

**MINUTES OF THE MEETING OF
THE INDIANA STATE ETHICS COMMISSION
December 2, 2016**

I. Call to Order

A regular meeting of the State Ethics Commission (“Commission”) was called to order at 9:00 a.m. Members present included James N. Clevenger, Chairperson; Priscilla Keith; Robert Jamison; Peter Nugent; and Daryl Yost. Office of Inspector General staff present included Cyndi Carrasco, Inspector General; Jennifer Cooper, Ethics Director; Stephanie Mullaney, Compliance Officer; Tiffany Mulligan, Chief Legal Counsel; Chelsea Smith, Staff Attorney; and Cindy Scruggs, Director of Administration.

Others present were Rachel Russell, Deputy Director and Ethics Officer, Indiana State Department of Health; Kimberley Rhoades, Director of Long Term Care, Indiana State Department of Health; Deanna Smith, Staff Attorney, Indiana State Department of Health; Hilari Sautbine, Staff Attorney, Indiana State Department of Health; Adrienne Brune, Staff Attorney, Indiana State Department of Health; Barry Leavitt, former senior database analyst programmer, FSSA; Ryan Stout, Senior Manager Medicaid Applications, Family and Social Services Administration; Allison Taylor, General Counsel, Family and Social Services Administration; and Mark Tidd, Ethics Officer, Indiana Department of Transportation.

II. Adoption of Agenda and Approval of Minutes

Commissioner Yost moved to adopt the agenda and Commissioner Jamison seconded the motion which passed (3-0). Commissioner Yost moved to approve the minutes of the November 10, 2016 Commission meeting and Commissioner Jamison seconded the motion which passed (3-0).

III. Consideration of Limited Use of State Property Policy

**Joe Hoage, General Counsel & Ethics Officer
Indiana Department of Natural Resources**

Mr. Hoage presented a revised version of the DNR’s Limited Use of State Property policy. MR. Hoage explained that Indiana has been chosen to host the 2017 annual meeting of Association for Conservation Information. DNR was seeking to amend their Limited Use Policy to allow a limited number of DNR employees to perform tasks related to this meeting. After the Commission discussed the matter Chairman Clevenger requested that a sunset provision be added to the policy to clearly delineate when tasks related to the meeting will conclude. Commissioner Yost moved to approve the amended Limited Use Policy provided the DNR

added the language requested by Chairman Clevenger. Commissioner Keith seconded the motion which passed (4-0).

IV Request for Formal Advisory Opinion

**16-I-17 Barry A. Leavitt, Former Senior Database Analyst Programmer
Allison Taylor, General Counsel and Ethics Officer
Ryan Stout, Senior Manager Medicaid Applications
Indiana Family and Social Services Administration**

Mr. Leavitt stated that his is a former employee of the Indiana Family and Social Services Administration (FSSA). Mr. Leavitt recently retired from his position as Database Analyst Programmer Senior on June 17, 2016. In this position Mr. Leavitt was responsible for extracting data from various computer applications used by FSSA employees and contractors. Allison Taylor, General Counsel and Ethics Officer for FSSA, and Ryan Stout, Senior Manager of Medicaid Applications for FSSA, appeared with Mr. Leavitt to provide additional information regarding his former responsibilities at FSSA. Mr. Stout served as Mr. Leavitt's supervisor at FSSA.

CODY Computer Services (CODY) has been a contractor of FSSA since 2009 when it entered into a QPA agreement after being selected as a vendor in 2008. The initial QPA agreement was not renewed. A contract between FSSA and CODY Computer Services was signed in the fall of 2015, which covered annual support services through June 30, 2017. FSSA still has active users of the CODY computer applications.

Mr. Leavitt served as the primary contact between CODY and the approximately 100 software users from FSSA and its contractor Xerox/Affiliated Computer Services. Mr. Leavitt answered questions from FSSA users regarding CODY applications and contacted CODY if he was unable to answer the users' questions. Mr. Leavitt's other duties related to the CODY applications used by FSSA included changing configuration parameters when requested by FSSA management, creating new users and deactivating former users when requested by other FSSA staff, and transmitting special programming requests from FSSA users to CODY. Mr. Leavitt provides that the programming specifications he wrote were approved by other FSSA staff and allowed CODY to estimate the requested project. According to Mr. Leavitt, others in FSSA management had the responsibility to decide whether to accept this estimate and authorize the work. Mr. Leavitt also received the annual invoice for software maintenance from CODY, and he forwarded that invoice to FSSA Accounting and FSSA Purchasing for processing.

Mr. Leavitt noted that he did not have decision-making authority concerning choosing CODY as a vendor, any contract with CODY, or any payment to CODY. Mr. Leavitt was a member of the FSSA committee that selected CODY as a vendor in 2008, but he provided that he did not play a significant role in the selection process. Specifically, he attended meetings and participated in the scoring of vendors. He does not recall voting on a recommended vendor, only that the scoring method used by the committee indicated that one vendor was the best for the agency's needs. Mr.

Stout provided that Mr. Levitt would not have had authority to make a decision regarding the negotiation of this contract as these decisions are made by FSSA management.

In terms of CODY's 2015 contract, FSSA Purchasing determined that the contract was needed and then handled all negotiations with CODY to finalize the agreement. He does not recall if he was approached for recommendations by those at FSSA who oversaw these negotiations, but he was asked to make contact with CODY to indicate that FSSA was interested in pursuing a contract based on their current needs. He also received communications about this contract from CODY and forwarded them to FSSA purchasing. FSSA still has active users (approximately 100) of the CODY computer applications.

Mr. Stout confirmed Mr. Levitt's understanding that FSSA Accounting, FSSA Purchasing and the executives of the sponsoring units, Division of Family Resources (FSSA DFR), and FSSA Division's Chief of Investigations, possessed the authority to make decisions regarding this contract and how it was fulfilled. Mr. Stout provided that Mr. Levitt ensured the CODY contract was up to date, because FSSA does not have a system to alert management when a contract is up for renewal. Mr. Stout explained that Mr. Levitt was responsible for ensuring that services did not lapse and to inform his managers that a new contract would be needed. It was then management's decision to renew the contract or to look for another application system. Mr. Stout provided that Mr. Levitt was not asked to provide an opinion or recommendation regarding whether FSSA should enter into or renew a contract with CODY.

Mr. Stout further explained that Mr. Levitt was not responsible for the administration or management of the CODY contract. According to Mr. Stout, Mr. Levitt was considered more of a "super user" who assisted other people with the CODY software applications themselves and did not make decisions regarding the administration of the contract.

In August of 2016, CODY contacted Mr. Levitt about a potential employment position. In this position Mr. Levitt would be a contractor responsible for software analysis, software implementation, user support and user training. He provides that his potential work with CODY would not involve using any information of a confidential nature from FSSA.

Mr. Levitt was seeking advice to determine if he would be subject to the one-year cooling off requirement under IC 4-2-6-11(b) of the post-employment rule.

The advisory opinion stated the following analysis:

A. Confidential Information

IC 4-2-6-6 prohibits Mr. Levitt 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. Levitt provides that his potential future work with CODY would not involve using any confidential information from FSSA. So long as any compensation Mr. Levitt receives does not result from confidential information, his potential employment with CODY would not violate IC 4-2-6-6.

B. Post-Employment

IC 4-2-6-11 consists of two separate limitations: a “cooling off” period and a “particular matter” restriction. The first prohibition, commonly referred to as the cooling off or revolving door period, prevents Mr. Levitt from accepting employment from an employer for 365 days from the date that he left 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. Therefore this restriction includes a client or customer of a self-employed individual.

First, Mr. Levitt 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).

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

Second, Mr. Levitt 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.

CODY has had a contract with FSSA since 2009. Mr. Levitt indicates that he was part of the selection committee that chose CODY as a vendor in 2008, which led to a Quantity Purchase Agreement (QPA) contract in 2009. A QPA is a contract between the State and vendor where the vendor provides an estimated quantity of goods and services at a stated unit price guaranteed for a specific time frame. As part of this selection committee, Mr. Levitt attended meetings and he participated in the scoring of vendors. He does not recall voting to recommend a particular vendor.

Mr. Levitt provided that the Project Manager, Keith Harden, and IDOA officials handled all negotiations for the QPA between FSSA and CODY. Mr. Stout confirmed that based on his knowledge of Mr. Levitt’s job responsibilities, Mr. Levitt did not have the authority to make a decision to award the contract to CODY or otherwise negotiate this contract. Therefore, it does not appear that Mr. Levitt was in a position to negotiate or make a discretionary decision regarding the outcome of the negotiation of this contract.

CODY’s QPA contract expired and was not renewed; however, CODY entered into a contract with FSSA in the fall of 2015, and this contract is still in effect until June 30, 2017. Based on the information provided by Mr. Levitt and Mr. Stout, this contract between FSSA and CODY covered annual support services, and FSSA Purchasing determined that the contract was needed and then handled all negotiations with CODY to

finalize the agreement. Mr. Stout confirmed that Mr. Levitt only informed FSSA management of the need for this contract based on the expiration of the support services provided by CODY and that Mr. Levitt was not asked for a recommendation or opinion regarding CODY's services and whether FSSA should enter into this contract. Therefore, it does not appear that Mr. Levitt negotiated this contract nor was he in a position to make a discretionary decision regarding the outcome of the negotiation of this contract.

Regarding administration of the CODY contracts, Mr. Levitt provided that although he was the point of contact between CODY and FSSA and FSSA contractor users, his role was related to the use of the CODY software applications, and he was not in a position to make decisions concerning the contract itself. Mr. Levitt advised that FSSA management made the requests for any configuration parameters he changed for the CODY software applications. Mr. Levitt also provided that the requests to activate new users and inactivate former users came from FSSA management. Further, Mr. Levitt advised that the programming specifications that they wrote when transmitting programming requests from FSSA users to CODY also had to be approved by other FSSA staff. In addition, Mr. Levitt provided that FSSA management had the responsibility to decide whether to accept the estimate and authorize the work associated with the programming requests.

According to Mr. Stout, Mr. Levitt's interactions with CODY concerning the CODY software applications;, including submitting questions from users, changing configuration parameters, creating new users and deactivating former users, transmitting special programming requests from FSSA users to CODY, and forwarding the annual software maintenance invoice to FSSA Accounting and FSSA Purchasing for processing; did not constitute administering a contract between CODY and FSSA. Mr. Stout provided that Mr. Levitt was a "super user" of the CODY applications and that the administration of the contract was carried out by FSSA management.

Based on this information, it does not appear that Mr. Levitt was in a position to make discretionary decisions affecting the nature of the administration of CODY's contracts with the State.

Accordingly the Commission finds that this provision of the cooling off restriction would not prohibit Mr. Levitt from pursuing employment with CODY immediately.

Third, Mr. Levitt 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. Nothing in the information provided indicates that Mr. Levitt ever made any regulatory or licensing decisions that directly applied to CODY at any time during his state employment.

