

**MINUTES OF THE MEETING OF  
THE INDIANA STATE ETHICS COMMISSION  
January 12, 2017**

**I. Call to Order**

A regular meeting of the State Ethics Commission (“Commission”) was called to order at 10:00 a.m. Members present included James N. Clevenger, Chairperson; Priscilla Keith (by telephone); Peter Nugent (arrived late); and Daryl Yost. Office of Inspector General staff present included Lori Torres, Inspector General; Jennifer Cooper, Ethics Director; Stephanie Mullaney, Compliance Officer; Tiffany Mulligan, Chief Legal Counsel; and Cindy Scruggs, Director of Administration.

Others present were Rachel Russell, Deputy Director and Ethics Officer, Indiana State Department of Health; Deanna Smith, Staff Attorney, Indiana State Department of Health; Mark Wuellner, Ethics Officer, Indiana Office of Rural and Community Affairs; Geoff Schomacker, Deputy Director, Indiana Office of Community and Rural Affairs; Bill Konyha, Executive Director; Indiana Office of Community and Rural Affairs; Sarah Kamhi, Deputy General Counsel, Indiana Economic Development Corporation; Chris Cotterill, General Counsel & Ethics Officer, Indiana Economic Development Corporation; Mark Tidd, Ethics Officer, Indiana Department of Transportation; Ryan Gallagher, Deputy Commissioner of Operations, Indiana Department of Transportation; Joe McGuinness, Commissioner, Indiana Department of Transportation; Erica Sullivan, Ethics Officer, Department of Child Services; Dan Brumfield, Regional Manager, Department of Child Services; Brandye Hendrickson, Director of State Personnel/Commissioner, Indiana Department of Transportation; Deborah Frye, Director, Professional Licensing Agency; Michael Minglin, Ethics Officer, Professional Licensing Agency; Michael Brady, Director of INSPECT, Professional Licensing Agency; Jeff Gill, General Counsel, Department of Workforce Development; Ian Gunn, Business Analyst, Department of Workforce Development; Steven Braun, Commissioner, Department of Workforce Development; Josh Wakefield, Department of Workforce Development; and Terrie Daniel, Deputy Commissioner, Department of Administration.

**II. Adoption of Agenda and Approval of Minutes**

Chairman Clevenger stated that there was a change to the agenda as the Department of Workforce Development requested to be moved from being item number six on the agenda to item number four. Commissioner Yost moved to adopt the agenda with this change and Commissioner Keith seconded the motion which passed (3-0). Commissioner Keith moved to approve the minutes of the December 2, 2016 Commission meeting and Commissioner Yost seconded the motion which passed (3-0).

**III. Consideration of Post-Employment Waiver**

**Ryan Gallagher, Deputy Commissioner of Operations  
Brandye Hendrickson, Former Commissioner  
Joe McGuinness, current Commissioner  
Mark Tidd, Ethics Officer  
Indiana Department of Transportation**

Mr. Tidd and former INDOT Commissioner Hendrickson presented a post-employment waiver for Ryan Gallagher, Deputy Commissioner of Operations, Indiana Department of Transportation. Mr. Gallagher presented his reasons for requesting the waiver and Mr. Tidd and former Commissioner Hendrickson provided a summary of the waiver highlighting INDOT's reasons for presenting the waiver to the Commission and answered the Commission members' questions on the matter.

After the Commission discussed the matter, Commissioner Yost moved to approve the Post-Employment waiver. Commissioner Keith seconded the motion which passed (3-0).

**IV. Consideration of Post-Employment Waiver**

**Ian Gunn, Business Analyst  
Steve Braun, Commissioner  
Jeff Gill, Ethics Officer  
Indiana Department of Workforce Development**

Commissioner Braun and Mr. Gill provided a summary of the waiver highlighting DWD's reasons for presenting the waiver to the Commission and answered the Commission members' questions on the matter.

After the Commission discussed the matter, Commissioner Keith moved to approve the Post-Employment waiver. Commissioner Yost seconded the motion which passed (3-0).

**V. Consideration of Post-Employment Waiver**

**Michael Brady, Director of INSPECT  
Deborah Frye, Executive Director  
Michael Minglin, Ethics Officer  
Professional Licensing Agency**

Executive Director Frye and Mr. Minglin provided a summary of the waiver highlighting PLA's reasons for presenting the waiver to the Commission and answered the Commission members' questions on the matter.

