

**MINUTES OF THE MEETING OF
THE INDIANA STATE ETHICS COMMISSION
May 9, 2019**

I. Call to Order

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

Others present were Jeffery M. Brown, IDEM; James French, IDEM; Debera Backhus, former DNR employee; Lora Phillippe, INDOT; Chris Serak, INDOT; Chris Kulik, ISDH; Erika Steuerwald, ISDH; Deana Smith, ISDH; Beth Green, DWD; Elizabeth Gamboa, DNR; Mattheus Mitchel, DOR; Amber Nicole Ying, DOR; Tamera Glickman, IDOA; and Jared Prentice, DOR.

II. Adoption of Agenda and Approval of Minutes

Commissioner Gilroy moved to approve the Minutes of the April 11, 2019 Commission Meeting and Commissioner Keith seconded the motion which passed (4-0).

III. Request for Formal Advisory Opinion: Conflicts of Interest

**2019-FAO-009 Jeffery Matthew Brown, Confined Feeding Operations
Compliance Inspector
James Michael French, Interim Ethics Officer
Indiana Department of Environmental Management**

Jeffery (Matt) Brown is a Confined Feeding Operation (CFO) Compliance Inspector with the Indiana Department of Environmental Management (IDEM). Mr. Brown is responsible for conducting field inspections and providing technical and regulatory guidance to staff, the section supervisor and external entities. His essential duties are to interpret laws, regulations and guidelines within an area of assignment and develop and coordinate programs and work plans for the CFO Compliance Section. When necessary, he develops and modifies existing state programs to adapt to changes in federal or state legislation-mandated policy. He also acts as the program expert for the CFO Compliance Section and conducts field inspections in an assigned geographical area and large dairy operations.

Mr. Brown asserts that he is not involved in any contracting for IDEM and that he does not make any regulatory or licensing decisions for IDEM. He provides that his IDEM position does not involve participating in any decisions regarding the sale of harvested or standing crops to CFOs nor does it involve his participation in any decisions regarding the sale of calves/cattle to individuals who own or are associated with CFOs.

In addition to working for IDEM, Mr. Brown owns and operates a small cattle operation and harvests hay for livestock consumption in an Indiana county. Mr. Brown is seeking a formal advisory opinion from the Commission to determine if it would be a conflict of interests for him to sell either a harvested standing crop of hay to a permitted CFO or sell calves or cattle to individuals who own or are associated with a permitted CFO.

The advisory opinion stated the following analysis:

Mr. Brown's request for a formal advisory opinion invokes consideration of the provisions of the Code pertaining to Conflicts of Interests, Excess Compensation for Sale or Lease, Use of State Property, Ghost Employment and Benefitting from and Divulging Confidential Information. The application of each provision to Mr. Brown is analyzed below.

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 his official duties that his ability to perform them would be materially impaired; 2) disclosing confidential information that was gained in the course of state employment; or 3) using or attempting to use his official position to secure unwarranted privileges or exemptions of substantial value that are not properly available to similarly situated individuals outside state government.

IDEM's Ethics Officer, James Michael French, provides that Mr. Brown has an assigned region in which he is responsible for inspecting CFOs. His farming operation is not in this region, and he does not intend to sell his crops or livestock to CFOs within this region. Mr. Brown will also not be required to disclose any confidential information that he has access to as a state employee for his prospective business.

Based on the information provided, the Commission finds that Mr. Brown's outside commercial venture in selling crops and/or livestock is not inherently incompatible with his IDEM responsibilities nor would it require his recusal from matters central or critical to the performance of his official state duties that his ability to perform them would be materially impaired; however, he should not inspect the same CFOs to which he sells crops or livestock. The Commission advised Mr. French to ensure that procedures are in place to screen Mr. Brown from inspecting any of the CFOs to which he has or will sell crops or livestock.

Mr. Brown must also ensure that he does not use his position at IDEM to secure any advantages for CFOs or anyone else that would not be available to similar individuals.