The Commission finds that this provision does not apply to Mr. Levitt as he has not made a licensing or regulatory decision that applied to CODY or any of its subsidiaries or during the course of his state employment. Consequently, Mr. Levitt is not prohibited under this provision from accepting employment with CODY immediately.

Fourth, Mr. Levitt 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 CODY extended an offer of employment to Mr. Levitt in an attempt to influence him in his capacity as a state employee. Further, Mr. Levitt has been retired from state employment since June 17, 2016, and CODY first approached him about the potential employment opportunity in August of 2016. Accordingly, the Commission finds that this restriction does not apply to Mr. Levitt's intended employment opportunity with CODY.

Finally, Mr. Levitt 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.

As Database Analyst Programmer Senior for FSSA, Mr. Levitt's responsibilities included various tasks associated with the CODY computer applications used by FSSA. The Commission has previously determined computer applications are not particular matters for purposes of the post-employment rule. Therefore, he would not be prohibited under this rule from working on the CODY computer applications if he accepts employment with this company.

Mr. Levitt also served as the primary contact between CODY and approximately 100 software users at FSSA and its contractor Xerox/Affiliated Computer Services. CODY provided its applications and services under its contract with FSSA. Although this contract would be considered a particular matter, the Commission finds that Mr. Levitt's participation in this contract as an FSSA employee was not personal and substantial. Accordingly, he would not be prohibited from assisting or representing CODY, or any other person, on this contract.

The Commission further finds that Mr. Levitt must ensure compliance with the particular matter restriction and refrain from assisting or representing CODY, or any other person, on any of the particular matters listed above that he may have personally and substantially worked on during his state employment regardless of whether it involves CODY.

The Commission found that Mr. Levitt's post-employment opportunity with CODY would not violate the post-employment restrictions found in IC 4-2-6-11.

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

V. Request for Formal Advisory Opinion

**16-I-18 Rachel Russell, Deputy Director and Ethics Officer
Kimberley Rhoades, Director of Long Term Care
Indiana Family and Social Services Administration**

Rachel Russell stated that she is the Deputy Director and Ethics Officer for the Indiana State Department of Health (ISDH). Ms. Russell is seeking a formal advisory opinion on behalf of ISDH employee Kimberley Rhoades. Ms. Rhoades currently serves as the ISDH Director of the Division of Long Term Care (the Division). Ms. Rhoades is interested in pursuing a position with CarDon & Associates (CarDon), a company that runs senior living communities throughout Central and Southern Indiana.

The Division has regulatory oversight of nursing homes, residential care facilities, and intermediate care facilities for individuals with developmental disabilities. This would include facilities owned and operated by CarDon. Employees of the Division conduct surveys of the facilities to evaluate compliance with state and federal requirements. Based on the results of those surveys, federal enforcement remedies are recommended to the Centers for Medicare and Medicaid Services (CMS). State remedies are reviewed and determined by Ms. Rhoades' supervisor, the Assistant Commissioner of the Health Care Quality and Regulatory Commission. On a day-to-day basis, her job involves answering provider and public inquiries, offering rule or policy interpretation to staff, managing staff in the division, and signing survey, licensure, and enforcement notification letters.

As the director of the Division for the last seven years, Ms. Rhoades has been substantially involved in daily decision-making and rule/regulation interpretation and policies and procedures regarding licensing, plan review, surveys, and enforcement. A great majority of the Division's work is dictated by the State Operations Manual issued by CMS. Policies and Procedures primarily involve internal management of staff. Any areas of policy change, rule waiver, or state enforcement decisions are made by the Assistant Commissioner of the Health Care Quality and Regulatory Commission with input or recommendation by Ms. Rhoades, but the Assistant Commissioner is the final decision maker.

Ms. Rhoades is also involved in rule waiver recommendations related to the physical plant requirements for facilities, which are reviewed during the plan review process. Her supervisor makes the final determination on those. Ms. Rhoades has no involvement on any contracts other than occasionally being asked to serve as a reviewer on bids submitted in response to an RFP. She performed this service on one FSSA RFP and one ISDH RFP in 17 years of employment at ISDH. According to Ms. Russell, neither one of these involved CarDon or had any connection to CarDon.

Ms. Rhoades' prospective responsibilities with CarDon would include enhancing and maintaining an organization-wide, risk-based, service-driven compliance program that is proactive and progressive. She would design and implement policies, procedures, programs, and practices to ensure compliance with State and Federal regulations, laws, and mandates. The prospective position is also responsible for monitoring changes to laws and regulations to mitigate risk and take appropriate action to ensure the establishment and implementation of standard policies, procedures, and best practices across CarDons' facilities. She would provide support for the collection of data for regulatory filings, coordination and development of reports, projects, and assessment tools to verify compliance. She would also develop effective compliance communications to Executive Management team, Director of Operations, appropriate members of the Operations Team, and throughout the organization to educate staff on compliance policies.

Ms. Russell also provided a listing of all pending actions involving the facilities managed by CarDon. The licenses of all but two of the facilities are held by hospitals that are not under the Division. There are five facilities with an open survey cycle that may or may not require a discretionary decision, but Ms. Rhoades is currently screened from any involvement, as she notified Ms. Russell and her agency appointing authority and developed a screening process with her supervisor. She filed her Ethics Disclosure Statement, Conflict of Interests – Decision and Voting form with the Office of the Indiana Inspector General on November 17, 2016.

Ms. Russell provides that it is likely Ms. Rhoades would have contact with ISDH if she were to be employed by CarDon; however, she believes that contact would be incidental. Ms. Rhoades would be performing a corporate function at CarDon; typically, regulatory matters are addressed at the facility level and ISDH employees and surveyors would be speaking to employees at the facility in question, such as Directors of Nursing, rather than a corporate workforce member. Ms. Rhoades has provided that company representatives have assured her she will not attend any meetings, have business-related contact with any person at ISDH, including surveyors, nor will she have any involvement during surveys or any matters related to enforcement—the two areas where the ISDH has the most discretion where the facilities managed by the company is concerned.

Ms. Russell provided a list of more specific functions of Ms. Rhoades' current role and how they may affect her possible future role at CarDon:

Licensing: Licenses in the Division of Long Term Care are issued according to the language in the statute. If there are any issues or questions about a license application, she forwards documentation that is reviewed by an attorney in the Office of Legal Affairs. Her signature on the licenses is pre-printed. She signs the licensure letters only to verify the dates are correct. She does not have discretion in granting or denying a license, as that can only be done with her supervisor's approval. She usually makes a recommendation to her supervisor if a licensure action is necessary. Sometimes her supervisor initiates the discussion and determines the agency needs to take a licensure action.

Certification: The certification process is tightly controlled by CMS directives and final approval of certification or re-certification is with CMS. Ms. Rhoades has no discretion in this area. All certification and re-certification is a recommendation from Ms. Rhoades' division to CMS, based on the documentation and survey results. It is an automatic process in which she is not involved because the State Operations Manual directs, based on the survey results, whether the ISDH should recommend certification, decertification, or denial of certification.

Surveys: This is an area where Ms. Rhoades has the most discretion/influence. This discretion comes from interpreting regulations, helping staff evaluate the facts/evidence to determine compliance with the regulations, and, if there is non-compliance, the extent and severity level of the non-compliance. There is a lot of CMS guidance and directives in this area. Ms. Rhoades and her team explore the facts with the surveyors, ask clarifying questions, or request additional information. They review the regulations and any other CMS guidance, then recommend to the surveyors what they should do. Many times, Ms. Rhoades gives surveyors options and guidance and leaves the final decision to them because they are onsite, they are trained, and they are nurses.

This process does not occur for every survey, as there is a deputy director who handles these on a day-to-day basis, but only on those issues brought to Ms. Rhoades. Ms. Rhoades has stated that representatives from CarDon have assured her she would have nothing to do with any survey that took place while she was still at ISDH. For surveys at CarDon facilities after she leaves the ISDH, she may be consulted by the facility on particular issues, but she would not be onsite in the facilities during a survey and she would not be asked to contact anyone at the ISDH about a survey or would she be writing Plans of Correction or participating in any Informal Dispute Resolution proceedings.

Plan Review: This is another area where there is discretion. In this area, the Health Care Engineering staff bring Ms. Rhoades any requests for a waiver of the physical plant standards in the rules. Sometimes this is done face-to-face with the providers, sometimes just on paper. Any decision she makes is a recommendation to her supervisor. Her supervisor reviews and makes the final decision to grant or deny a waiver request. Currently, there are no pending review projects for any buildings associated with CarDon.

Bed Changes: Federal regulations and guidance dictate bed changes in certification facilities. Ninety-nine percent of bed changes are handled automatically by the Provider Services' staff without Ms. Rhoades input. Occasionally, Ms. Rhoades is asked a question if a particularly unusual situation arises about how to process a bed change or if the provider should ask for a plan review first; however, this is more often a procedural issue and not a grant or denial. The grounds for granting or denying a bed change are dictated by CMS guidelines or the current State Moratorium law.

Ms. Russell has also provided further information on Ms. Rhoades' involvement with CarDon as an ISDH employee. As to licensing, the relevant statute requires that the director finds that the licensee will operate in compliance with the state rules before issuing a license. This is accomplished through staff going through the routine process of receiving the applications, reviewing the documents and, if all is complete, generating the license and letter with Ms.

Rhoades' signature. If there has been a problem with compliance, this would be handled with a licensure action upon the Administrative Orders and Procedures Act (AOPA) and the Assistant Commissioner, Ms. Rhoades' boss, makes the decision to pursue licensure. Ms. Rhoades has advised Ms. Russell that there has been nothing involving licensure on any of the facilities licensed or managed by CarDon other than the routine processing.

Ms. Rhoades has further advised Ms. Russell that CarDon recently had a couple of facilities that underwent a plan review to make some modifications to allow the addition of residential care beds. This required a rule waiver that Ms. Rhoades' supervisor approved on her recommendation after meeting with the engineers and discussing with the architect. Ms. Rhoades also states she has not talked with anyone from CarDon on a regulatory issue in several years; she estimates around four years ago there was an abuse issue cited at the Immediate Jeopardy level, and she and a member of her team met with representatives from CarDon to discuss it.

Ms. Russell seeks clarification from the Commission regarding the post-employment rule as it applies to Ms. Rhoades. Specifically, Ms. Russell would like clarification from the Commission regarding whether Ms. Rhoades would be restricted under the post-employment rule's cooling off period from going to work for CarDon immediately after leaving state employment. Further, Ms. Russell would also like clarification as to whether Ms. Rhoades' participation in certain matters would trigger the post-employment rule's particular matter restriction.

The advisory opinion stated the following analysis:

A. Confidential Information

IC 4-2-6-6 prohibits Ms. Rhoades 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. Ms. Rhoades affirmed that she would not use confidential information in her employment with CarDon. So long as any compensation Ms. Rhoades receives does not result from confidential information, her potential employment with CarDon would not violate IC 4-2-6-6.