After the Commission discussed the matter, Commissioner Yost moved to approve the Post-Employment waiver. Commissioner Keith seconded the motion which passed (3-0).

**VI. Consideration of Post-Employment Waiver**

**Geoff Schomacker, Deputy Director  
William Konya, Executive Director  
Mark Wuellner, Ethics Officer  
Indiana Office of Rural and Community Affairs**

Mr. Wuellner and Executive Director Konya provided a summary of the waiver highlighting OCRA's reasons for presenting the waiver to the Commission and answered the Commission members' questions on the matter.

After the Commission discussed the matter, Commissioner Keith moved to approve the Post-Employment waiver. Commissioner Yost seconded the motion which passed (3-0).

**The Commission took a short break at 10:52 a.m. The meeting resumed at 11:05 a.m.**

**VII. Request for Formal Advisory Opinion**

**17-I-1            Dan Brumfield, Regional Manager  
Erica Sullivan, Ethics Officer  
Indiana Department of Child Services**

Erica Sullivan stated that 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.

The advisory opinion stated the following 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. Mr. Brumfield confirmed that he would not be required to utilize any confidential information in his prospective employment with the Bureau. 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. Conflicts 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.

Mr. Brumfield stated that he has not participated in any votes or decisions, or matters relating to such decisions or votes, in matters in which the Bureau would have a financial interest since employment negotiations have begun. Further, he stated that his current job responsibilities do not include participating in such matters.

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. Further, if he identifies a potential conflict of interests, he must follow the requirements in IC 4-2-6-9(b) to avoid violating this rule.

#### *C. Post-Employment*

IC 4-2-6-11 consists of two separate limitations: a “cooling off” period and a “particular matter” restriction. The first prohibition, commonly referred to as the cooling off or revolving door period, prevents Mr. 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). Mr. Brumfield provided that he does not anticipate engaging 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.

Mr. Brumfield serves on the Regional Services Council (RSC) that helps identify community-based and preventative service needs throughout his community. As part of the RSC, Mr. Brumfield, along with other committee members, participate in scoring RFPs that are developed by the DCS Central Office to address these needs. 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.

The Commission finds that Mr. Brumfield's participation in scoring the RFPs and making recommendations to the DCS Central Office as part of the RSC does not amount to making a discretionary decision in the negotiation of a contract. Mr. Brumfield is one of several committee members on the RSC and the committee's recommendations are forwarded to the DCS Central Office for decision-making regarding contracts. Specifically, the Central Office considers the RSC's recommendations, but ultimately makes the decision whether to award a contract to any providers and negotiates all contracts. Accordingly, the Commission finds that Mr. Brumfield is not prohibited under this provision from accepting employment with the Bureau immediately upon leaving state employment.

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.

The Commission finds that this provision does not apply to Mr. Brumfield because he has not made any regulatory or licensing decisions that applied to the Bureau as a DCS employee. Consequently, he is not prohibited under this provision from accepting employment with the Bureau immediately upon leaving state employment.

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 to the Commission 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. Accordingly, the

Commission finds that this restriction would not apply to his intended employment opportunity with the Bureau.

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, Mr. Brumfield may have personally and substantially participated in various contracts, determinations, and business transactions. However, Mr. Brumfield does not expect 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.

The Commission finds that 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 personally and substantially worked on during his state employment regardless of whether it involved the Bureau.

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

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

### **VIII. Request for Formal Advisory Opinion**

**17-I-2            Chris Cotterill, General Counsel and Ethics Officer  
                     Sarah Kamhi, Deputy General Counsel  
                     Indiana Economic Development Corporation**

Chris Cotterill stated that he 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 21<sup>st</sup> 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 Commission approved the request. *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 the 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 the Commission 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 Commission extend the procedures permitted under Advisory Opinion No. 13-I-33 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 it will also make administration of these issues easier for the IEDC and presumably the OIG, the Commission, and their respective staff.

The advisory opinion stated the following 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 would also be 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 information on negotiations is ended. At that time, the Ethics Officer would be required to 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. Under the proposed policy, when a potential conflict of interest arises, IEDC will implement the proposed screen without the Board members having to request an advisory opinion from the Commission on a case-by-case basis so long as the IEDC reports to the Commission that a potential conflict was identified and that the screen was implemented after negotiations become public.

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.

Given the statutory protections afforded to the IEDC's negotiations, along with the IEDC's robust internal screening procedures, the Commission finds that the IEDC's proposed method of handling potential conflicts of interests for its Board members and employees is appropriate. Once the negotiations conclude, however, the IEDC Board member or employee must follow all of the requirements in IC 4-2-6-9(b) to publicly disclose any potential conflict of interests.

