to cease the supplemental employment within thirty days or seek an opinion from the State Ethics Commission.
- d. In all cases where the Supplemental Employment Authorization has been approved, a signed copy of the form will be forwarded to human resources and placed in the employee's personnel file.
- e. When the secondary employment ceases, the employee shall complete Part D of the approved Supplemental Employment Authorization and submit it to the immediate supervisor who will send it to human resources for placement in the employee's personnel file.
- f. Violation of this procedure shall result in appropriate disciplinary actions.

V. FORMS

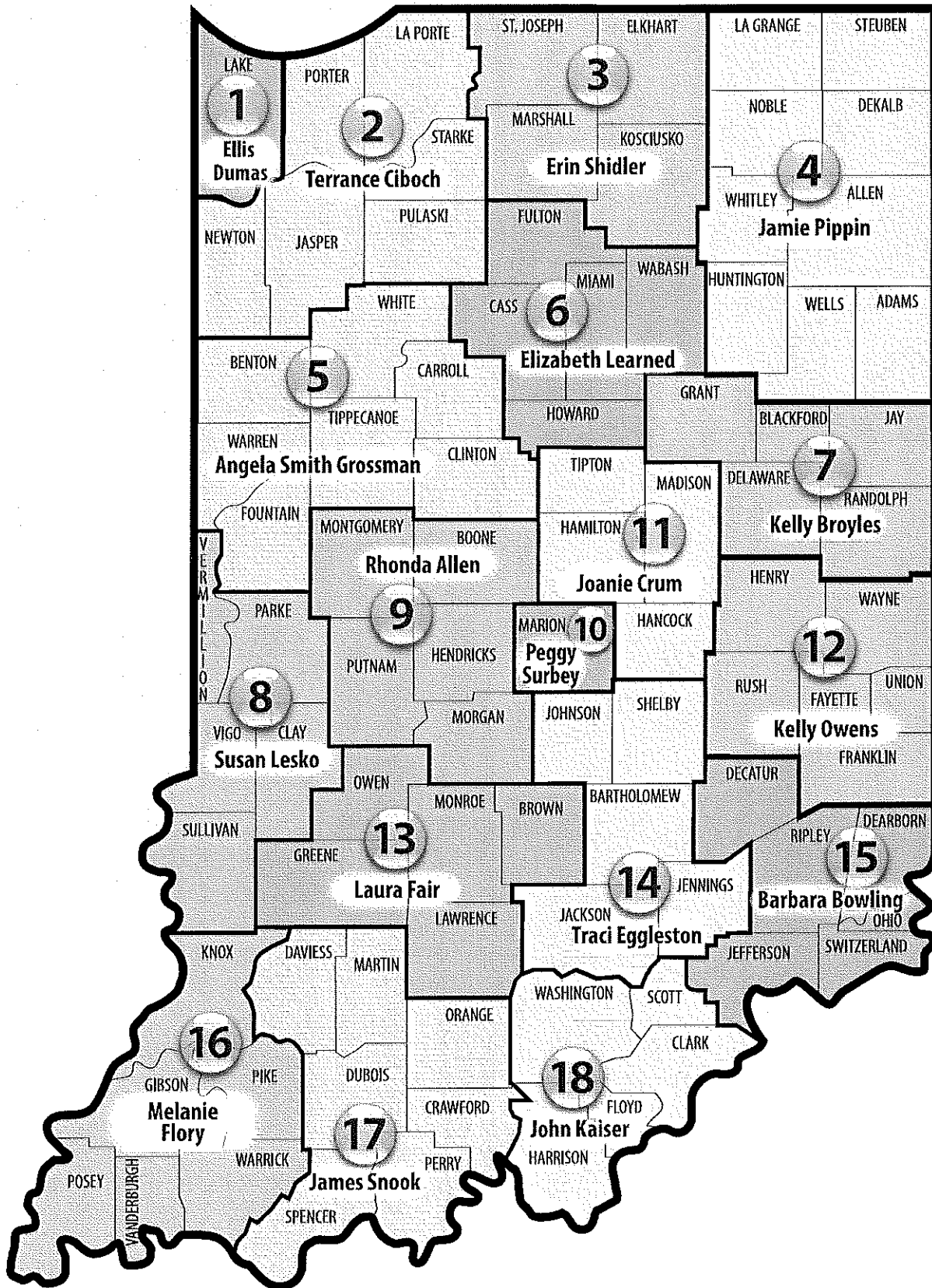
- a. Supplemental Employment Authorization

DATE: 06/15/05

James W. Payne, Director

Department of Child Services

Indiana Department of Child Services Regional Managers





JOB DESCRIPTION

State Form 52468 (12-05)

DRAFT

This document is used to provide a basic description of essential duties and other work elements.