B. Conflict of Interests

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

In this case, employment negotiations have already begun. Accordingly, Ms. Rhoades would be prohibited from participating in any decision or vote, or matter related to a decision or vote, in which she, by virtue of her employment negotiations with CarDon, or CarDon itself would have a financial interest in the outcome of the matter.

Because she identified a potential conflict of interests, Ms. Rhoades has followed the requirements in IC 4-2-6-9(b)(2) and filed a written disclosure statement with the Office of Inspector General that detailed her conflict of interest, described and affirmed the implementation of a screen established by Ms. Russell to shield her from participating in any pending actions involving CarDon's facilities, and notified her agency's appointing authority of the potential conflict.

Ms. Rhoades must continue to ensure she does not participate in any decisions or votes, or matters relating to any such decisions or votes, in which she or CarDon has a financial interest in the outcome of the matter for the remainder of her state employment or until employment negotiations end.

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 Ms. Rhoades from accepting employment from an employer for 365 days from the date that she leaves state employment under various circumstances.

First, Ms. Rhoades 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.

Based on the information provided, Ms. Rhoades would not be required to engage in any lobbying activities or register as an executive branch lobbyist in her prospective employment with CarDon. To the extent that Ms. Rhoades does not engage in executive branch lobbying for one year after leaving state employment, her intended employment with CarDon would not violate this provision of the post-employment rule.

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

The Commission finds that this prohibition does not apply to Ms. Rhoades' opportunity with CarDon. Ms. Russell has indicated that Ms. Rhoades has not had any involvement in any state contracts with CarDon. Further, Ms. Russell provided that Ms. Rhoades' only

participation in any state contracts was participation in the RFP process for two contracts not related to CarDon.

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

Ms. Rhoades, as the Director for the Division of Long Term Care, has regulatory oversight of nursing homes and residential care facilities, including facilities owned and operated by CarDon. In this role, she has been substantially involved in daily decision-making and rule/regulation interpretation and policies and procedures regarding licensing, certification, plan review, surveys, and enforcement involving these facilities.

Accordingly, the Commission finds that Ms. Rhoades made regulatory and licensing decisions that directly applied to CarDon. Specifically, Ms. Rhoades' role in issuing licenses to CarDon's long term care facilities overseen by her Division would constitute making a licensing decision, as the staff she oversees receives the applications and provides her with the information she needs to make the decision to sign the licensing letter or to make a recommendation to her supervisor to pursue another course of action. Although her supervisor is the ultimate decision-maker, she makes the recommendations to him that he uses for his decisions, and she is therefore substantially involved in making these decisions.

Further, it appears that Ms. Rhoades' role in the plan review and waiver decisions involving CarDon facilities also constitutes making a licensing or regulatory decision, as she reviews the requests and makes a recommendation to her supervisor to grant or deny the request. Although her supervisor is the ultimate decision-maker, she makes the recommendations to him that he uses for his decisions, and she is therefore substantially involved in making these decisions.

Therefore, absent a waiver from her agency's appointing authority, the post-employment rule's cooling off requirement precludes Ms. Rhoades from accepting employment with CarDon until the elapse of 365 days from the date she leaves state employment.

Fourth, Ms. Rhoades is prohibited from accepting employment from an employer if the circumstances surrounding the hire suggest the employer's purpose is to influence her in her official capacity as a state employee. The information presented to the Commission does not suggest that CarDon extended an offer of employment to Ms. Rhoades in an attempt to influence her in her capacity as a state employee.

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

an economic development project, or 12) a public works project. The particular matter restriction is not limited to 365 days but instead extends for the entire life of the matter at issue, which may be indefinite. The term particular matter does not include the proposal or consideration of a legislative matter or the proposal, consideration, adoption, or implementation of a rule or administrative policy or practice of general application.

Ms. Rhoades was involved in applications, determinations, and licenses in her role as Director of the Division of Long Term Care. These matters would qualify as particular matters. Ms. Rhoades provided that she would not be expected to work on any of these particular matters in her prospective employment with CarDon. She has also provided that CarDon representatives have assured her she will not attend any meetings or have business-related contact with any person at ISDH regarding surveys or anything else regarding enforcement.

Accordingly, the Commission advises that Ms. Rhoades refrain from assisting or representing CarDon, or any other person, in these matters to avoid a violation or a perceived violation of the particular matter provision of the post-employment rule.

Further, Ms. Rhoades must ensure compliance with the particular matter restriction and refrain from assisting or representing CarDon, or any other person, on any of the particular matters listed above that she may have personally and substantially worked on during her state employment, regardless of whether it involves CarDon, for the life of these matters.

The Commission found that Ms. Rhoades made licensing and regulatory decisions that directly applied to her prospective employer during her state employment. Accordingly, absent a waiver, the post-employment rule's one-year cooling off period would prohibit her from accepting employment with the employer until the expiration of 365 days from the last day of her state employment.

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

VI. Director's Report

Ms. Cooper stated that OIG staff issued 12 informal advisory opinions since the last Commission meeting and that the majority of these opinions dealt with the ethics rules conflict of economic interests, post-employment, confidential information, ghost employment, and the use of state property. Ms. Cooper provided the Commissioners with the dates for the 2017 Commission meetings. The Commission discussed and decided to change the date of the March meeting from March 9, 2017 to March 16, 2017.

VIII. Adjournment

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

The Public Meeting adjourned at 9:40 a.m.



INDIANA DEPARTMENT OF TRANSPORTATION

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STATE ETHICS COMMISSION

DEC 20 2016

FILED

Michael R. Pence, Governor
Brandye L. Hendrickson,
Commissioner

Request for Post-employment waiver pursuant to IC 4-2-6-11

As the Appointing Authority of The Indiana Department of Transportation, I am filing this waiver of the application of the Code of Ethics' post-employment restriction as it applies to Ryan Gallagher in his post-employment with Purdue University.

I understand that I must file and present this waiver to the State Ethics Commission at their next available meeting. I further understand that this waiver is not final until approved by the State Ethics Commission.

A. This waiver is provided pursuant to IC 4-2-6-11(g) and specifically waives the application of
(Please indicate the specific restriction in 42 IAC 1-5-14 (IC 4-2-6-11) you are waiving):

IC 4-2-6-11(b)(1): 365 day required "cooling off" period before serving as a lobbyist.

IC 4-2-6-11(b)(2): 365 day required "cooling off" period before receiving compensation from an employer for whom the state employee or special state appointee was engaged in the negotiation or administration of a contract and was in a position to make a discretionary decision affecting the outcome of such negotiation or administration.

IC 4-2-6-11(b)(3): 365 day required "cooling off" period before receiving compensation from an employer for which the former state employee or special state appointee made a directly applicable regulatory or licensing decision.

IC 4-2-6-11(c): Particular matter restriction prohibiting the former state employee or special state appointee from representing or assisting a person in a particular matter involving the state if the former state officer, employee, or special state appointee personally and substantially participated in the matter as a state worker.
(Please provide a brief description of the specific particular matter(s) to which this waiver applies below):

B. IC 4-2-6-11(g)(2) requires that an agency's appointing authority, when authorizing a waiver of the application of the post-employment restrictions in IC 4-2-6-11(b)-(c), also include specific information supporting such authorization. Please provide the requested information in the following five (5) sections to fulfill this requirement.

1. Please explain whether the employee's prior job duties involved substantial decision-making authority over policies, rules, or contracts:

Some of the following information is supported by the employee's personnel file or my knowledge of his current INDOT duties, and the remainder is based solely upon information the employee has provided to me in connection with the process of considering this waiver. The employee's prior job is more particularly described below in this answer.

As Deputy Commissioner of Operations, Ryan leads all of INDOT's district operations including maintenance, construction, engineering services, fleet, facilities, and finance, among others. In his role, Ryan manages roughly 2500 employees and a \$330M operating budget. Ryan's duties as Deputy Commissioner of Operations include serving as a board member on the INDOT Executive Committee for the Joint Transportation Research Program (JTRP). Ryan had substantial decision-making authority over many INDOT policies, rules and contracts, but his interaction with JTRP is more specifically set forth below.

The role of JTRP is to facilitate cooperation between INDOT and higher education research programs. JTRP is housed within the Purdue College of Engineering under the Executive Vice President and Provost of the University. The Executive Committee is comprised of four INDOT Deputy Commissioners, the Director of Research and Development, the INDOT JTRP Program Director, and a representative from INDOT's Office of Innovation and Enhancement. The Executive Committee approves the annual JTRP work program which includes the portfolio of research and innovation projects that will receive funding. The typical INDOT contracted budget with JTRP is approximately \$5,000,000 annually using 100% federal funds expressly apportioned by Congress for the advancement of research, development and technology transfer activities.

The Executive Committee operates under Roberts' Rules of Order resulting in majority consensus being required for approval of JTRP matters associated with allocation of funds to Purdue. The role of the executive committee is to ensure that federal funds, set aside for research and administered by INDOT, are allocated to research projects that further the INDOT mission. As an Executive Committee member, Ryan votes on the JTRP administration budget and approves the JTRP program that defines the research initiatives and their budgets. Approval of the JTRP program is accomplished through the approval of individual research projects during bi-monthly JTRP executive meetings. Research needs are defined by INDOT staff and drafted into full-fledged research proposals with the help of faculty members. Each proposal is brought to the board by an INDOT business owner, and voted on by the Executive Committee.

2. Please describe the nature of the duties to be performed by the employee for the prospective employer:

Based solely upon the job description and other information provided to me by Ryan, and contingent on the approval of this waiver, Ryan has accepted the position of Senior Director of Buildings and Grounds within the Physical Facilities Division under direction of the Treasurer and CFO. Ryan will provide management and leadership to three functional areas: Building Services, Grounds, and Operations and Maintenance. He will report to the Chief Operating Officer of Physical Facilities.

3. Please explain whether the prospective employment is likely to involve substantial contact with the employee's former agency and the extent to which any such contact is likely to involve matters where the agency has the discretion to make decisions based on the work product of the employee:

In the role of Senior Director of Buildings and Grounds, Ryan would have no substantial interaction with INDOT nor the JTRP Executive Committee. I understand that Purdue will assist in screening Ryan from any INDOT requests that might otherwise be made, including any request for maintenance under the

institutional roads program provided for in Ind. Code 8-23-5-6. Written confirmation of this from Purdue should be provided to the Ethics Commission.

4. Please explain whether the prospective employment may be beneficial to the state or the public, specifically stating how the intended employment is consistent with the public interest:

The State of Indiana has invested in Ryan's development from staff engineer to executive leader. It is consistent with the public interest for Ryan's knowledge and skills as a manager to be utilized within another state institution. Particular to his new role, Ryan's background in managing cost effective and efficient maintenance activities will be of benefit to Purdue, and thus the State of Indiana.

5. Please explain the extent of economic hardship to the employee if the request for a waiver is denied:

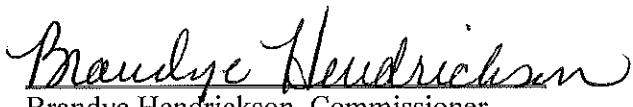
As a registered Civil Engineer and a member of the INDOT executive staff, many outside employment opportunities for Ryan would have to undergo ethics scrutiny, and many would be prohibited. Failure to approve this opportunity, which I believe to have no conflict of interest with Ryan's current role, or the spirit of the ethics rules, would severely limit Ryan's opportunities outside of INDOT.