#### *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 Inspector General *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 public 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.

Given the statutory protections afforded to the IEDC's negotiations, along with the IEDC's robust internal screening procedures, the Commission finds that the IEDC's proposed method of handling financial interests in state contracts for its Board members and employees is appropriate. Once the negotiations conclude, however, the IEDC Board member or employee must follow all of the requirements in IC 4-2-6-10.5 to publicly disclose any financial interests in a state contract.

The Commission found that a conflict of interests could arise for the IEDC Board members and employees under IC 4-2-6-9 and IC 4-2-6-10.5 in certain situations arising from financial interests of the Board members and employees. Given the statutory protections afforded to the IEDC's negotiations, the Commission finds it appropriate for the Board members and employees to follow the IEDC's updated Confidentiality & Conflicts of Interest Policy. This policy will ensure that Board members and employees file and continually update a conflict of interest disclosure form with the Commission and that the IEDC will implement the proposed screening mechanism when a potential conflict of interest arises to ensure that Board members and

employees do not have a conflict of interests under the Code of Ethics. Once IEDC negotiations conclude, the Board members and employees who were screened from the matters must file the appropriate conflict of interest disclosure forms.

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

#### **VI. Director's Report**

Ms. Cooper stated that OIG staff issued 27 informal advisory opinions since the last Commission meeting and that the majority of these opinions dealt with the ethics rules on post-employment, conflict of economic interests, gifts, confidential information, ghost employment, and the use of state property. Ms. Cooper advised that the annual Financial Disclosure Statement filing season and the OIG is communicating with all of the required filers to ensure they file by the February 1, 2017, deadline.

#### **VIII. Adjournment**

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

The Public Meeting adjourned at 11:44 a.m.



DEPARTMENT OF EDUCATION

Dr. Jennifer McCormick  
Superintendent of Public Instruction

*Working Together for Student Success*

January 30, 2017

RECEIVED

JAN 31 2017

Indiana Office of the Inspector General

Mr. James Clevenger, Chairman  
Indiana State Ethics Commission  
315 West Ohio Street, Room 104  
Indianapolis, IN 46202

Subject: Waiver of post-employment for Michelle Walker

Dear Mr. Clevenger:

As the Superintendent of Public Instruction, I am writing to you to express my support and approval of the Indiana Department of Education's (IDOE) waiver of post-employment restrictions for Michelle Walker's proposed employment with Questar Assessment, Inc. and Pearson Education (limited to activities outside of Indiana).

I regret that I am unable to appear in person to present the waiver. Unfortunately, I have scheduling conflicts involving previously scheduled meetings and legislative activities. When I became aware of these scheduling conflicts, I asked the IDOE's Chief of Staff, LeeAnn Kwiatkowski, and the IDOE's General Counsel, Marsha Bugalla, to attend the Commission meeting on my behalf. I understand that I.C. 4-2-6-11(g) requires the state officer or appointing authority authorizing the waiver to present it to the Commission, and I greatly appreciate your granting my request for this alternative arrangement in advance of the February 9th meeting.

I fully support and approve this waiver as Ms. Walker's activities will exclusively be outside Indiana.

Thank you for your consideration of this matter

Sincerely,

Dr. Jennifer McCormick  
Superintendent of Public Instruction

cc: Indiana Office of Inspector General  
Marsha Bugalla, IDOE Ethics Officer

JAN 27 2017

FILED

**IC 4-2-6-11  
Post-employment waiver**

As the Appointing Authority of the Indiana Department of Education, I am filing this waiver of the application of the Code of Ethics' post-employment restriction as it applies to Dr. Michele Walker in her post-employment with Questar Assessment, Incorporated and Pearson Education.

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:

Dr. Walker served as the Director of Student Assessment at the Indiana Department of Education. During that time, staff members reporting to Dr. Walker were responsible for the day-to-day operations of the Questar and Pearson contracts, and Dr. Walker provided oversight of the assessment contracts. Dr. Walker participated in weekly meetings with vendor leadership to ensure contracts were appropriately implemented.

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

In working for Questar, Dr. Walker would provide oversight for subcontractors working with Questar on state assessment programs (not including work related to Indiana). Dr. Walker would focus on communication, tracking, and logistics. In working for Pearson, Dr. Walker would work on test development and standard setting (not including work related to Indiana).