So long as he does not sell to CFOs that he inspects as part of his IDEM duties, Mr. Brown would not have a conflict of interests under this rule and his outside commercial venture would not violate IC 4-2-6-5.5.

B. Excess Compensation for Sale or Lease

IC 4-2-6-7 prohibits a state employee from accepting compensation for the sale or lease of any property or service that substantially exceeds that which he or she would charge in the ordinary course of business or from any person who has a business relationship with the agency in which the individual is employed.

Business relationship is defined, in part, as the dealing of a person with an agency seeking, obtaining, establishing, maintaining, or implementing a license or permit requiring the exercise of judgment or discretion by the agency. In this case, it appears that the CFOs to which Mr. Brown would like to sell crops and/or livestock have a business relationship with IDEM since they are permitted by IDEM.

The Commission finds that Mr. Brown would need to ensure that he does not sell any crops and/or livestock to a CFO at a price that substantially exceeds what he would charge in the ordinary course of business.

C. Conflict of interests - decisions and votes

IC 4-2-6-9 (a)(1) prohibits Mr. Brown from participating in any decision or vote, or matter relating to that decision or vote, if he has a financial interest in the outcome of the matter. Financial interest is defined to include an interest in a purchase, sale, lease, contract, option, or other transaction between an agency and any person or an interest involving property or services.

This prohibition extends beyond merely the decision or vote on the matter to encompass any participation in that decision or vote. In addition, the rule requires a state employee who recognizes a potential conflict of interests to notify his agency's appointing authority and ethics officer in writing and either (1) seek a formal advisory opinion from the State Ethics Commission or (2) file a written disclosure form with the OIG.

Mr. Brown asserts that he does not participate in any decisions regarding the sale of crops and cattle/calves to CFOs or individuals associated with CFOs in the course of his official state business; however, he is involved in conducting inspections of CFOs and his findings could lead to fines or other penalties for the CFOs if they are found to be noncompliant with applicable regulations. If he were to participate in decisions, or matters related to such decisions, concerning CFOs to whom he may sell his livestock or crops, it is possible that he could have a financial interest in the outcome of such decisions.

Accordingly, the Commission finds that he has an identified potential conflict of interests and he must ensure he meets the remaining disclosure and notification requirements in IC 4-2-6-9(b). He has already requested a formal advisory opinion and disclosed the potential conflict to the Commission, but he must also notify IDEM's appointing

authority of the potential conflict and work with his Ethics Officer to ensure he is screened from all participation in the matters in which he would have a financial interest.

D. 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 contracting responsibility for any of the activities of the contracting agency, provided certain statutory criteria are met.

Mr. Brown does not have contracting responsibility for IDEM. Further, Mr. Brown provides that none of the compensation he would receive from the sale of his crops or livestock to CFOs would be derived from any state contracts.

Accordingly, the Commission finds that he does not have a financial interest in a state contract at this time and this rule does not apply.

E. Confidential information

Mr. Brown 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 Mr. Brown 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 a CFO. In addition, the definition of “information of a confidential nature” is set forth in IC 4-2-6-1(a)(12).

To the extent Mr. Brown is exposed to or has access to such confidential information in his position with IDEM, he would be prohibited not only from divulging that information but from ever using it to benefit any person, including any CFO, in any manner.

F. Use of state property and Ghost employment

42 IAC 1-5-12 prohibits Mr. Brown 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 Mr. Brown 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.

The Commission confirmed that Mr. Brown would be conducting his commercial activity during non-working hours and that he would not use any state property to conduct his outside activities. To the extent that Mr. Brown observes these provisions, his outside activities would not violate these ethics laws.

The Commission found that Mr. Brown's outside commercial activities in selling crops and livestock to CFOs would not create a conflict of interests under the Code of Ethics so long as IDEM screens him from inspecting any CFOs to which he would sell his products.