Further, Ryan is the father of five children including two sets of twins. Two of Ryan's children will be attending college next year. Two years after that Ryan will have four children in college. This employment opportunity provides Ryan with the economic means to make those years more affordable for his family.

C. Signatures

1. Appointing authority/state officer of agency

By signing below I authorize the waiver of the above-specified post-employment restrictions pursuant to IC 4-2-6-11(g)(1)(A). In addition, I acknowledge that this waiver is limited to an employee or special state appointee who obtains the waiver before engaging in the conduct that would give rise to a violation.


Brandye Hendrickson, Commissioner
Indiana Department of Transportation

12-16-2016
DATE

2. Ethics Officer of agency

By signing below I attest to the form of this waiver of the above-specified post-employment restrictions pursuant to IC 4-2-6-11(g)(1)(B).


Mark Tidd, INDOT Ethics Officer

12/20/16
DATE

D. Approval by State Ethics Commission

FOR OFFICE USE ONLY

Approved by State Ethics Commission

James Clevenger, Chair, State Ethics Commission

Date

Mail to:

Office of Inspector General
315 West Ohio Street, Room 104
Indianapolis, IN 46202

OR

Email scanned copy to:

info@ig.in.gov

*Upon receipt you will be contacted
with details regarding the*

Professional Licensing Agency
402 West Washington Street
Room W072
Indianapolis, IN 46204



Michael R. Pence
Governor of Indiana
Deborah J. Frye
PLA Executive Director

IC 4-2-6-11

Post-employment waiver

As the Appointing Authority of Indiana Professional Licensing Agency (PLA), I am filing this waiver of the application of the Code of Ethics' post-employment restriction as it applies to Michael Brady in his post-employment with the Indiana State Medical Association (ISMA).

I understand that I must file and present this waiver to the State Ethics Commission at their next available meeting. I further understand that this waiver is not final until approved by the State Ethics Commission.

A. This waiver is provided pursuant to IC 4-2-6-11(g) and specifically waives the application of *(Please indicate the specific restriction in 42 IAC 1-5-14 (IC 4-2-6-11) you are waiving):*

- IC 4-2-6-11(b)(1): 365 day required "cooling off" period before serving as a lobbyist.
- IC 4-2-6-11(b)(2): 365 day required "cooling off" period before receiving compensation from an employer for whom the state employee or special state appointee was engaged in the negotiation or administration of a contract and was in a position to make a discretionary decision affecting the outcome of such negotiation or administration.
- IC 4-2-6-11(b)(3): 365 day required "cooling off" period before receiving compensation from an employer for which the former state employee or special state appointee made a directly applicable regulatory or licensing decision.
- IC 4-2-6-11(c): Particular matter restriction prohibiting the former state employee or special state appointee from representing or assisting a person in a particular matter involving the state if the former state officer, employee, or special state appointee personally and substantially participated in the matter as a state worker. *(Please provide a brief description of the specific particular matter(s) to which this waiver applies below):*

B. IC 4-2-6-11(g)(2) requires that an agency's appointing authority, when authorizing a waiver of the application of the post-employment restrictions in IC 4-2-6-11(b)-(c), also include specific information supporting such authorization. Please provide the requested information in the following five (5) sections to fulfill this requirement.

1. Please explain whether the employee's prior job duties involved substantial decision-making authority over policies, rules, or contracts:

As the Director of INSPECT, Indiana's prescription drug monitoring program, it is Mr. Brady's duty to manage the daily functions, initiatives, and internal and external relationships of the program. In carrying out his job duties, Mr. Brady worked within the parameters of IC 35-48-7 to administer the INSPECT program. Mr. Brady does not have any decision-making authority over rules as this responsibility falls under the Board of Pharmacy (IC 35-48-7-12.1). While he assists PLA leadership in an advisory capacity when considering contracts related to the INSPECT program, he is not a signatory, nor does he have any final discretionary authority over a contract.

2. Please describe the nature of the duties to be performed by the employee for the prospective employer:

In Mr. Brady's prospective role with the ISMA, he will continue to serve the public interest by working in the Government Relations Department to address issues that impact the practice of medicine throughout Indiana. In doing so, Mr. Brady will represent ISMA member-physicians by collaborating with various entities, including members of the Indiana General Assembly, to responsibly promote the ISMA's strategy to improve public health outcomes.

3. Please explain whether the prospective employment is likely to involve substantial contact with the employee's former agency and the extent to which any such contact is likely to involve matters where the agency has the discretion to make decisions based on the work product of the employee:

Traditionally, the ISMA and the PLA both have substantial interaction with one another. Predecessors in this prospective position have regularly attended PLA board meetings where issues concerning the practice of medicine are often identified and addressed. Since the PLA oversees the Medical Licensing Board, the ISMA's insight on various issues is often warranted. It is also important to note that the INSPECT program's largest user group is physicians. The INSPECT program has been recognized by healthcare practitioners as an invaluable prescribing tool in combatting the opioid epidemic. Understanding this relationship, Mr. Brady is mindful of decisions made in the prospective role and will take appropriate steps to ensure all ethical guidelines are followed and respected.

4. Please explain whether the prospective employment may be beneficial to the state or the public, specifically stating how the intended employment is consistent with the public interest:

"The ISMA is a federation of county and district medical societies all across Indiana. With more than 8,200 members, the ISMA continues its dedication to a mission of helping the state's physicians provide the best possible healthcare for their patients." –ISMA Website (www.ismanet.org)

As previously mentioned, Mr. Brady's employment with the ISMA would serve the public interest as the ISMA often advises entities that legislate and regulate various healthcare related matters. There have been various scenarios where the ISMA has been summoned by a governmental body to convey the message and speak on behalf of Hoosier physicians regarding healthcare issues. Mr. Brady has demonstrated his

ability to use his knowledge and understanding of the various healthcare challenges that the State of Indiana is facing.

5. Please explain the extent of economic hardship to the employee if the request for a waiver is denied:

While Mr. Brady would receive a \$5,000 annual salary increase in this prospective position, the actual value that would be lost if he were denied the ability to work for the ISMA is difficult to quantify, but it could be reasonably inferred that the amount would be substantial. The individual who is vacating this position at the ISMA has been in this role for over eight years, during which he has positively impacted the practice of medicine throughout the state. Throughout his time at the ISMA, his stature as a trusted and prominent voice in Indiana healthcare has been solidified. The availability of such a position is considerably rare and working for the ISMA in this capacity would allow Mr. Brady to advance his career in ways that his current position at the PLA may not provide.

C. Signatures

1. Appointing authority/state officer of agency

By signing below I authorize the waiver of the above-specified post-employment restrictions pursuant to IC 4-2-6-11(g)(1)(A). In addition, I acknowledge that this waiver is limited to an employee or special state appointee who obtains the waiver before engaging in the conduct that would give rise to a violation.



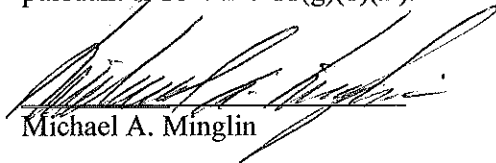
12/28/2016

Deborah J. Frye

DATE

2. Ethics Officer of agency

By signing below I attest to the form of this waiver of the above-specified post-employment restrictions pursuant to IC 4-2-6-11(g)(1)(B).



Michael A. Minglin

12/28/16

DATE

D. Approval by State Ethics Commission

FOR OFFICE USE ONLY

Approved by State Ethics Commission

James Clevenger, Chair, State Ethics Commission

Date



INDIANA OFFICE OF
Community & Rural Affairs
Where Rural Matters

IC 4-2-6-11

Post-employment waiver

As the Appointing Authority of the Office of Community and Rural Affairs (OCRA), I am filing this waiver of the application of the Code of Ethics' post-employment restriction as it applies to Geoff Schomacker in his post-employment with Ball State University.

I understand that I must file and present this waiver to the State Ethics Commission at their next available meeting. I further understand that this waiver is not final until approved by the State Ethics Commission.

A. This waiver is provided pursuant to IC 4-2-6-11(g) and specifically waives the application of *(Please indicate the specific restriction in 42 IAC 1-5-14 (IC 4-2-6-11) you are waiving):*

IC 4-2-6-11(b)(1): 365 day required "cooling off" period before serving as a lobbyist.

X IC 4-2-6-11(b)(2): 365 day required "cooling off" period before receiving compensation from an employer for whom the state employee or special state appointee was engaged in the negotiation or administration of a contract and was in a position to make a discretionary decision affecting the outcome of such negotiation or administration.

IC 4-2-6-11(b)(3): 365 day required "cooling off" period before receiving compensation from an employer for which the former state employee or special state appointee made a directly applicable regulatory or licensing decision.

IC 4-2-6-11(c): Particular matter restriction prohibiting the former state employee or special state appointee from representing or assisting a person in a particular matter involving the state if the former state officer, employee, or special state appointee personally and substantially participated in the matter as a state worker. *(Please provide a brief description of the specific particular matter(s) to which this waiver applies below):*

B. IC 4-2-6-11(g)(2) requires that an agency's appointing authority, when authorizing a waiver of the application of the post-employment restrictions in IC 4-2-6-11(b)-(c), also include specific information supporting such authorization. Please provide the requested information in the following five (5) sections to fulfill this requirement.

1. Please explain whether the employee's prior job duties involved substantial decision-making authority over policies, rules, or contracts:

Geoff Schomacker is currently employed as Deputy Director of the Office of Community and Rural Affairs (OCRA). In this capacity, Mr. Schomacker serves as second in command to the agency appointing authority (sometimes referred to herein as the Executive Director), and is involved in setting and accomplishing OCRA's vision and strategic priorities.

In general, the decision making role on State of Indiana funded contracts with OCRA are reserved for the Executive Director. The Deputy Director neither signs the contracts nor administers them. He does not monitor the performance of entities with which OCRA has contracted.

This general principle applies to in the specific case of the two active contracts (A159-14-PSC-001RED & A159-16-PSC-204) between OCRA and Ball State University, executed April 2014 and January 2016 respectively. Mr. Schomacker is named in the Notice Provision of these contracts. By being named as notice recipient, he is contractually designated to receive periodic progress reports and financial claim vouchers. However, in practice, the OCRA Project Managers receive and review these documents. The Project Managers use the information in the contracts to ensure completion of work, and to brief the Executive Director and others on the OCRA Senior Staff, including but not limited to the Deputy Director. The Project Managers are also responsible for handling the financial claims, which includes reviewing, approving or working with the vendor on edits, and transferring to the centralized accounting department for payment. Mr. Schomacker does not supervise the Project Managers.