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:

Prospective employment at Questar and at Pearson would not involve contact with the Indiana Department of Education.

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:

As the prospective employment is related to developing and furthering best practices in the testing industry, it is in the public's interest for Dr. Walker to be employed by these assessment companies.

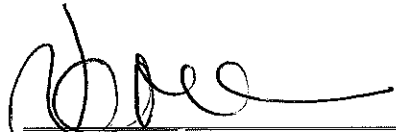
5. Please explain the extent of economic hardship to the employee if the request for a waiver is denied:

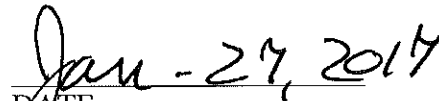
As during the restructuring/reorganizing of the Indiana Department of Education at the beginning of Dr. McCormick's term of office it was determined that Dr. Walker's services would no longer be needed, denying the request for a waiver would impact Dr. Walker's employment and cause economic hardship.

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.

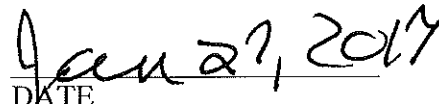
  
\_\_\_\_\_  
Dr. Jennifer McCormick

  
\_\_\_\_\_  
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).

  
\_\_\_\_\_  
Marsha Bugalla

  
\_\_\_\_\_  
DATE

D. Approval by State Ethics Commission

<b>FOR OFFICE USE ONLY</b>	
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](mailto:info@ig.in.gov)

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

Date: January 26, 2017

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

Thru: Stephen P. Elliott, Deputy Commissioner of Information Technology *spe*

Thru: [Supervisor]

*AM* From: Amy Marsh

Cc: Jeffrey M. Gill, Agency Ethics Officer  
Indiana Department of Workforce Development (DWD) *JMG*

---

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, MGT Consulting Group hired me. As a former employee with DWD, I was not involved with MGT Consulting nor did I make any discretionary decisions affecting the outcome of the negotiation or the nature of the administration of any contracts. 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 MGT Consulting Group would be consistent with the public interest for the reasons described in the attached waiver.

By way of this memo, I am asking Steve Elliott 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** CAREER CENTERS

**IC 4-2-6-11**  
**Post-employment waiver**

As the Appointing Authority of Department of Workforce Development, I am filing this waiver of the application of the Code of Ethics' post-employment restriction as it applies to Amy B. Marsh in his/her post-employment with MGT Consulting Group.

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):*

*Although it is questionable DWD's "Demand Driven Workforce System" (DDWS) would qualify as a "particular matter" Amy is requesting this waiver as a precaution in the case that it would so qualify. The DDWS is as much a strategy as it is a*

Eric J. Holcomb, *Governor*  
Steven J. Braun, *Commissioner*

10 N. Senate Avenue  
Indianapolis, IN 46204  
[www.IN.gov/dwd](http://www.IN.gov/dwd)

An Economic Development Partner

system. By using existing data and new technologies the DDWS will enable DWD to improve job demand forecasts. It will be used to develop a skills library validated by employers to better understand the skills that are needed by employers. It also will be used to align education courses and curricula using the skills library to develop educational tools that teach the skills that are in demand by employers. It also includes outreach to parents, students, and jobseekers to make sure they are informed about in-demand occupations that will match their skills and interests.

Amy's involvement would focus around the use of the DDWS among K-12 and higher education students and educators. As part of her employment with MGT Consulting Group she would help focus the outreach efforts to those particular stakeholders. She would provide information, run focus groups and conduct other efforts that would let the K-12 and higher education institutions to imbed the DDWS into their existing processes.

The nature of the role would involve some project management duties as well as advisory responsibilities.

- 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:  
*No. Amy's role was largely programmatic, where any decisions she made were focused on providing services to other employees in the field. After policy decisions had been made Amy would provide input on the implementation of those policies providing guidance and focus on best practices.*
  2. Please describe the nature of the duties to be performed by the employee for the prospective employer:  
*In her new role as an educational consultant, Amy delivers services to K-12 schools, colleges and government agencies (outside Indiana). Services include (primarily) program design (i.e. curriculum, scope and sequence of educational programs at the college level and community organizations), strategic planning, connections to potential clients and cross-service providing partners, and project management.*
  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:

*Amy's new employer currently has no contracts with the State of Indiana/agencies of the State. However, the purpose of this waiver is to seek permission to allow MGT and Amy to respond to RFPs released by executive branch agencies when relevant and appropriately within the scope of services that MGT is able to provide. Some of these opportunities may involve DWD's*