Employee Name:	
Agency: Indiana Department of Child Services	BU: 00502
Division: Field Operations	Section/District: Local Office
Job Title: Family Case Manager Supervisor 4	Job Code: 007AP4
Working Title (if different from above):	
Reports To: Family Case Manager Supervisor 3 or Local Office Director	
FLSA Status: <input type="checkbox"/> Non-Exempt (OT Eligible) <input checked="" type="checkbox"/> Exempt	Effective Date:

Purpose of Position/Summary:

The incumbent works in a County Office of the Department of Child Services (DCS) and is responsible for the direction and supervision of a unit that provides protective services to children and families. The unit provides social services to maintain children in their families in a safe and positive manner, or to remove children from their family to place them in protective environments working through the court system. This role is expected to integrate and embed a learning environment inclusive of all staff, and a culture and climate of respect towards children, families and staff alike. The incumbent reports to either a Division Manager or Assistant Director in large County Offices or to the Director in smaller counties.

Supervisory Duties/Responsibilities:

- Promote, maintain, and model working relationships with staff, clients, and partners that are inclusive, respectful and adhere to the vision, mission and core values of the Department
- Prioritizes work within the department and ensures that deadlines are met. This includes assessment of the risk to the child when complaint calls are received and staff is not available to respond to all calls
- Assigns work to unit staff. Sets standards for work based on federal, state and judicial system regulations and guidelines. Monitors the flow and quality of work performed. Schedules on call rotation of Family Case Managers 2's
- Reassigns work to maintain equitable work distribution and to cover vacant caseloads
- Ensures effective monitoring and accountability of staff to meet the best interest of children specifically for direct reports, and ensures accountability of the direct reports to set similar goals and objectives for the staff they supervise
- Ensures effective monitoring and accountability of staff to promote and model responsible case planning in connecting families with appropriate resources. Manage employee travel, time reporting and overtime to ensure maximum efficiency in case management and costs.
- Provides clinical supervision to Family Case Managers
- Establishes and/or communicates and interprets policy and objectives to staff
- Effectively trains Family Case Managers and other staff on new programs and developments, as well as provides training to new staff
- Identifies management and organizational problems and provides training and development opportunities to resolve the problems
- Reviews and measures staff and unit performance
- Identifies employee training needs and prepares employee training plans
- Conducts performance appraisals and maintains a fact file for all assigned employees
- Interviews applicants for vacant positions and makes promotional and hiring recommendations to the Local Office Director
- Review and/or authorize leave requests for Family Case Managers and other staff under their supervision
- Review, monitor, and approve timesheets and/or authorize overtime

- Identifies behaviors and/or performance contrary to the vision, mission and core values of the Department. Recommends, assists and documents the need for corrective disciplinary action
- Assists the Director or Division Manager in establishing long-term goals and objectives for the county office or division. Sets and implements goals and objectives within the department both long and short term

Case Management Duties/Responsibilities:

- Reviews actions taken by the Family Case Managers during home visits resulting from allegations of abuse or neglect for soundness of judgement and to ensure that appropriate steps were taken to protect involved children;
- Reviews case files to ensure that documentation is sufficient to meet Practice Model and court standards if subpoenaed. Reviews documents that are written specifically for the court such as recommendations to make a child a CHINS (Child in Need of Services), informal adjustment plans, family progress reports, reunification plans, and terminations of parental rights. The formats must meet court standards and the content must substantiate the recommendation of the department. The supervisor utilizes the assistance of the county attorney for this area but is held accountable for their review and approval of actions taken by the Family Case Managers that lead to the recommendations. Also reviews recommendations regarding licensure of foster care homes and adoptive home studies as well as other reports;
- Ensures that Family Case Managers and other staff are following the Practice Model, and other policies, regulations and operating procedures. Assures that contacts between staff and clients receiving services, as well as, between staff and all other involved social service providers and/or the public are conducted in a professional and ethical manner;
- Review selected assessments or ongoing cases using the RPS tool located in the Management Gateway for Indiana's Kids (MaGIK). Complete field observations for the selected assessment or ongoing case by accompanying the FCM during his or her assessment, home visit, and/or Child and Family (CFT) Meeting. Provide feedback to the FCM regarding the observations and identify areas of strength and opportunity to achieve better outcomes for the child and family;
- Conducts staff and community child protection team meetings;
- Oversees the assessment of a family's progress and capability to be reunited with their children;
- Maintains positive relationships with foster parents and foster parent organizations;
- Communicates closely and effectively with the local court holding juvenile jurisdiction. Sets goals and objectives for a child welfare management unit to ensure the safety, wellbeing and permanency of children in a timely and efficient manner;
- Prepares for and testifies in court or may assist staff in preparation and testimony for hearings;
- Exercising considerable judgment, assists staff on call with difficult, emergency, life threatening, or other serious situations;
- May participate in on call in a supervisory capacity. May be responsible for on call rotation with the Family Case Managers 2's. May accompany staff on home visits where crisis situations exist (although these are difficult to predict) and may conduct home visits when staff is not available to respond to a call;
- Establishes effective working relationships with supervisory staff of community social services agencies to facilitate services;
- May perform public relations functions as directed by a supervisor, by addressing groups or individuals about the purpose, goals and methods of programs;
- May represent the department in administrative appeals and hearings as a result of a complaint by people receiving services or by staff;
- Performs related duties as assigned.

Core Competencies:

- **Change Management** – Successfully implements and lead change in work unit. Openly support change and motivates and encourages others by the use of sound leadership skills, building a culture of respect and a sense of team.
- **Staff Development/Performance Management** – Provides clear standards for employee achievement. Establishes a culture which fosters a learning environment and embrace of the agency practice model.

- **Judgment** - Exercises logical thinking and foresees consequences of actions; has adequate knowledge of all applicable policies or rules and selects appropriate guidelines or procedures to follow in a variety of situations.
- **Employee Relations** - Is supportive, considerate, fair, and objective in one's behavior toward subordinates; establishes and maintains a cordial and harmonious work atmosphere.
- **Problem Solving/Decision Making** - Recognizes and defines problems; thoroughly obtains and analyzes facts; takes immediate corrective action; uses resources and techniques to develop sound solutions while foreseeing possible consequences.

Preferred Experience:

Bachelor's degree from an accredited college/university in Child Development, Criminology, Criminal Justice, Education, Healthcare, Home Economics, Psychology, Guidance and Counseling, Social Work, or Sociology or a related field. One (1) year of experience in the provision of social services to children and/or families. One (1) year of the experience in a leadership, managerial, or supervisory capacity is preferred or accredited graduate training in Social Work.

Job Requirements:

- Advanced knowledge of principles and practices of social work, casework, sociology, and group and individual counseling, including new methods and theories of treatment;
- Thorough knowledge of state and or federal laws, regulations, guidelines , policies and standards affecting child protection services, foster care, family preservation and adoption;
- Thorough knowledge of the operation of the local court system and law enforcement agencies;
- Specialized knowledge of State Personnel Department and Settlement Agreement rules, regulations and policies and the ability to apply them in the management of staff;
- Working knowledge of the state budget process;
- Ability to exercise sound judgment while managing crises situations including those involving confronting, aggressive adults being investigated for child abuse or neglect;
- Ability to prioritize and manage workflow;
- Ability to supervise the work of professional and clerical staff;
- Ability to prepare clear, accurate reports;
- Ability to use tact and empathy in working with people of diverse backgrounds;
- Ability to establish and maintain productive working relationships with supervisory staff of other organizations whose cooperation is necessary in delivering services to children and families in protective services;
- Ability to communicate articulately for court testimony;
- Ability to use computerized caseload data in planning and coordination of work;
- Ability to investigate and interview alleged victims and perpetrators of child abuse or neglect in an appropriate and effective manner;
- Required to possess and maintain a valid drivers' license, independent reliable automobile and appropriate automobile insurance coverage at all times.
- The Indiana Department of Child Services is a drug free work place. Candidates are subject to pre-employment and random drug/alcohol testing.