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

**IV. Request for Formal Advisory Opinion: Post-Employment Restrictions
2019-FAO-010 Debera Backhus, Former Special Projects Coordinator, Lake
Michigan Coastal Program
Department of Natural Resources**

Debera Backhus is a former employee of the Indiana Department of Natural Resources (DNR) Division of Nature Preserves, Lake Michigan Coastal Program (LMCP). Ms. Backhus served as the Special Projects Coordinator for the LMCP from July 31, 2017 to October 19, 2018. In that capacity, she served as project manager for several projects. Two of those projects included negotiating a contract extension or developing and negotiating subcontracts and then administering and overseeing the contract work.

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

A smaller and intermittent part of Ms. Backhus' job was to provide support to other LMCP program efforts, including the grant program. Ms. Backhus provides that the LMCP's grant program is a bit different from many grant programs in that it encourages potential grant applicants to reach out to and work with the grants staff and technical staff to discuss their project ideas; ask questions to ensure that projects they submit are eligible, consistent with needs in the LMCP area and are not duplicative; and otherwise seek feedback to strengthen their grant proposals. This approach helps the grant program achieve an overall goal to fund high quality, viable, sustainable projects that advance the LMCP's mission.

Accordingly, all LMCP staff in the Chesterton office, including Ms. Backhus, served as technical resources to the decision-making bodies and grants staff to answer questions and provide technical perspective on all grant applications submitted at the pre-proposal level and full proposal level. At the pre-proposal level all staff read all pre-proposals and then attended the LMCP Grants Committee meeting to provide technical support as needed and answer questions based on one's areas of expertise. The Grants Committee, which is composed largely of appointees on the Coastal Advisory Board, then voted on which proposals should be

recommended to the full LMCP Coastal Advisory Board for their approval and voted to move the recommended pre-proposals to the full proposal level.

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

Specifically, Ms. Backhus provides that her role in the grants process during her tenure with DNR was limited to 1) talking to any potential applicants who reached out to her for assistance (only one of the fifteen or so applicants sought her advice and feedback); 2) reading all of the pre-proposals submitted and serving as a technical resource to the grants staff, particularly the Grants Assistant, and to the Grants Committee during their pre-proposal review meeting; and 3) reading all full proposals submitted and serving as a technical resource for the Technical Advisory Board during their full proposal review meeting. Ms. Backhus provided the Commission with supporting materials for her request, including the cover page and a grants process diagram that outlines the process and refers to the decision-making bodies involved throughout the process. She also provided a link to the entire current Grant Pre-Proposal Guidance for additional details.

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

Ms. Backhus provides that although she was involved in some contracts as a DNR employee, she was not involved in any contracts with the City while she was with DNR. The LMCP Grants Specialist is the staff member that deals with contracting for all grants. Ms. Backhus also notes that she was not involved in any regulatory or licensing decision involving the City, and she is not aware of LMCP having any regulatory or licensing authority. She also notes that she does not plan on doing any executive branch lobbying if she performs work for the City.

According to Ms. Backhus, one of the many projects the Director of the Department conveyed as a possible element of the consulting scope of work was a project (the Project) funded in part by a LMCP grant in which Ms. Backhus participated during her employment with DNR. As described above, as a technical staff member, Ms. Backhus served as a technical resource for the Grants Committee (September/October 2017), Technical Advisory Board (January 2017) and Grants Program staff when the Project was evaluated by these decision-making bodies who discussed, ranked and voted on all pre- and full proposals submitted in late 2017.

Ms. Backhus is seeking a Formal Advisory Opinion to determine whether her limited technical resource input involvement in the overall grant selection process rises to the level of “personal and substantial participation” in the Project and prevents her from working with the City in implementing some elements of this particular project.

The advisory opinion stated the following analysis:

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

A. Confidential Information

IC 4-2-6-6 prohibits Ms. Backhus from accepting any compensation from any employment, transaction, or investment that was entered into or made as a result of material information of a confidential nature. Based on the information provided, it does not appear that Ms. Backhus would utilize confidential information in her consultant work with the City. So long as any compensation Ms. Backhus receives does not result from confidential information, her post-employment opportunity with the City would not violate IC 4-2-6-6.