Outside of the nominal notice recipient designation, Mr. Schomacker has not been the final decision maker or signatory for the contracts. Nor has Mr. Schomacker been involved in any regulatory or licensing decisions that have applied to Ball State (given that OCRA has not made any such decisions with regard to Ball State).

With regard to policy-making at OCRA, the OCRA Senior Staff (of which Mr. Schomacker is a part) are expected to offer opinions and advice to the Executive Director. OCRA prides itself on being a nimble and responsive agency, and therefore puts a priority on leadership that can generate ideas which might enhance OCRA's ability to meet its mission, vision and strategic priorities. Following generation and discussion, the Executive Director is responsible for evaluating these ideas and determining the strategic direction of the agency.

2. Please describe the nature of the duties to be performed by the employee for the prospective employer:

Mr. Schomacker has been offered a position as project manager for the Indiana Communities Institute at Ball State University (Ball State). The project manager role

would serve Hoosiers by developing and delivering educational programming for local units of government and other community leaders.

Specifically, his duties are anticipated to include the following:

- a) Supporting activities with the federal Economic Development Administration (EDA) University Center (UC) designation of Ball State University. The EDA-supported UC program is specifically designed to marshal the resources located within colleges and universities to support regional economic development strategies in regions of chronic and acute economic distress. The UCs, which EDA considers long-term partners in economic development, are required to devote the majority of their funding to respond to technical assistance requests originating from organizations located in the economically distressed portions of their service regions.
- b) Facilitating community conversations to identify and leverage assets to increase the quality of place and spur community and economic development
- c) Developing new community economic development educational programming for leaders, professional staff, and volunteers in Hoosier communities
- d) Supporting the Rural Policy Research Institute (RUPRI) state policy program focused to provide rural policy leaders with powerful, proven tools to enhance rural research, practice and public policy at the state level. The ultimate goal is to create more vibrant rural communities and increased prosperity in Indiana's rural regions and ultimately, throughout the country.

3. Please explain whether the prospective employment is likely to involve substantial contact with the employee's former agency and the extent to which any such contact is likely to involve matters where the agency has the discretion to make decisions based on the work product of the employee:

Mr. Schomacker's prospective employment is not likely to have substantial contact with OCRA. First, he would not have any interaction with either of the two active Ball State contracts referenced above.

Second, Mr. Schomacker's potential future duties (as articulated above in Section 2) are complementary, not supplementary, to OCRA's suite of services for rural Indiana. Therefore, while it may be likely that OCRA and Mr. Schomacker and Ball State will find themselves attending the same rural community development event, they would be attending in distinct capacities, and serving as the subject matter expert on different service sets. Rather than a negative, OCRA anticipates that these complementary offerings would have a beneficial compounding impact on the rural community served.

4. Please explain whether the prospective employment may be beneficial to the state or the public, specifically stating how the intended employment is consistent with the public interest:

The role which Mr. Schomacker has been offered at the Indiana Communities Institute of Ball State has the potential to have significant positive impacts for the general public of Indiana. Three direct opportunities immediately appear:

- a. Having a passionate, experienced leader to lead the efforts around the UC designation will impact economic development strategies in regions of chronic and acute economic distress in rural Indiana. In some cases, this might mean improving an existing strategy. In others, it could mean working with a community to create a strategy where one never existed.
- b. His work at RURPI could result in public policy adopted by Indiana's legislature, which would positively impact distressed areas of rural Indiana.
- c. Mr. Schomacker's experience in facilitating conversations among local units of government around big picture community and economic development challenges will create a bridge between various constituencies that may not often talk with each other, such as citizens, local government, business.

Indirectly the general public is benefited because Mr. Schomacker would be taking his talents to another entity in the public sector. Ball State is a state educational institution, which by its nature, is an entity created to serve the greater public good.

d. Please explain the extent of economic hardship to the employee if the request for a waiver is denied:

Mr. Schomacker's economic hardship is that there are few, if any, opportunities outside the public sector in community economic development outside of (a) state government and (b) institutions of higher education, Ball State being the most significant. Denying this waiver would foreclose Mr. Schomacker's alternate opportunity for employment and have the effect of locking him into state government or forcing him to elect a different career path in order to exit. OCRA believes the state ethics laws are designed to prevent unseemly behavior, not to unintentionally force retention for employees like Mr. Schomacker who desire to continue to serve the public through a different outlet.

Denying the waiver leaves Mr. Schomacker in a position which is vulnerable not only with each election cycle, but with each changing of leadership staff in the Lt. Governor's Office. As a member of OCRA leadership, his position is always one which is subject to the risks of the political cycle. As the primary breadwinner in his family, this comes with significant potential economic hardship to Mr. Schomacker.

Finally, it is clear that Mr. Schomacker is attracted to this opportunity for reasons other than financial gain. Based on OCRA's assessment, this position would place Mr. Schomacker in essentially the same financial position as he would find himself in 2017 with OCRA. While his salary would be \$82,000 versus \$79,560 (post-2017 P4P), he will

have to commute to Muncie. The job will also require extensive statewide travel, which OCRA understands will be in his personal vehicle, as opposed to the state vehicle and rental options he is afforded now. Based on the passion for rural Indiana which Mr. Schomacker has demonstrated throughout his tenure at OCRA, OCRA believes Mr. Schomacker is sincerely interested in the Ball State role due to this continued passion about helping Indiana communities achieve their community economic development goals.

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C. Signatures

1. Appointing authority/state officer of agency

By signing below I authorize the waiver of the above-specified post-employment restrictions pursuant to IC 4-2-6-11(g)(1)(A). In addition, I acknowledge that this waiver is limited to an employee or special state appointee who obtains the waiver before engaging in the conduct that would give rise to a violation.



William S. Konyha, Executive Director

December 30, 2016
DATE

2. Ethics Officer of agency

By signing below I attest to the form of this waiver of the above-specified post-employment restrictions pursuant to IC 4-2-6-11(g)(1)(B).

Mark J. Wuellner
Mark J. Wuellner, Ethics Officer

December 30, 2016
DATE

D. Approval by State Ethics Commission

FOR OFFICE USE ONLY

Approved by State Ethics Commission

James Clevenger, Chair, State Ethics Commission

Date

Mail to:

Office of Inspector General
315 West Ohio Street, Room 104
Indianapolis, IN 46202

OR

Email scanned copy to: info@ig.in.gov

Upon receipt you will be contacted with details regarding the presentation of this waiver to the State Ethics Commission.

Date: November 28, 2016

To: Steven J. Braun, Commissioner
Indiana Department of Workforce Development

Thru: Stephen P. Elliott, Deputy Commissioner of Information Technology *spe 11/28/16*

Thru: Jessica Tysen, Director Testing and Project Planning *JT 11/28/16*

From: Ian Gunn *IG 11/28/16*

Cc: Jeffrey M. Gill, Agency Ethics Officer
Indiana Department of Workforce Development

Please accept this memo as a request for signature on the attached waiver of the Ethics Code's Post Employment Restrictions. The Agency's Ethics Officer has reviewed the letter and asked that I submit the letter up through my chain of command to request your signature on the attached letter.

Recently, I contacted KSM Consulting to discuss potential employment with the company. As an employee with the Department of Workforce Development (DWD), I have been involved with KSM Consulting as a Business Analyst on the UIM team. My duties include gathering business requirements from the DWD business areas and transforming them into design specifications for development and subsequent implementation as part of DWD's Uplink system.

Under I.C. 4-2-6-11, only the agency appointing authority can waive the post-employment restrictions if waiver is consistent with the public interest. I believe my employment with KSM Consulting would be consistent with the public interest for the reasons described in the attached waiver.

By way of this memo, I am asking my supervisor, Jessica Tysen, Director Testing and Project Planning, to approve my request to submit this to you for signature and to indicate their approval by initialing this memo. Should you have questions or concerns, please contact me.



INDIANA
WORKFORCE
DEVELOPMENT
AND ITS **WorkOne** CENTERS

IC 4-2-6-11

Post-employment waiver

As the Appointing Authority of the Indiana Department of Workforce Development, I am filing this waiver of the application of the Code of Ethics' post-employment restriction as it applies to Ian Gunn in his post-employment with KSM Consulting.

I understand that I must file and present this waiver to the State Ethics Commission at their next available meeting. I further understand that this waiver is not final until approved by the State Ethics Commission.

A. This waiver is provided pursuant to IC 4-2-6-11(g) and specifically waives the application of *(Please indicate the specific restriction in 42 IAC 1-5-14 (IC 4-2-6-11) you are waiving):*

IC 4-2-6-11(b)(1): 365 day required "cooling off" period before serving as a lobbyist.

IC 4-2-6-11(b)(2): 365 day required "cooling off" period before receiving compensation from an employer for whom the state employee or special state appointee was engaged in the negotiation or administration of a contract and was in a position to make a discretionary decision affecting the outcome of such negotiation or administration.

IC 4-2-6-11(b)(3): 365 day required "cooling off" period before receiving compensation from an employer for which the former state employee or special state appointee made a directly applicable regulatory or licensing decision.

IC 4-2-6-11(c): Particular matter restriction prohibiting the former state employee or special state appointee from representing or assisting a person in a particular matter involving the state if the former state officer, employee, or special state appointee personally and substantially participated in the matter as a state worker. *(Please provide a brief description of the specific particular matter(s) to which this waiver applies below):*

Ian Gunn's position at the Department is Business Analyst (Classification Program Specialist 2) and responsibilities include eliciting and documenting detailed business, functional, and technical requirements for ongoing enhancements to DWD's Unemployment Insurance Benefits System, Uplink. The project to provide these enhancements to Uplink is referred to as the Unemployment Insurance Modernization (UIM) project. Ian reports to the Director of UIM and IT Planning. KSM Consulting, the prospective employer, is DWD's contractor which provides project management support for the UIM project. In other words, DWD and KSM Consulting work together on the UIM

project. Gunn has neither engaged in the negotiation or administration of any contract with KSM Consulting nor been in a position to make discretionary decisions affecting any negotiation or administration of any contract. Based on these facts, we do not believe a waiver to IC 4-2-6-11(b)(2) is required.

B. IC 4-2-6-11(g)(2) requires that an agency's appointing authority, when authorizing a waiver of the application of the post-employment restrictions in IC 4-2-6-11(b)-(c), also include specific information supporting such authorization. Please provide the requested information in the following five (5) sections to fulfill this requirement.

1. Please explain whether the employee's prior job duties involved substantial decision-making authority over policies, rules, or contracts:

The employee's prior duties had no bearing on policies, rules, or contracts as it relates to the Indiana Department of Workforce Development.

2. Please describe the nature of the duties to be performed by the employee for the prospective employer:

The employee will enter in to a role of business analyst for the prospective employer. Job duties will include mainly creating high-level and detailed requirements packages for software development projects.

3. Please explain whether the prospective employment is likely to involve substantial contact with the employee's former agency and the extent to which any such contact is likely to involve matters where the agency has the discretion to make decisions based on the work product of the employee:

The prospective employment will involve contact with the employee's former agency. It is possible the agency will make some IT related decisions based on the prospective employer's recommendations. The employee's work product may contribute to the formulation of those recommendations. The desire, given the employee's familiarity with the UIM project, is to allow the employee to continue working on the UIM project. He would simply be working for the Contractor instead of the State of Indiana.