*Demand Driven Workforce System, but would also include opportunities with other state agencies such as the Department of Education.*

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:

*MGT has successfully worked with a number of state agencies in Florida, North Carolina, Kentucky, Colorado, etc. MGT is based in Tampa, FL. and has consultants with varying types of expertise in education and workforce development, and can offer services at a competitive price. MGT seeks to be able to bid for contract work that may become available. This work will necessitate the skills, abilities and years of experience brought by Amy. Because of her familiarity with Indiana laws and procedures she, in her new capacity with MGT would be able to provide Indiana Agencies with much more information and analysis concerning programs design, strategic planning and project management. This would greatly benefit the public interest and the State of Indiana in particular.*

*While Amy understands that simply submitting a formal response to an RFP does not necessarily constitute Executive Branch Lobbying (See 25 IAC 6-1-1 (7)(F)). She wants to ensure that she does not invoke any of the other executive branch lobbying restrictions in the course of her responsibilities.*

*The current restrictions impose a hardship on MGT in that Amy represents sole Central Indiana presence that the company has in Indiana. To rely on other out-of-state employees to engage in the type of communications and activity that would allow the company to compete in Indiana would be logistically difficult.*

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

*The inability to contract within the state of Indiana will require MGT to cover travel costs and expenses for Amy to continue to work outside the state.*

#### 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.



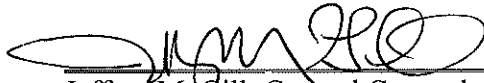
\_\_\_\_\_  
Steven J. Braun, Commissioner

1-27-17

\_\_\_\_\_  
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, General Counsel

1.27.17

\_\_\_\_\_  
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](mailto:info@ig.in.gov)

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





---

## LIMITED PERSONAL USE OF STATE PROPERTY/RESOURCES

### I. PURPOSE

Ind. Code § 4-2-6-16, effective July 1, 2015, prohibits state officers, employees and special state appointees from using state materials, funds, property, personnel, facilities, or equipment for purposes other than official state business unless the use is expressly permitted by a general written agency, departmental, or institutional policy or regulation that has been approved by the State Ethics Commission.

This policy establishes guidelines for limited personal use of state property/resources by the Governor's Office, the Lieutenant Governor's Office, and the First Lady's Office, including its state officer, employees, and special state appointees.

### II. APPLICABILITY

This policy applies to the state officer, employees, and special state appointees of the Governor's Office, the Lieutenant Governor's Office, and the First Lady's Office. This policy replaces/rescinds any previous limited use policies adopted by the Governor's Office, the Lieutenant Governor's Office, and the First Lady's Office.

### III. POLICY STATEMENT

The Governor, the Lieutenant Governor, and the First Lady, and their respective employees perform a variety of duties for numerous and diverse constituencies, across the entire geography of the State, often in a constant capacity. This makes it inevitable for the state officer and Governor's Office, Lieutenant Governor's Office and First Lady's Office employees, in the course of conducting official state business, to make occasional, non-official use of state property or time that some may construe as outside the scope of the official business of the agency. Such limited, personal use of state property/resources should not be considered a violation of the Indiana Code of Ethics.

Further, in recognition that the Governor and Lieutenant Governor, as state officers hold a publicly elected office, Ind. Code § 4-2-17 (c) allows for the state officer or (an) individual(s) designated by the state officer to use state resources for the following: (1) to coordinate the state officer's official, personal, and political calendars; (2) to provide transportation and security for the state officer and any employee or special state appointee who accompanies the state officer; and incidental or de minimus political communications or activity involving the state officer.

The parameters of permissible use under this policy are as follows:

- A. The use must not interfere with the performance of official duties and work responsibilities;
- B. The use must be infrequent, of short duration and, unless not reasonably practical, made on the state officer's, employee's or special state appointee's personal time;
- C. The use must not be for the purpose of conducting business related to an outside commercial activity;
- D. The use must not be for an illegal activity;
- E. The use must not be for a political purpose, except as provided for in Ind. Code § 4-2-6-17(c). A political purpose does not include handling or disposing of unsolicited political communications. Pursuant to Ind. Code §4-2-6-17(c), a state officer or an individual designated by the state officer may use state materials, funds, property, personnel, facilities, or equipment for the following:
  - (1) To coordinate the state officer's official, personal, and political calendars.
  - (2) To provide transportation and security for:
    - (a) the state officer; and
    - (b) any employee or special state appointee who accompanies the state officer.
  - (3) Incidental or de minimis political communications or activity involving the state officer.
- F. The use must be in accordance with the current version of the Information Resources Use Agreement ("IRUA"). The restrictions in the IRUA apply to all information resources including, but not limited to, state hardware, software, data, information, network, personal computing devices, phones and other information technology; and
- G. The use must not violate any other ethics rules or agency policies.