B. Post-Employment

IC 4-2-6-11 consists of two separate limitations: a “cooling off” period and a “particular matter” restriction. The first prohibition, commonly referred to as the cooling off or revolving door period, prevents Ms. Backhus from accepting employment from an employer for 365 days from the date that she leaves state employment under various circumstances. Employer is defined in IC 4-2-6-1(a)(10) as any person from whom a state employee receives compensation.

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

Ms. Backhus has indicated that she does not plan on engaging in any executive branch lobbying as part of her work for the City. To the extent that Ms. Backhus does not engage in executive branch lobbying for one year after leaving state employment, she would not violate this provision of the post-employment rule.

Second, Ms. Backhus 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 or grant 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 or grant. Ms. Backhus provides that she was

not involved in any agreements, contracts or grants between the City and the State during her tenure at DNR except as otherwise outlined herein. The Commission has considered a grant to be a contract for the purposes of this rule.

The Commission finds that Ms. Backhus has never participated in the negotiation or administration of a contract or grant with the City during the course of her state employment. Accordingly, this provision would not apply to Ms. Backhus' post-employment opportunity with the City.

Third, Ms. Backhus 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. Backhus provides that she was not involved in any regulatory or licensing decisions that applied to the City while with DNR. The Commission finds that Ms. Backhus has never made a regulatory or licensing decision that directly applied to the City during the course of her state employment. Accordingly, this provision would not apply to Ms. Backhus' post-employment opportunity with the City.

Fourth, Ms. Backhus 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. Ms. Backhus is a former state employee; thus any future employer cannot influence her in her official capacity as a state employee.

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

In this instance, Ms. Backhus would be prohibited from representing or assisting the City, as well as any other person, in a particular matter in which she personally and substantially participated as a state employee. The "personal and substantial" standard is one the Commission applies on a case-by-case basis.

Based on the information provided, Ms. Backhus had some limited involvement in the LMCP grant through which the Project was funded; however, she was not involved in ranking proposals or in making funding decisions. She and all of the LMCP staff in the Chesterton office merely provided technical resources to the decision-making bodies and grants staff to answer questions and provide technical perspective on the viability and quality of projects proposed in all grant applications. She estimates she spent less than

five percent of her time on the proposals for this particular grant during the relevant grant cycle.

Accordingly, the Commission finds that Ms. Backhus' involvement in the Project as a state employee did not rise to the level of being "personal and substantial" for purposes of the particular matter restriction, and she would be permitted to work on the Project for the City as a consultant.

The Commission finds that Ms. Backhus' post-employment opportunity with the City would not violate any of the post-employment restrictions found in IC 4-2-6-11.

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

**V. Request for Formal Advisory Opinion: Post-Employment Restrictions
2019-FAO-011 Lora Phillippe, Project Manager
Christopher Serak, Ethics Officer/Prequalification Director
Indiana Department of Transportation**

Christopher Serak is the Ethics Officer for the Indiana Department of Transportation (INDOT). Mr. Serak is requesting an advisory opinion on behalf Lora Phillippe, Project Manager for INDOT's Vincennes District.

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

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

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

Mr. Serak provides that Ms. Phillippe's duties do not include or otherwise relate to contract negotiation, scoping, design or delivery. Her responsibilities do not involve negotiating,

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

Mr. Serak and Ms. Phillippe are seeking a formal advisory opinion to determine if Ms. Phillippe's participation in assigned LPA projects is "personal and substantial" for the purposes of IC 4-2-6-11(c), and in turn, whether the particular matter restriction prevents her from assisting future employers with LPA projects she participated in as a project manager for INDOT.

After the Commission discussed the matter, Commissioner Keith moved to table this matter and not issue a Formal Advisory Opinion until such time as the requestor produced additional information on a specific employment opportunity. Commissioner Gilroy seconded the motion which passed (4-0).

**VI. Consideration of the Agreed Settlement
In the Matter of Jada Mocaby/Case Number 2018-08-0233
Heidi Adair, Staff Attorney
Office of Inspector General**

Heidi Adair presented the proposed Agreed Settlement in this matter to the Commission for their approval.

Commissioner Gilroy moved to approve the Agreed Settlement and Commissioner Keith seconded the motion which passed (4-0).