4. Please explain whether the prospective employment may be beneficial to the state or the public, specifically stating how the intended employment is consistent with the public interest:

The prospective employment is beneficial to both the state and the public. The prospective employee is a valuable member of an ongoing project team for the agency. This individual is seeking to advance his career by moving to a professional environment that could offer a greater range of project opportunities and skill development. By allowing the prospective candidate to seek employment with KSM Consulting and continue on with the project we have not only satiated the employee's need for career advancement but retained his valuable knowledge, skills, and abilities. This better serves the state and the public interest than the

alternative of replacing this employee, regressing the effectiveness of the role while a new, likely less-qualified, candidate is located. The Department will negotiate with KSM Consulting an hourly rate specifically for this position that will not be detrimental to the economics of this project.

5. Please explain the extent of economic hardship to the employee if the request for a waiver is denied:

See Response to Question #4.

C. Signatures

1. Appointing authority/state officer of agency

By signing below I authorize the waiver of the above-specified post-employment restrictions pursuant to IC 4-2-6-11(g)(1)(A). In addition, I acknowledge that this waiver is limited to an employee or special state appointee who obtains the waiver before engaging in the conduct that would give rise to a violation.



Steven J. Braun, Commissioner
Indiana Department of Workforce Development

11-29-16

DATE

2. Ethics Officer of agency

By signing below I attest to the form of this waiver of the above-specified post-employment restrictions pursuant to IC 4-2-6-11(g)(1)(B).



Jeffrey M. Gill, Ethics Officer
Indiana Department of Workforce Development

11.29.16

DATE

- D. Approval by State Ethics Commission

FOR OFFICE USE ONLY

Approved by State Ethics Commission

James Clevenger, Chair, State Ethics Commission

Date

Mail to:

Office of Inspector General
315 West Ohio Street, Room 104
Indianapolis, IN 46202

OR

Email scanned copy to: info@ig.in.gov

*Upon receipt you will be contacted with
details regarding the presentation of this
waiver to the State Ethics Commission.*

INDIANA
STATE ETHICS COMMISSION

315 WEST OHIO STREET, ROOM 104, INDIANAPOLIS, IN 46202 317.232.3850

January 2017

No. 17-I-7

The Indiana State Ethics Commission (Commission) issues the following advisory opinion concerning the State Code of Ethics (Code) pursuant to IC 4-2-6-4(b)(1). The following opinion is based exclusively on sworn testimony and documents presented by the requestor.

BACKGROUND

Daniel Brumfield is a state employee at the Indiana Department of Child Services (DCS). Mr. Brumfield began working at DCS in March 2002, where he worked in Marion County as a Family Case Manager (FCM). He was later promoted to FCM Supervisor and then to Division Manager. He became the Regional Manager of Region 11 (Hamilton, Hancock, Madison, and Tipton counties) in February 2013. In this position, Mr. Brumfield oversees the daily operations of the four local DCS offices in each county. As Regional Manager, Mr. Brumfield also works to ensure that each local office follows DCS policy, to help build and sustain relationships with various stakeholders in the local communities in his region, and to serve as the conduit between the DCS Central Office and his local offices. Although he typically works directly with other DCS staff members, he also works with foster parents, bio-parents, community stakeholders, and provider agencies to help navigate challenges that arise with children and families involved with DCS. He also works with these various individuals, groups, and providers through his role on the Regional Services Council (RSC) in Region 11.

The RSC is comprised of Mr. Brumfield, his Region's four local office directors, two foster parents, a Court Appointed Special Advocate (CASA), a Juvenile Prosecutor, two members from Juvenile Probation and two DCS FCMs. The RSC is tasked with identifying community-based service needs within the region for families who are involved with DCS as well as preventative services for families who are experiencing challenges, but who are not yet involved with DCS. Mr. Brumfield and the RSC work to identify potential service gaps in the community. Once the RSC identifies community-based service needs, DCS issues a Request for Proposal (RFP) to search for and solicit vendors to provide those services. These RFPs are developed by the DCS Central Office and scored at the regional or local level by DCS staff, including Mr. Brumfield, and the non-DCS staff members of the RSC provide input. A DCS Service Specialist guides the local staff in the scoring process, ensuring that the local staff is reviewing proposals based on how it relates to the actual RFP. After scoring is complete, the RSC identifies the number of providers needed in each service category and recommends the providers with the highest scores to the DCS Service Specialist so that the DCS Central Office can work on contract negotiations.

The DCS Central Office finishes contract negotiations and decides which entities receive contracts based on their proposals sent in response to the RFP.

In addition to community-based services, the RSC also works with a “Community Partner” agency to provide prevention services to families. In Region 11, the Community Partner is the Indiana Children’s Bureau (the Bureau). DCS works with the Bureau to identify and provide prevention services for families who are not yet involved with DCS. Similar to community-based services, the RSC identifies potential prevention service needs for the region. However, the Bureau, as the Region’s Community Partner, is the one who develops and puts out the RFP for the prevention services. The DCS local offices score the prevention RFPs similarly to how they score the community-based RFPs, and the RSC then makes a recommendation to the Bureau regarding which services should be added. The Bureau then works with the DCS Central Office to determine if the proposed services and providers meet the prevention criteria, and then the Bureau and DCS Central Office begin the contract negotiation process and determines which providers will receive contracts. The Bureau and DCS have the discretion to turn down a recommendation made by the RSC. The Bureau then subcontracts directly with the chosen providers for these prevention services.

Mr. Brumfield is submitting this request because, in November 2016, he was offered a position with the Bureau to be the Vice President of four Community Partner Child Safety Programs outside of Region 11 (Regions 8, 9, 10, and 12). The Bureau serves as the Community Partner in these four regions performing prevention services. Mr. Brumfield, as the Regional Manager and a member of the RSC, has worked with the Bureau regarding both community-based and preventative services contracts. He has participated in scoring teams for RFPs for various types of community-based services in his region. The Bureau often responds with proposals to provide services for several types of services, and Mr. Brumfield has been a part of the team to review these proposals. He has also been involved in scoring the preventative services RFPs that the Bureau administers.

ISSUE

What rules in the Code apply to Mr. Brumfield’s prospective post-employment opportunity with the Bureau?

RELEVANT LAW

IC 4-2-6-6

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

Sec. 6. No state officer or employee, former state officer or employee, special state appointee, or former special state appointee shall accept any compensation from any employment,

transaction, or investment which was entered into or made as a result of material information of a confidential nature.

IC 4-2-6-9 (42 IAC 1-5-6)

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

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

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

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

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

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

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

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

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

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

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

(A) details the conflict of interest;

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

(C) is signed by both:

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

(ii) the agency ethics officer;

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

(E) is filed no later than seven (7) days after the conduct that gives rise to the conflict.

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

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

IC 4-2-6-11 (42 IAC 1-5-14)

One year restriction on certain employment or representation; advisory opinion;

exceptions; waivers; disclosure statements; restrictions on inspector general seeking state office

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

- (1) An application.
- (2) A business transaction.
- (3) A claim.
- (4) A contract.
- (5) A determination.
- (6) An enforcement proceeding.
- (7) An investigation.
- (8) A judicial proceeding.
- (9) A lawsuit.
- (10) A license.
- (11) An economic development project.
- (12) A public works project.

The term does not include the proposal or consideration of a legislative matter or the proposal, consideration, adoption, or implementation of a rule or an administrative policy or practice of general application.

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

- (1) as a lobbyist;
- (2) from an employer if the former state officer, employee, or special state appointee was:
 - (A) engaged in the negotiation or the administration of one (1) or more contracts with that employer on behalf of the state or an agency; and
 - (B) in a position to make a discretionary decision affecting the:
 - (i) outcome of the negotiation; or
 - (ii) nature of the administration; or
- (3) from an employer if the former state officer, employee, or special state appointee made a regulatory or licensing decision that directly applied to the employer or to a parent or subsidiary of the employer;
before the elapse of at least three hundred sixty-five (365) days after the date on which the former state officer, employee, or special state appointee ceases to be a state officer, employee, or special state appointee.

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

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

- (1) employment; or
- (2) compensation;

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

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

- (1) employment of;
- (2) consultation by;
- (3) representation by; or
- (4) assistance from;

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

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

- (1) A special state appointee who serves only as a member of an advisory body.
- (2) A former state officer, employee, or special state appointee who has:
 - (A) not negotiated or administered any contracts with that employer in the two (2) years before the beginning of employment or consulting negotiations with that employer; and
 - (B) any contract that:
 - (i) the former state officer, employee, or special state appointee may have negotiated or administered before the two (2) years preceding the beginning of employment or consulting negotiations; and
 - (ii) is no longer active.

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

- (1) The waiver must be signed by an employee's or a special state appointee's:
 - (A) state officer or appointing authority authorizing the waiver; and
 - (B) agency ethics officer attesting to form.
- (2) The waiver must include the following information:
 - (A) Whether the employee's prior job duties involved substantial decision making authority over policies, rules, or contracts.
 - (B) The nature of the duties to be performed by the employee for the prospective employer.
 - (C) Whether the prospective employment is likely to involve substantial contact with the employee's former agency and the extent to which any such contact is likely to involve matters where the agency has the discretion to make decisions based on the work product of the employee.
 - (D) Whether the prospective employment may be beneficial to the state or the public, specifically stating how the intended employment is consistent with the public interest.
 - (E) The extent of economic hardship to the employee if the request for a waiver is denied.
- (3) The waiver must be filed with and presented to the commission by the state officer or appointing authority authorizing the waiver.
- (4) The waiver must be limited to an employee or a special state appointee who obtains the waiver before engaging in the conduct that would give rise to a violation of subsection (b) or (c).

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

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

- (1) made decisions as an administrative law judge; or
- (2) presided over information gathering or order drafting proceedings;

that directly applied to the employer or to a parent or subsidiary of the employer in a material manner.

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

- (1) be signed by the former state officer, employee, or special state appointee;
- (2) certify that the former state officer, employee, or special state appointee is not an employee of the entity; and
- (3) state in detail the treatment of taxes, insurance, and any other benefits between the entity and the former state officer, employee, or state appointee.

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

ANALYSIS

A. Confidential Information

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

Based on the information provided, it is unclear whether Mr. Brumfield would utilize any confidential information in his prospective employment with the Bureau. The Commission may wish to discuss the application of this rule with Mr. Brumfield to ensure that he will not be utilizing confidential information.

So long as any compensation Mr. Brumfield receives does not result from confidential information, his potential employment with the Bureau would not violate IC 4-2-6-6.

B. Conflict of Interest

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

In this case, employment negotiations have already begun, as Mr. Brumfield indicates that the Bureau offered him the position in November 2016. Accordingly, Mr. Brumfield

would be prohibited from participating in any decision or vote, or matter related to a decision or vote, in which he, by virtue of his employment negotiations with the Bureau, or the Bureau itself, would have a financial interest in the outcome of the matter.