Difficulty of Work:

The incumbent must ensure that decisions made and work completed by departmental staff comply with highly complex state and federal laws, rules and regulations. The supervisor must also be highly knowledgeable of the operations of the local judicial system, local law enforcement and social services agencies. Each family and child that comes in contact with the department represents a unique challenge. Significant adaptation of existing and sometimes limited resources may be necessary to meet the needs of children and families. Extensive judgment is required to determine the risk involved to each child not only upon initial contact, but when return to, or maintenance in the family, is considered. The supervisor may answer complaint calls and or accompany workers on calls involving potential personal risk.

Responsibility:

The supervisor works in a highly independent manner in the exercise of duties. Errors are often not detected until after the fact and may result in the injury or death of a child or loss of court case. The decisions made by the supervisor and subordinates for whom he or she is responsible have direct consequence to the health and lives of the children and families served. The health and lives of the

supervisor and workers are sometimes threatened and the supervisor is responsible for ensuring that reasonable safeguards are taken to protect staff. The supervisor is also responsible for overseeing adequate provision of services, licensure of foster care homes, and home studies for adoptions.

Personal Work Relationships:

Working relationships with the staff will be in a supervisory and management capacity. The incumbent will assist staff in maintaining morale and sense of ethics in difficult situations. The incumbent works with families and their children to assess risks, provide services, or discuss the actions and recommendations of a worker. Contacts with law enforcement personnel, supervisors of other social service agencies, and medical professionals are to coordinate services, obtain assistance, or to contract for services. Contacts with the legal system include coordinating with the county attorney. The incumbent works with the judicial system to represent the department in hearings and trials. The supervisor is also responsible for providing information to elected officials upon request.

Physical Effort:

Majority of work is performed in a professional office setting. Incumbent must be able to operate a motor vehicle and drive short and long distances in all weather and light conditions. Must be able to lift and care for children.

Working Conditions:

Incumbent is required to use his or her personal vehicle for work-related travel and transportation of children. The incumbent may be required to work from more than one location during a given work week which may include travel within a specified region. May be required to fly to other states with possible overnight stays.

Croft, Celeste

From: Charbonneau, Sam P
Sent: Thursday, April 19, 2018 9:27 AM
To: Savage, Matthew (Matt)
Cc: Russell, Rachel D; Barrett, Jennifer
Subject: RE: Ethics Informal Advisory Opinion; Charbonneau; DCS; Political Activity

Mr. Savage,

Thank you for the prompt response and detail. I have attached the response to Ms. Russell so we are all on the same page. One last question. Is seeking an Ethics Informal Advisory Opinion during my work day regarding my campaign a violation? You will have to forgive me, however this is all brand new to me.

-Sam Charbonneau

From: Savage, Matthew (Matt)
Sent: Wednesday, April 18, 2018 5:05 PM
To: Charbonneau, Sam P <Sam.Charbonneau@dcs.IN.gov>
Subject: Ethics Informal Advisory Opinion; Charbonneau; DCS; Political Activity

Sam,

Thank you for contacting our office for ethics advice. I understand that you are a Family Case Manager Supervisor for the Department of Child Services' (DCS) Floyd County office. You are also a candidate for Indiana State Representative, and you ask if you may accept certain campaign donations.

The first potential donor is a person who co-owns a company from which DCS has purchased beds (the Bed Company) for the last seven years. You note that DCS also purchases beds from other businesses, such as Walmart and Bowles Mattress. You also write that the Bed Company does not have any contract with the State for the beds or services.

Other potential campaign donors include attorneys (the Attorneys) who have acted as public defenders in cases wherein they represented parents in Child in Need of Services (CHINS) proceedings in Floyd County. You write that you are a supervisor and do not have any direct contact with their clients.

You write that you have not solicited campaign contributions from the Attorneys or the Bed Company's co-owner. Instead, all of the potential donors voluntarily requested to make financial contributions to your campaign.

Your question primarily involves the State Ethics Code's (Code) rule on political activity found at 42 IAC 1-5-4. I included all relevant rules at the end of this opinion for your reference.

The political activity rule prohibits you from engaging in political activity, including solicitation of political contributions from any person when on duty or acting in your official capacity. When not on duty or acting in your official capacity, you can engage in political activity so long as you do not solicit political contributions from any state employees or special state appointees you supervise. The rule also prohibits you from soliciting campaign donations from any person or organization that has a business relationship with DCS. The Code defines "business relationship" to include the dealings of a person with an agency seeking, obtaining, establishing, maintaining, or implementing (1) A pecuniary interest in a contract or purchase with the agency or

(2) a license or permit requiring the exercise of judgment or discretion by the agency. "Business relationship" also includes the relationship between an agency and a registered or unregistered lobbyist.