VII. Director's Report

State Ethics Director, Jen Cooper, stated that the number of informal advisory opinions issued by the Office of Inspector General since the last meeting was 20, the majority of which covered the ethics rules on post-employment, outside employment, conflicts of interests and gifts. Ms. Cooper also reported that there had been legislative action taken in response to the Formal Advisory Opinion the Commission issued in April (2019-FAO-004) pertaining to communications by state officers. Ms. Cooper provided a handout to the Commissioners, which is also available on the OIG website, explaining the changes.

VIII. Adjournment

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

The public meeting adjourned at 10:44 a.m.

INDIANA
OFFICE OF INSPECTOR GENERAL

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

**Report of Inspector General to
State Ethics Commission
2019 Q2**

1. IAOs: Q2 April 1 – June 30, 2019:
 - a. 71 issued in Q2
 - i. Compares to 77 issued in Q1
 - ii. Compares to 85 in Q2 in 2018
 - iii. 2018 we issued 321
2. Investigations: Q2 April 1 – June 30, 2019:
 - a. 92 Hotline Reports/Requests to Investigate
 - i. Compares to 87 in Q1 2019
 - ii. 179 2019YTD compared to 178 2018YTD
 - b. 19 New investigations opened by our office.
 - i. Compared to 14 in Q1 2019
 - ii. Compared to 9 in Q2 2018
 - c. 12 Closed investigations/Final Reports
 - i. Compared to 17 closed in Q1 2019
 - ii. Compared to 16 closed for Q2 in 2018
 - iii. 9 of 12 closed cases are published on the website
3. KPI's for Q1
 - a. KPI #1 - Number of informal advisory opinions (“IAO”s) requested 76 (includes withdrawn or no jurisdiction)
 - b. KPI #2 - Average number of business days to provide an IAO 1.24
 - c. KPI #3 - Number of recommendations made to reduce waste, inefficiency, fraud and improve integrity 18 recommendations in 6 reports (0 confidential and 6 public reports)
4. 2019 Auditors & Investigators Conference
 - i. 215 Attendees
 - ii. Primary speaker was Joe Buckley, president of John E. Reid & Associates, a nationally known organization that trains police officers and investigators in the art or investigative interviewing and interrogation techniques.
5. OIG Annual Report was sent to you last week. Any questions or comments?
6. FY2020 Budget
 - a. OIG \$1,185,157 for operations (3.3% increase over FY2019)
 - b. SEC \$5,731 for operations (reduction from FY2019 due to reduced travel expenses)
 - c. All general fund dollars
 - d. Dedicated conference funds of \$5,176

- e. Reserve is 1% for OIG and SEC funds
7. FY2019 Reversions are not yet calculated



Eric J. Holcomb, Governor
Bret D. Marsh, DVM, State Veterinarian

INDIANA STATE BOARD OF ANIMAL HEALTH

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IC 4-2-6-11

Post-employment waiver

As the Appointing Authority of the Indiana State Board of Animal Health, I am filing this waiver of the application of the Code of Ethics' post-employment restriction as it applies to Daniel Spears in his post-employment with Ladoga Frozen Foods and Retail Meats, Inc.

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:

The Indiana State Board of Animal Health (BOAH) operates the State's meat and poultry inspection program. Meat slaughtering and processing establishments must apply for and receive a grant of inspection service from BOAH in order to produce and sell meat and poultry products in commerce. BOAH employs meat inspectors to conduct inspections of slaughtering and processing activities at meat plants to determine compliance with state and federal food safety rules. A meat inspector is trained to recognize potential food safety issues and is authorized to write notices of violations when problems are noted. An inspector may detain animals with potential issues, but the final determination of fitness to enter the food supply is by a BOAH veterinarian.

Daniel Spears has worked for BOAH as a meat inspector since April 2017. Daniel would like to leave state employment and work for Ladoga Frozen Foods and Retail Meats, Inc. (Ladoga). Ladoga is a meat plant that BOAH inspects. Ladoga is not a plant that Daniel normally inspects; however, Daniel has completed inspection of Ladoga on occasions while covering the shifts of other employees who were on leave. Specifically, Daniel has covered inspection duties at Ladoga for one shift in 2018 and 21 shifts in 2019 to date.