Based on Mr. Brumfield's position as Regional Manager and as a member of the RSC, it appears that he may be in a position to participate in decisions or votes, or matters related to decisions or votes, that the Bureau has a financial interest in. The Commission may want to seek more information to determine if there is a potential conflict of interest at this time.

Mr. Brumfield must ensure that he does not participate in any decisions or votes, or matters relating to any such decisions or votes, in which he or the Bureau has a financial interest in the outcome of the matter for the remainder of his state employment.

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. Brumfield from accepting employment from an employer for 365 days from the date that he left state employment under various circumstances. Employer is defined in IC 4-2-6-1(a)(10) as any person from whom a state employee receives compensation.

First, Mr. Brumfield 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).

Based on the information provided, it does not appear Mr. Brumfield will engage in any lobbying activities in his prospective employment with the Bureau. To the extent that Mr. Brumfield does not engage in executive branch lobbying for one year after leaving state employment, his intended employment with the Bureau would not violate this provision of the post-employment rule.

Second, Mr. Brumfield 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.

The Bureau serves as the Community Partner for Mr. Brumfield's region. Through his role on the RSC, Mr. Brumfield identifies community-based and preventative service needs throughout his community. Moreover, as Regional Manager and part of the RSC, he has participated in scoring teams for these services. The Bureau often responds with proposals for various types of community-based services, and Mr. Brumfield has participated in a team to score these proposals. Moreover, in addition to scoring the Bureau's community-based services proposals, Mr. Brumfield has also worked with the

Bureau to identify and obtain preventative services for the region. In this context, the Bureau serves as Region 11's Community Partner, and the Bureau administers RFPs for preventative services in the area. As with the community-based services RFPs, Mr. Brumfield and the RSC score the preventative services proposals that the Bureau receives.

It is unclear whether this subsection of the one-year cooling off period would apply to Mr. Brumfield. The Commission has previously found that scoring an RFP by itself is not enough to trigger application of the cooling off period. The Commission must determine whether Mr. Brumfield's interactions with the Bureau amount to simply scoring RFPs or whether they go beyond to trigger application of the cooling-off period. Mr. Brumfield does score proposals received for community-based RFPs (including the Bureau's) and helps to determine how many providers may be needed in each service category. After that, he also helps the RSC make recommendations to the DCS Central Office. In addition, it appears that Mr. Brumfield helped the Bureau administer its own RFPs for preventative services in a similar way. The Commission may want to request additional information about how Mr. Brumfield, as Regional Manager, worked with the Bureau to identify preventative services needs in the community to determine if this goes beyond scoring of an RFP.

Third, Mr. Brumfield 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. Nothing in the information provided indicates that Mr. Brumfield ever made any regulatory or licensing decisions that directly applied to the Bureau at any time during his state employment.

To the extent the Commission is satisfied that Mr. Brumfield has never made a regulatory or licensing decision that directly applied to the Bureau during the course of his state employment, this provision would not apply.

Fourth, Mr. Brumfield 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 does not suggest that the Bureau extended an offer of employment to Mr. Brumfield in an attempt to influence him in his capacity as a state employee. Specifically, Mr. Brumfield provides that the Bureau never offered him anything during the RFP process. To the extent that the Commission is satisfied that the information provided does not suggest that the Bureau is attempting to influence Mr. Brumfield in his capacity as a state employee, this restriction would not apply.

Finally, Mr. Brumfield 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.

Based on the information provided, it appears that Mr. Brumfield may have personally and substantially participated in various contracts, determinations, and business transactions. However, it does not appear that Mr. Brumfield would be expected to work on any of these matters in his prospective employment with the Bureau. Specifically, Mr. Brumfield indicated that his prospective position with the Bureau is in regions 8, 9, 10, and 12, outside of his current region. He indicates that he would not be working on any of the same matters he worked on while serving as Regional Manager of Region 11.

Mr. Brumfield must ensure compliance with the particular matter restriction and refrain from assisting or representing the Bureau, or any other person, on any of the particular matters listed above that he may have personally and substantially worked on during his state employment regardless of whether it involves the Bureau.

CONCLUSION

Respectfully Submitted,

Jennifer Cooper

Ethics Director

INDIANA STATE ETHICS COMMISSION

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January 2017

No. 17-I-2

The Indiana State Ethics Commission (“Commission”) issues the following advisory opinion concerning the State Code of Ethics pursuant to IC 4-2-6-4(b)(1). The following opinion is based exclusively on sworn testimony and documents presented by the requestor.

BACKGROUND

Chris Cotterill is the General Counsel and Ethics Officer for the Indiana Economic Development Corporation (“IEDC”). The IEDC is the State of Indiana’s lead economic development agency. In order to respond quickly to the needs of businesses, the IEDC was established in February 2005 as “a body politic and corporate, not a state agency but an independent instrumentality exercising essential public functions.” *See* IC 5 -28-3-2(a). The IEDC exists to improve the quality of life for the citizens of Indiana by encouraging the (i) diversification of Indiana’s economy and the orderly economic development and growth of Indiana; (ii) creation of new jobs; (iii) retention of existing jobs; (iv) growth and modernization of existing industry; and, (v) promotion of Indiana. *See* IC 5-28-1-1.

Consistent with these statutory responsibilities, the IEDC provides performance-based tax incentives and workforce training grants to incentivize companies to create and retain high-wage jobs and make investments to expand operations here in Indiana. The IEDC also leads the Regional Cities Initiative, which is designed to help attract and retain talent by improving the quality of life in our communities, and the \$1 Billion Innovation & Entrepreneurship Initiative, which is designed to strengthen and accelerate Hoosier innovation through strategic partnerships, ensuring that Indiana plays a leading role in solving 21st century challenges while supporting long-term economic growth, job creation, and talent attraction.

The Governor serves as the Chair of the IEDC Board of Directors (“Board”), which oversees the corporation. There are 11 other members of the Board who are appointed by, and serve at the pleasure of, the Governor. *See* IC 5-28-4-2, 3, and 4. Appointed members “must be employed in or retired from the private or nonprofit sector or academia.” *See* IC 5-28-4-2(a). The IEDC is led by the chief executive officer, who serves as the Secretary of Commerce and the President of the IEDC. Both positions are appointed by the Governor. *See* IC 5-28-3-4. The Secretary of Commerce and the President oversee a staff of approximately 70 employees at the IEDC.

The IEDC is subject to “the jurisdiction of and rules adopted by the Indiana State Ethics Commission” and the “ethics rules and requirements that apply to the executive branch of state government.” *See* IC 5-28-5-5. (In addition to its other powers, the IEDC Board is expressly permitted to “adopt additional ethics rules and requirements that are more stringent than those adopted by the state ethics commission.” *See id.*) The IEDC is also subject to the Indiana Access to Public Records Act and the Indiana Open Door Law. *See* IC 5-28-5-9.

The IEDC negotiates incentive packages with prospect companies considering job expansion projects in the State. Under the Indiana Access to Public Records Act (“APRA”), certain records of the IEDC are specifically exempted from disclosure. *See* IC 5-14-3-4(b)(5)(A-B). The IEDC publishes the terms of all incentive agreements (“the terms of the final offer of public financial resources”) on the IEDC Transparency Portal. The statute expressly incorporates the primary policy reason behind disclosure: the obligation and utilization of “public financial resources.” IC 5-14-3-4 (b)(5)(B).

Conflicts Policy

In 2005, the IEDC Board adopted a Confidentiality & Conflict of Interest Policy designed to protect confidential information entrusted to the IEDC and to require recusal of a Board member when that Board member has a financial interest in a company that makes an application to the IEDC for incentives. *See* Attachment A (hereinafter “the 2005 Policy”).

On July 29, 2013, the IEDC requested a formal advisory opinion to approve screening procedures designed to protect the confidentiality of negotiations with prospects while ensuring compliance with the Indiana Code of Ethics. *See* Attachment B. Following a hearing on August 8, 2013, the request was approved. *See* Attachment C. In its formal Advisory Opinion No. 13-I-33 approving the IEDC’s request, the Commission explained:

The Commission finds that a conflict of interest could arise for the Board members under I.C. 4-2-6-9 in certain situations arising from financial interests of the Board members. Given the statutory protections afforded to the IEDC’s negotiations, the Commission finds it appropriate for the Board members to file and continually update a conflict of interest disclosure form with the Commission and, when a potential conflict of interest arises, the proposed screen be implemented without requiring that

the Board member request an advisory opinion from the Commission on a case-by-case basis.

Mr. Cotterill provides that Board member conflicts of interests are not frequent, but they do occur and, when they do, this process is followed. Further, as required by Advisory Opinion No. 13-I-33, the IEDC must “report to the Commission that a potential conflict of interest was identified and that the screen was implemented,” which the IEDC Ethics Officer prepares and files. (An example of a report filed by the IEDC is included in Attachment D.)

Mr. Cotterill advises that together, the conflicts of interest safeguards for IEDC board members in the 2005 Policy and Advisory Opinion No. 13-I-33 have proven effective at ensuring compliance with the Indiana Code of Ethics while also preserving the confidentiality necessary for effective economic development.

Statutory Changes

Effective July 1, 2015, IC 4-2-6-9 was amended to provide an option for a written disclosure for identified potential conflicts of interests. At the time the Commission issued Advisory Opinion No. 13-I-33, an individual was required to seek a formal advisory opinion each time a potential conflict of interest arose. This limited option and the length of time between meetings when the conflicts issues could be addressed were factors considered in the Commission’s approval for the departure from the standard disclosure process.

Under the new language of IC 4-2-6-9(b), IEDC Board members and employees would be able to file a conflict of interests disclosure form upon the identification of a potential conflict of interests instead of seeking a formal advisory opinion each time a conflict arises.

In addition, IC 4-2-6-10.5, pertaining to financial interests in state contracts, was amended to require that the disclosure statement - filed by state employees, special state appointees, and state officers who meet certain statutory requirements - be filed before a contract is executed. This statute was not addressed in Advisory Opinion No. 13-I-33, but the timing used to be such that this disclosure could be filed after the state contract was executed.

Updated conflicts policy

On December 13, 2016, the IEDC Board conditionally approved an updated Confidentiality & Conflicts of Interest Policy. *See* Attachment E (hereinafter “the 2016 Policy”). This approval was conditioned upon the Commission’s approval to extend the screening procedures, as requested herein.

Compared to the 2005 Policy, the IEDC designed the 2016 Policy as a more detailed “how to” guide for Board members and employees to use when ethical considerations arise. Additionally, the 2016 Policy includes various definitions that relate directly to the Indiana Code of Ethics in IC 4-2-6-1. The 2016 Policy also recognizes that there may be ethical considerations, in addition to those that should be considered under IC 4-2-6-9 and IC 4-2-6-10.5. The 2016 Policy highlights the fact that term “business organization” includes non-profit organizations. These are among the many various intended improvements.