Based on the information you provided, the Attorneys do not have a business relationship with DCS. **As a result, 42 IAC 1-5-4 does not prohibit you from soliciting or accepting political contributions from the Attorneys so long as you comply with the rule's other requirements.** For example, you may not discuss/accept the contributions or engage in other political activity while on duty or acting in your official capacity.

Although DCS has a business relationship with the Bed Company, it is unclear if DCS has a business relationship with the Bed Company's co-owner. This would likely depend on the legal status of the Bed Company and the nature of the co-owner's ownership interest. Even if DCS has a business relationship with the co-owner, the political activity rule does not specifically prohibit acceptance of unsolicited political donations. **As a result, the political activity rule does not prohibit you from accepting unsolicited political contributions from the Bed Company's co-owner.** The important distinction here is that you would merely be *accepting* the contribution instead of *soliciting* the contribution. The political activity rule still prohibits you from soliciting political contributions from a person or organization that has a business relationship with DCS.

The gift rule (42 IAC 1-5-1) also prohibits state employees from accepting a gift from someone who has a business relationship with the employee's state agency; however, it exempts political contributions subject to IC 3-9-2 from the prohibition. Therefore, so long as the unsolicited contributions comply with IC 3-9-2, the gift rule would permit you to accept the donations from the Bed Company's co-owner. The gift rule would not apply to donations from the Attorneys because DCS does not have a business relationship with the Attorneys.

In addition to the political activity and gift rules, you should also be aware of the Code's rules on ghost employment (42 IAC 1-5-13) and use of state property (IC 4-2-6-17). Any activity related to seeking or holding a public office must be done outside of your normal state working hours to avoid violations of the ghost employment rule. Also, you cannot use state property, such as equipment or materials, while engaging in activities related to seeking or holding public office in order to comply with the use of state property rule. For example, you cannot use your state computer, state email account or state phone to work on matters related to the public office, and you cannot engage in any activities related to your work for the public office while you are working at your state job. All such activities must be done using your own resources and on your own time, such as after work or on the weekends. In addition, although most agencies, including DCS, have policies regarding minimal personal use of state property, these policies strictly prohibit using state property for a political purpose.

Finally, you should ensure that seeking and/or holding elected office does not violate the outside employment rule found at IC 4-2-6-5.5. We recommend that you contact DCS's Ethics Officer, Rachel Russell, to ensure that your political activities do not conflict with your DCS responsibilities and that Ms. Russell does not have additional concerns about other matters discussed in this opinion.

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,

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

IC 4-2-6-1 Definitions

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

(5) "Business relationship" includes the following:

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

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

(11) "Financial interest" means an interest:

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

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

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

- (A) obtained by reason of the position or office held; and
- (B) which:
 - (i) a public agency is prohibited from disclosing under IC 5-14-3-4(a);
 - (ii) a public agency has the discretion not to disclose under IC 5-14-3-4(b) and that the agency has not disclosed;

or

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

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

IC 4-2-7-1 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.

42 IAC 1-5-1 Gifts; travel expenses; waivers

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

Affected: IC 3-9-2; IC 4-2-6

Sec. 1. (a) A state employee or special state appointee, or the spouse or unemancipated child of a state employee or special state appointee, shall not knowingly solicit, accept, or receive any:

- (1) gift;
- (2) favor;
- (3) service;
- (4) entertainment;
- (5) food;
- (6) drink;
- (7) travel expenses; or
- (8) registration fees;

from a person who has a business relationship with the employee's or special state appointee's agency or is seeking to influence an action by the employee or special state appointee in his or her official capacity.

(b) The following shall not be subject to this rule:

(1) Gifts, favors, services, entertainment, food, drink, travel expenses, or registration fees from public agencies or public institutions.

(2) Food or drink consumed at a public meeting to which at least twenty-five (25) individuals are invited. A meeting will be considered public if:

(A) the event is a reception or other gathering for public officials that is not arranged to solicit government procurement of goods or services;

(B) the employee is giving a speech or participating in a presentation in the employee's official capacity; or

(C) the meeting has a formal educational program that the employee is attending to assist him or her in performing official duties.