#### **IV. COMPLIANCE**

Directors, supervisors, and managers are responsible for monitoring the appropriate use of state property/resources within their areas of supervision and for referring matters for investigation and/or discipline to the Office of Inspector General. State officers, employees and special state appointees who violate this policy are subject to disciplinary action by both their employing office and the Office of Inspector General & State Ethics Commission.

**V. LEGAL REFERENCE**

42 IAC 1-5-12 Use of State Property

42 IAC 1-5-13 Ghost Employment

Ind. Code § 4-2-6-17

Ind. Code § 4-2-7-5

**VI. EFFECTIVE DATE**

Immediately

**VII. ENDING DATE**

Upon recession

**APPROVAL**

---

Eric J. Holcomb  
Governor

---

Date

INDIANA  
STATE ETHICS COMMISSION

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

February 2017  
No. 17-I-3

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**

Allison Taylor is the Ethics Officer for the Indiana Family and Social Services Administration (“FSSA”). Ms. Taylor is requesting an advisory opinion on behalf of Dr. Jennifer Walthall, the newly appointed Secretary of FSSA. Specifically, Ms. Taylor is requesting an opinion from the Commission to ensure that Dr. Walthall’s outside employment at Riley Hospital for Children (“Riley”) would be permissible under the Code of Ethics.

Dr. Walthall joins FSSA after serving as the Deputy Health Commissioner for the Indiana State Department of Health for two and a half years. She was also the Division Chief at Riley for 4 years, and prior to that she served as the Residency Program Director of Riley for 9 years. She has over 16 years of clinical experience and maintains Board Certification in Pediatrics and Emergency Medicine. She also has a Master’s Degree in Public Health.

Dr. Walthall would like to work a weekly shift in the pediatric emergency room at Riley while she is serving as the Secretary of FSSA in order to maintain her clinical certification and to continue her personal and professional mission of providing compassionate services to children.

Dr. Walthall proposes to work a weekly shift in the Riley emergency room on a consistent but alternating schedule. For example, during week one she will work in the emergency room from 10 a.m. to 7 p.m. on Tuesday. During week two, she will work from 3 p.m. to midnight on Tuesday. During week three she would be back to a shift from 10 a.m. to 7 p.m. on Tuesday, and the pattern continues. This schedule will allow her to spend a few hours at the FSSA office on the days where her shift begins at 10 a.m., but will allow her to spend almost a full day at the FSSA office on the Tuesdays when her shift starts at 3 p.m. As an employee of the State, Dr. Walthall will pay for her own medical malpractice insurance, licensing fees and certifications.

Riley first opened in 1924 and is the State’s first hospital exclusively for children. Riley is nationally-ranked and has Indiana’s only Level I Pediatric Trauma Center, Pediatric Burn Unit and Pediatric Dialysis Program. In her consulting role with Riley, Dr. Walthall will not serve in a supervisory or leadership role with the hospital. Instead, Dr. Walthall will serve as an independent contractor to Riley and will be paid by Riley on an hourly basis. Dr. Walthall will not charge patients nor will she bill insurance. The very nature of emergency room medicine is

that the patients come to you, and the receiving physicians treat patients without regard to insurance, income or even the ability to pay. Ms. Taylor believes this fact in and of itself solidifies her opinion that Dr. Walthall's work in the emergency room is not inherently incompatible, and does not conflict in any relevant way, with her duties as Secretary.

Dr. Walthall understands and agrees that she may not use State time to work at Riley or see patients. She anticipates easily meeting the 37.5 hour work-week requirement despite time spent seeing patients. During emergency room shifts she will be available remotely by phone and email. The Riley campus is in very close proximity to the FSSA office.