Notwithstanding its improvements, the 2016 Policy carries forward the screening procedures that were approved under Advisory Opinion No. 13-I-33. These safeguards include the filing of annual disclosure statements with the Commission, logging interests in the Conflicts of Interest Management System maintained by the IEDC, and the conflicts of interest screening process. Mr. Cotterill emphasizes that those procedures still only apply when confidentiality must be maintained with an economic development prospect. These special procedures do *not* apply to other contracts, such as contracts with vendors. Thus, a Board member or employee having a financial interest in other non-economic development prospect matters, such as a proposed contract with a vendor must still go through the normal disclosure processes required by IC 4-2-6-9(b) and IC 4-2-6-10.5(b). *See* Attachment E at IV(3)(f) on p. 6.

The 2016 Policy also provides on its first page that “[i]n the event there is an inconsistency between the Indiana Code of Ethics and this Policy, the more restrictive provision(s) shall control.” Further, it provides that “[o]nly the Indiana State Ethics Commission can conclude with finality whether a Financial Interest exists under the Indiana Code of Ethics....” *See* Attachment E at III(6) on p. 4. Also, it provides that “[n]othing in this Policy shall be construed to limit a Board Member or Employee’s ability to consult directly with the Indiana Office of Inspector General or the Indiana State Ethics Commission regarding any ethics concern.” *See id.* at (V)(9) on p. 7.

The most significant change in the 2016 Policy, and the cause for this request for a formal advisory opinion, is the proposed extension of the screening procedures approved under Advisory Opinion No. 13-I-33, which apply to IEDC board members under IC 4-2-6-9. The IEDC would like to extend these procedures to include (1) employees under IC 4-2-6-9 and (2) board members and employees under IC 4-2-6-10.5.

The IEDC’s request in 2013, and the Commission’s approval thereof, was premised on the statutory confidentiality afforded to the IEDC’s negotiations with prospects. Though the IEDC’s request in 2013 only applied to Board members, the same statutory confidentiality is afforded to IEDC employees. Further, while the IEDC’s request in 2013 applied only to disclosures filed under IC 4-2-6-9, the same concept at the core of IC 4-2-6-9—*i.e.*, a financial interest in a contract—is at the core of IC 4-2-6-10.5. Therefore, the risks to economic development (as detailed in Attachment B on pages 2 and 3), which were addressed in the context of board members under IC 4-2-6-9 with Advisory Opinion No. 13-

I-33, remain for (1) employees under IC 4-2-6-9; and (2) board members and employees under IC 4-2-6-10.5.

Proposed resolution

The IEDC requests that the procedures permitted under Advisory Opinion No. 13-I-33 be extended so that there is one straightforward process for dealing with apparent conflicts of interests involving the IEDC's confidential economic development negotiations, whether the conflict involves a board member or employee and whether the disclosure would be required under IC 4-2-6-9 or IC 4-2-6-10.5.

The IEDC believes that this will not only protect the confidentiality of economic development negotiations as permitted by Indiana law, but will also make administration of these issues easier for the IEDC, and presumably the OIG, the Commission, and their respective staff.

ISSUE

1. Would a conflict of interest arise for IEDC employees and Board members under IC 4-2-6-9 in certain situations arising from financial interests of the employees and Board members?
2. If so, would the proposed implementation of the disclosure and screening procedures outlined in the IEDC's 2016 Policy satisfy the statutory requirements set forth in IC 4-2-6-9(b) for IEDC employees and board members when a potential conflict of interests is identified?
3. Would the proposed implementation of the disclosure and screening procedures outlined in the IEDC's 2016 policy satisfy the statutory requirements set forth in IC 4-2-6-10.5 for IEDC employees and Board members who have a financial interest in a state contract?

RELEVANT LAW

IC 4-2-6-1 Definitions

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

...

(10) "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.

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

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

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

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

IC 4-2-6-9

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

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

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

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

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

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

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

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

(A) details the conflict of interest;

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

(C) is signed by both:

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

(ii) the agency ethics officer;

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

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

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

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

42 IAC 1-5-7 Conflicts of Interest; contracts

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

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

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

IC 4-2-6-10.5

Prohibition against financial interest in contract; exceptions; disclosure statement; penalty for failure to file statement

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

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

(1) does not participate in or have contracting responsibility for the contracting agency; and

(2) files a written statement with the inspector general before the state officer, employee, or special state appointee executes the contract with the state agency.

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

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

(2) An affirmation that the contract: (A) was made after public notice and, if applicable, through competitive bidding; or (B) was not subject to notice and bidding requirements and the basis for that conclusion.

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

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

(5) In the case of a contract for professional services, an affirmation by the appointing authority of the contracting agency that no other state officer, employee, or special state appointee of that agency is available to perform those services as part of the regular duties of the state officer, employee, or special state appointee. A state officer, employee, or special state appointee may file an amended statement upon discovery of additional information required to be reported.

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

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

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

ANALYSIS

Conflict of interests – Decisions and votes

IC 4-2-6-9 prohibits a state officer, state employee, or special state appointee from participating in any decision or vote, or matter relating to that decision or vote, if the individual has knowledge that various persons may have a “financial interest” in the outcome of the matter, including the individual or a business organization in which they are serving as an officer, director, a member, a trustee, a partner, or an employee. The term financial interest as defined in IC 4-2-6-1(a)(11) includes an interest involving property, services, or a transaction between an agency and any person. However, 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.

In this case, a conflict of interests would arise for an IEDC Board member or employee if they were to participate in a decision or vote, or matter relating to such decision or vote, in which the member or employee, a member of their immediate family, or a business organization in which they are serving as an officer, a director, a member, a trustee, a partner, or an employee would have a financial interest in the outcome of the matter.

For example, it is possible that a company that a Board member or an employee’s immediate family member is employed by would apply for a specific incentive program administered by the IEDC. The Board member or employee would be prohibited from participating in any decision or vote, or matter related to such decision or vote, in that matter because the employer or immediate family member would have a financial interest in whether the incentive program is approved or not.

IC 4-2-6-9(b) requires that an employee or special state appointee who identifies a potential conflict of interests shall notify the person’s appointing authority and ethics officer in writing and either (1) seek an advisory opinion from the Commission by filing a written description detailing the nature and circumstances of the particular matter and making full disclosure of any related financial interest in the matter; or (2) file a written disclosure statement with the Commission that details the conflict of interests and describes and affirms the implementation of a screen established by the ethics officer.

Under the IEDC’s 2016 policy, IEDC Board members and employees would be required to file and continually update a conflict of interest disclosure form with the IEDC’s Ethics Officer, which is then logged in the IEDC’s Conflict of Interest Management System to proactively identify any potential conflicts of interest. The Board members and employees are also required to file the disclosure form with the Commission. The 2016 policy outlines a detailed conflicts of interests screening process based on the disclosure form that would be implemented whenever a

Board member or employee has an identified potential conflict of interest. This process includes ensuring the Board member or employee is screened from the matters in which they have a potential conflict of interest and that a disclosure is made in accordance with the requirements under IC 4-2-6-9(b).

However, in cases in which the filing of a public disclosure to the Commission would have the possibility of revealing the identity of an economic development prospect still in negotiations with the State, the IEDC proposes that the filing of the disclosure be deferred until such risk has ended (e.g., when the project has been announced). In these cases, the screening and other safeguards required by the 2016 Policy would be implemented without requiring the Board member or employee to request an advisory opinion from the Commission or file the Conflicts of Interest-Decisions and Voting Ethics Disclosure Statement form until the risk of revealing negotiations information is ended. At that time, the Ethics Officer must file a report with the Commission that a potential conflict of interest was identified and that the required screen was implemented.

This proposed policy and its procedures are an extension of the screening procedures that the Commission approved in Advisory Opinion 13-I-33 to allow the Board members to file and continually update a conflict of interest disclosure form with the Commission and, when a potential conflict of interest arises, the proposed screen be implemented without requiring the Board members to request an advisory opinion from the Commission on a case-by-case basis so long as the IEDC reported to the Commission that a potential conflict was identified and that the screen was implemented.

The Commission based this decision on the unique statutory protections afforded to the IEDC's negotiations. The IEDC is once again requesting a departure from the disclosure requirements for IEDC Board members and also for IEDC employees under IC 4-2-6-9(b) involved in economic development project negotiations. Under the current language of this statute, these individuals must request an advisory opinion or file the conflict of interests disclosure form when a potential conflict is identified. The request for a formal advisory opinion or disclosure form must detail the conflict of interests and the individual's financial interest in the matter. The individual would then have to attend a public Commission meeting to receive the formal advisory opinion or, in the case of the disclosure form option, the form would be posted on the OIG website. Making such a public disclosure via either option would highlight the identity of a prospect company while it is still in negotiations with the State. This public disclosure, the IEDC claims, before a prospect company has made a final determination to expand in or come to Indiana, could have a negative impact on the State's job attraction efforts.

Accordingly, the Commission must decide whether to accept the IEDC's proposed method of handling conflicts of interests under IC 4-2-6-9 and delaying public disclosure of the conflicts for Board members and employees when such public disclosure could compromise the confidentiality of economic development project negotiations.

Additionally, if it accepts the IEDC's proposed method of handling such conflicts under IC 4-2-6-9, the Commission may wish to require the IEDC to file the Conflict of Interest-Decisions and Voting Ethics Disclosure Statement instead of or in addition to the reports

the IEDC has been filing since the issuance of Advisory Opinion No. 13-I-33. The disclosure form option was not available at the time Advisory Opinion No. 13-I-33 was issued, but it is now standard practice to file this form to disclose and report when a conflict of interest was identified and a screen was established and implemented.

Conflict of interests – contracts

The IEDC is also requesting that the Commission approve a departure from the disclosure statement requirements in IC 4-2-6-10.5 given the statutory protections afforded to the IEDC's negotiations.

IC 4-2-6-10.5 prohibits a state officer, employee, or special state appointee from knowingly having a financial interest in a contract made by a state agency. This prohibition does not apply to an individual who (1) does not participate in or have contracting responsibility for the contracting agency; and (2) files a written statement with the OIG *before* the individual executes the contract with the state agency. [emphasis added]

The IEDC wishes to extend the process for handling conflicts of interests as described in the 2016 Policy to individuals who identify a financial interest in a contract with a state agency under IC 4-2-6-10.5. Accordingly, the IEDC proposes implementing all of the screening safeguards described in the 2016 Policy and deferring the disclosure of the financial interest - when there is a possibility of revealing the identity of an economic development project in negotiations with the State - until such risk has ended.

Accordingly, the Commission must decide whether to accept the IEDC's proposed method of handling conflicts of interests under IC 4-2-6-10.5 and delaying public disclosure of a Board member's or an employee's financial interest in a contract when such public disclosure could compromise the confidentiality of economic development project negotiations.

Additionally, if the Commission accepts the IEDC's proposed method of handling such conflicts under IC 4-2-6-10.5, the IEDC must ensure the Board member or employee files the standard Conflicts of Interest-Contracts Ethics Disclosure Form with the OIG.

CONCLUSION

Respectfully Submitted,
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