(3) Mementos or souvenirs of nominal value.

(4) Food or drink consumed by an employee during negotiations or other activities related to an Indiana economic development corporation economic development project.

(5) Gifts, favors, services, entertainment, food, or drinks from relatives, or a person with whom the employee or special state appointee has an ongoing social relationship, so long as:

(A) the gifts or other items of value are not deducted as a business expense; and

(B) the gift giver is not seeking to influence an action by an employee or special state appointee in that person's official capacity.

(6) Political contributions subject to IC 3-9-2 that are reported in accordance with applicable law.

(7) Nominal refreshments offered to a state employee or a special state appointee conducting official state business while the employee or special state appointee is at a workplace of a person who:

(A) has a business relationship; or

(B) seeks to influence official action;

with the employee's or special state appointee's agency.

(8) Discount and other promotional programs approved and made available to state employees and special state appointees through the state personnel department or the Indiana department of administration.

(c) An employee's or special state appointee's state officer or appointing authority may waive application of subsection (a) of this rule in individual cases when consistent with the public interest. The waiver shall:

(1) be in writing; and

(2) identify the following:

(A) The employee or special state appointee.

(B) The nature and value of the gift.

(C) The donor of the gift.

(D) Why acceptance of the gift is consistent with the public interest.

(d) Written waivers must be filed with the commission within thirty (30) days of receipt of the gift. The commission may review the written waivers. An appointing authority or state officer may designate authority to the agency's ethics officer to waive application of this rule on behalf of the appointing authority or state officer. The designation shall be in writing and filed with the commission.

(e) If a person wishes to reimburse the state for any part or all of the expenses incurred by the state for appearances of a state officer, employee, or special state appointee or their official representatives on behalf of the state, the person shall remit to the treasurer of state any such amounts. The treasurer of the state shall quietus the funds into the general fund.

42 IAC 1-5-4 Political activity

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

Affected: IC 3-9-2; IC 4-2-6-1

Sec. 4. (a) A state employee or special state appointee shall not engage in political activity including solicitation of political contributions from:

- (1) another employee or special state appointee; or
- (2) any other person;

when on duty or acting in an official capacity.

(b) This section does not prohibit a state employee or special state appointee from engaging in such activity when not on duty.

(c) A state employee or special state appointee shall not solicit political contributions at any time from:

- (1) persons whom the employee or special state appointee knows to have a business relationship with the employee's or the special state appointee's agency; or
- (2) state employees or special state appointees directly supervised by the employee or the special state appointee.

(d) The appointing authority of an agency and all employees or special state appointees with purchasing or procurement authority on behalf of the state shall not solicit political contributions on behalf of any candidate for public office, unless that individual is a candidate for public office himself or herself.

42 IAC 1-5-5 Outside Employment

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

Affected: IC 4-2-6-5.5; IC 4-2-7

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

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

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

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

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

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

(A) of substantial value; and

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

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

42 IAC 1-5-10 Benefiting from confidential information

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

Affected: IC 4-2-7

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

42 IAC 1-5-11 Divulging confidential information

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

Affected: IC 4-2-7

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

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

Sec. 17. (a) Subject to IC 4-2-7-5, a state officer, an employee, or a special state appointee may not use state materials, funds, property, personnel, facilities, or equipment for purposes other than official state business unless the use is expressly permitted by a general written agency, departmental, or institutional policy or regulation that has been approved by the commission. The commission may withhold approval of a policy or rule that violates the intent of Indiana law or the code of ethics, even if Indiana law or the code of ethics does not explicitly prohibit that policy or rule.

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

42 IAC 1-5-13 Ghost employment

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

Affected: IC 4-2-7

Sec. 13. A state officer, employee, or special state appointee shall not engage in, or direct others to engage in, work other than the performance of official duties during working hours, except as permitted by general written agency, departmental, or institutional policy or regulation.