FSSA has no direct contracts with Riley. However, Riley is a related entity of Indiana University (IU) Health and FSSA's various divisions have about 29 contracts with IU Health and related entities. One grant from FSSA's Division of Mental Health and Addiction to IU totals \$339,000 over a two-year period and is for the operation of Riley's dual diagnosis clinic for adolescents. Ms. Taylor points out that these 29 contracts are all at the division level, meaning that the Division Directors are the owners of the contracts – Dr. Walthall will not be in a position to sign or negotiate these contracts. In order to avoid violating the State's ethics laws and to avoid a potential conflict under IC 35-44.1-1-4, Riley has agreed that neither State funds from these contracts nor funds from FSSA facilitated programs like Medicaid, will be used to pay Dr. Walthall's consulting fees. Ms. Taylor believes that this separation, coupled with the fact that Dr. Walthall has no leadership role with Riley and is simply staffing the emergency room once a week, should ensure that there is not even the appearance that Dr. Walthall is deriving a profit from, or has pecuniary interest in, any of the IU Health contracts with the State.

In terms of her daily duties at FSSA, IC 12-8-1.5-10.5 designates the Office of FSSA Secretary as the single state agency to administer the Medicaid program. In this role, the FSSA Secretary may make decisions affecting Medicaid providers; however, most if not all decisions of the Secretary or her office makes regarding Medicaid providers would apply to all providers (or groups of providers) uniformly. For example, any changes FSSA makes to the Medicaid fee schedule would apply to all Medicaid providers equally. Furthermore, although Riley serves Medicaid patients, it has little, if any, direct interaction with FSSA. Accordingly, it is unlikely that FSSA would make a decision that would have a unique impact on Riley or I U Health or related entities. However, if the situation presented itself, FSSA will screen Dr. Walthall from participating in any such decision by providing the FSSA Deputy Secretary full authority to handle such matters independently. Dr. Walthall successfully utilized a similar screen during her work with the Indiana State Department of Health.

On February 1, 2017, Dr. Walthall filed a Conflict of Interests – Decisions and Voting Ethics Disclosure Statement with the Office of Inspector General describing the potential conflict of interests she would have if she were to participate in votes or decisions regarding Medicaid providers. The Statement also describes the screen Ms. Taylor has established to ensure that Dr. Walthall will not participate in any Medicaid decisions that would uniquely affect Riley. If any such matters come before the Office of the FSSA Secretary, they will be handled independently by the FSSA Deputy Secretary.

Ms. Taylor believes that Dr. Walthall's outside employment would not violate any agency rule or regulation. Ms. Taylor's opinion is that this screen and the confirmation that IU will not pay Dr. Walthall with any state funds, should provide the proper assurance that her outside employment will not affect the integrity of her services to the State.

### **ISSUE**

What ethics issues, if any, arise for Dr. Walthall given her position as Secretary of FSSA and her simultaneous employment with Riley?

### **RELEVANT LAW**

#### **IC 4-2-6-5.5 (42 IAC 1-5-5)**

##### **Conflict of interest; advisory opinion by commission**

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

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

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

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

(A) of substantial value; and

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

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

#### **IC 4-2-6-9 (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 relating to that decision or vote, if the state officer, employee, or special state appointee has knowledge that any of the following has a financial interest in the outcome of the matter:

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

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

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

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

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

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

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

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

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

(A) details the conflict of interest;

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

(C) is signed by both:

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

(ii) the agency ethics officer;

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

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

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

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

#### **IC 4-2-6-10.5 (42 IAC 1-5-7)**

#### **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).

#### **42 IAC 1-5-10**

##### **Benefiting from confidential information**

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

#### **42 IAC 1-5-11**

##### **Divulging confidential information**

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

#### **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 4-2-6-17**

##### **Use of state property for other than official business; exceptions; Violations**



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

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

## **42 IAC 1-5-13**

### **Ghost employment**

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

## **ANALYSIS**

### *A. Outside employment*

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

The Commission generally defers to an agency's ethics officer regarding outside employment opportunities since these individuals are in a better position to determine whether a conflict of interest might exist between an employee's state duties and an outside employment opportunity. Based on the information and opinion provided by Ms. Taylor, Dr. Walthall's employment at Riley would not create a conflict under this provision. Specifically, Ms. Taylor provides that Dr. Walthall would be practicing emergency pediatric medicine once a week, during a well-defined shift for Riley. She would not serve in a supervisory or leadership role with the hospital. She would be an independent contractor and will be paid on an hourly basis. According to Ms. Taylor, her responsibilities in treating patients during one shift per week would not conflict with her responsibilities as the Secretary of FSSA, and the Riley shift would not require her to recuse herself from matters that are critical to the performance of her duties as Secretary of FSSA.