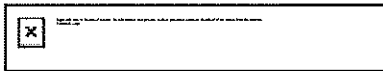
From: noreply@formstack.com [mailto:noreply@formstack.com]

Sent: Monday, April 16, 2018 11:16 AM

To: IG Info <info@ig.IN.gov>

Subject: Advice

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Formstack Submission For: ig_2334

Submitted at 04/16/18 11:15 AM

Name:	Sam Charbonneau
Email:	Sam.charbonneau@dcs.in.gov
Phone:	(502) 727-8234
State Agency:	Indiana Department of Child Services located in Floyd County
Description of Your State Occupation:	Family Case Manager Supervisor, Floyd County Department of Child Services

What is your ethics question?:

I am currently a candidate for Indiana State Representative. I have received requests (unsolicited) to make financial contributions from two sources. The first Source is a individual who co-owns a company which DCS uses to purchase beds for kids for the past 7 years. DCS also uses other company's such as Wal Mart and Bowles Mattress. The individual/company does not have any contact with the state of Indiana for the beds or services. Can I receive campaign donations?
2nd Question: I have received unsolicited request from area attorney's who have been assigned as public defenders in some cases where they represent the parents in CHINS proceedings within Floyd County. I am a supervisor and do not have any direct contact with the client. Can I receive financial campaign donations? In both questions, I have not solicited the individuals, they have volunteered and requested to make a financial contribution.

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Formstack, 8604 Allisonville Road, Suite 300, Indianapolis, IN 46250

Purpose

This Policy establishes general guidelines permitting the limited personal use of State Resources by Employees and seeks to provide a reasonable safe harbor from concerns about violating the Indiana Code of Ethics for permissible personal use of State Resources.

Applicability

This Policy is internal to the Indiana Management Performance Hub and shall apply to all Employees, as defined herein.

Authority

This Policy is promulgated by the Indiana Management Performance Hub pursuant to IC 4-2-6-17(a).

Definitions

1. "Employee," as set forth in IC 4-2-6-1(a)(9), 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.
2. "MPH" means the Indiana Management Performance Hub established by IC 4-3-26-8.
3. "Policy" means this *Indiana Management Performance Hub De Minimus Use Policy*.
4. "State Resources" means State materials, property, facilities, and equipment, as enumerated in IC 4-2-6-17(a).

Policy

MPH recognizes that Employees are responsible individuals who are the key to making government work for its citizens. It further recognizes that Employees occasionally need to use State Resources for emergencies and other infrequent personal activities that cannot reasonably be handled away from work. These activities might include communicating with schools, child-care providers, physicians, and others. MPH believes that accommodating occasional and limited use of State Resources provides a public benefit of attracting and maintaining a diverse, well-rounded workforce. Such limited, personal use of State Resources should not be considered a violation of the Indiana Code of Ethics. The parameters of permissible use under this Policy are as follows:

1. The use of State Resources must not interfere with the performance of official duties and work responsibilities;

2. The use of State Resources must be infrequent, of short duration and, unless not reasonably practical, made on the Employee's personal time;
3. The use must not be for the purpose of conducting business related to an outside commercial activity;
4. The use must not be for an illegal activity;
5. The use must not be for a political purpose. A political purpose does not include handling or disposing of unsolicited political communications;
6. An Employee shall not make private use of any State Resources which have been removed from state facilities or other official duty stations, even if there is no cost to the State, unless otherwise approved;
7. The use must be in accordance with the current version of the Information Resources Use Agreement ("IRUA"). The restrictions in the IRUA apply to all information resources including, but not limited to, state hardware, software, data, information, network, personal computing devices, phones and other information technology;
8. The use must not violate any other ethics rules, State of Indiana policies, or MPH agency policies.

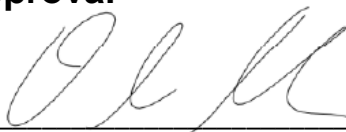
Supervisors are expected to use reasonable efforts to monitor Employees for compliance. If a supervisor reasonably believes that an Employee is not in compliance with this Policy, the supervisor may implement reasonable safeguards to achieve compliance, up to and including complete prohibition of personal use of State Resources by the Employee, action by human resources, or immediate termination of employment or contract related to the Employee. If MPH is not a signatory to the contract related to the Employee, MPH may reduce its participation in the contract or prohibit the Employee in question from interacting with MPH.

This Policy shall be applied in conformance with applicable statutes and rules, at the discretion of the MPH appointing authority and/or MPH ethics officer.

Revision History

Version	Date	Name	Revision Description
1	5/4/18	Ted Cotterill	Initial version.

Approval



Chief Data Officer
State of Indiana