Moreover, it does not appear Dr. Walthall would be required to disclose confidential information that she may have access to by virtue of her state employment. Similarly,

nothing in the information presented suggests that she would use or attempt to use her state position for any unwarranted privileges or exemptions. Dr. Walthall worked at Riley prior to becoming Secretary of FSSA and will not charge patients or bill insurance for her services.

**The Commission must determine whether Dr. Walthall's outside employment with Riley would create a conflict of interests for her under this rule.**

*B. Conflict of interests - decisions and votes*

IC 4-2-6-9 (a)(1) prohibits Dr. Walthall from participating in any decision or vote, or matter relating to that decision or vote, if she has a financial interest in the outcome of the matter. Similarly, IC 4-2-6-9(a)(3) prohibits Dr. Walthall from participating in any decision or vote, or matter relating to that decision or vote, if she or a business organization which employs her has a financial interest in the matter.

Dr. Walthall will be serving as the Secretary of FSSA and will also be employed as an independent contractor by Riley. Riley is a related entity of IU Health. Accordingly, Dr. Walthall would have a potential conflict of interests if she participates in decisions or votes, or matters related to such decisions or votes, in which she, Riley, or IU Health would have a financial interest in the outcome.

Riley does not have any direct contracts with FSSA, but it receives funding from an FSSA contract with IU Health. In addition, IU Health has 20 contracts with FSSA. Ms. Taylor advises that Dr. Walthall is not in a position to negotiate or sign contracts because the contracts are handled at the Division level. Accordingly, it is unlikely she would ever be required to participate in decisions regarding these contracts.

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

However, to ensure that Dr. Walthall does not participate in any decisions or votes in which Riley or IU Health would have a financial interest, FSSA has developed a screening process whereby any matters in which a decision could uniquely affect Riley, IU Health, or IU Health-related entities would be delegated to the Deputy Secretary. Further, any contracts involving Riley, IU Health or IU Health-related entities and the Office will be assigned to and/or negotiated by the Deputy Secretary.

IC 4-2-6-9(b) requires that an employee who identifies a potential conflict of interests notify their Ethics Officer and Appointing Authority, and seek an advisory opinion from the Commission or file a written disclosure statement. In addition to this request for a formal advisory opinion, Dr. Walthall has filed a Conflict of Interests –Decisions and

Voting Ethics Disclosure Statement with the Office of Inspector General. The disclosure statement identifies the potential conflict of interest, describes the screen established by Ms. Taylor and includes her notification to her appointing authority, all in accordance with the requirements in IC 4-2-6-9(b).

**The Commission must determine if Dr. Walthall would have a potential conflict of interests if she were to participate in decisions or votes, or matters related to such decisions or votes, that would affect Riley or IU Health.**

**If so, the Commission must determine if the disclosure and screening process developed by FSSA is satisfactory to prevent Dr. Walthall from violating this rule.**

*C. Conflict of interests – contracts*

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

Ms. Taylor provides that Riley does not have any direct contracts with FSSA, but IU Health has about 29 contracts with FSSA, one of which provides funding to Riley. However, Ms. Taylor has affirmed that Dr. Walthall would not have a financial interest in any of these contracts. Specifically, Riley has agreed that neither state funds from any of these contracts nor funds from FSSA facilitated programs like Medicaid, will be used to pay Dr. Walthall’s consulting fees. Accordingly, she would not have a financial interest in a state contract through her position at Riley and would not be in violation of this rule.

*D. Confidential information*

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

To the extent Dr. Walthall is exposed to or has access to such confidential information in her position as Secretary of FSSA, she would be prohibited not only from divulging that information but from ever using it to benefit any person, including Riley, in any manner.

*E. Use of state property and Ghost employment*

42 IAC 1-5-12 prohibits Dr. Walthall from using state property for any purpose other than for official state business unless the use is expressly permitted by a general written agency, departmental, or institutional policy or regulation that has been approved by the Commission. Likewise, 42 IAC 1-5-13 prohibits Dr. Walthall from engaging in, or directing others to engage in, work other than the performance of official duties during working hours, except as permitted by general written agency, departmental, or institutional policy or regulation.

To the extent that Dr. Walthall observes these provisions regarding her employment with Riley, such outside professional activity would not violate these ethics laws.

**The Commission may wish to confirm that Dr. Walthall has a plan for making up hours that she will miss when she completes her shifts at Riley to ensure she will not violate the ghost employment rule.**

**CONCLUSION**

Respectfully Submitted,

Jennifer Cooper  
Ethics Director