Daniel's position as a meat inspector implements rules and policy but he has no authority to create rules or policy.

Daniel has no authority to negotiate or administer any contracts as a meat inspector. BOAH has not contracts with Ladoga.

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

Daniel's prospective position with Ladoga would be as an "apprentice," wherein he would work in the plant for a period of years with the potential to purchase the business in the future. While working in the plant, he could be involved with any task associated with Ladoga's business operations, including slaughtering animals and processing meat products.

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:

Daniel's position with Ladoga will involve business operations, including slaughtering animals and the processing and sale of meat products. BOAH will continue to inspect Ladoga's meat production processes from a food safety perspective. BOAH's inspections include evaluating cleanliness and inspecting carcasses for contamination. Currently BOAH is in the Ladoga facility between 2 to 4 days each week, the frequency is determined by BOAH based on the operations conducted at the plant.

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:

During his term at BOAH Daniel has received extensive training in food safety concepts, rules and policies. The knowledge and skills Daniel obtained during his training and experience at BOAH could benefit Ladoga by helping the business comply with food safety requirements and avoid or appropriately address food safety issues. Having personnel in meat plants with food safety knowledge and skills reduces the risk of food safety issues which benefits consumers. This is all consistent with BOAH's food safety mission.

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

Mr. Spear's trade prior to working for the State of Indiana was work as a meat cutter / processor. Without a waiver, he will be severely limited in his ability to resume work in his trade in Indiana other than continuing to work for the State Board of Animal Health. He is unable to wait 365 days after leaving BOAH because he has a family to support and would be unable to pay for basic living necessities for such an extended period of time. Perhaps he could find work in another field for 365 days, but his experience and training and therefore best prospects for employment are in the meat business. Mr. Spears says: "I'm a meat cutter by trade and this is what I know. And this is how I want to make my living!"

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.



Signature

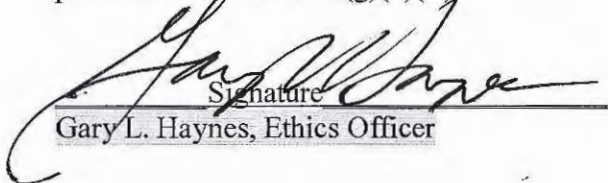
Bret D. Marsh, DVM, State Veterinarian

7/1/19

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).



Signature

Gary L. Haynes, Ethics Officer

7/1/19

DATE

D. Approval by State Ethics Commission

FOR OFFICE USE ONLY

Approved by State Ethics Commission

Katherine Noel, 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.*

July 2, 2019

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

RE: Request for Formal Advisory Opinion for Harold Gil

Dear Chairperson Noel and members of the Ethics Commission:

The Indiana State Department of Health (“ISDH”) on behalf of Harold Gil, requests a Formal Advisory Opinion from the State Ethics Commission addressing conflicts of interest and outside employment. Mr. Gil is an ISDH employee who is seeking part-time employment as a contractor for the Marion County Public Health Department (“MCPHD”). The opportunity is a position as a part-time computer programming contractor for MCPHD with work hours outside of his normal ISDH work hours. The funding for the contract position is from a Centers for Disease Control (“CDC”) grant that is not in any way affiliated with ISDH.

Mr. Gil is the Informatics Director for ISDH’s Epidemiology Resource Center. His job is to ensure that the ISDH is getting the patient information that it needs from emergency departments, labs, and local health departments. He is also responsible for overseeing drug and opioid use disorder surveillance being performed by his team. He has no authority to make significant decisions that will benefit MCPHD.

In March, Mr. Gil was involved in a recent grant awarded to MCPHD. His involvement was limited to receiving and forwarding MCPHD’s proposed budgets and associated activities to Eric Hawkins, the grant’s Project Director for ISDH and incorporating those associated MCPHD activities into the grant application. From there, Mr. Hawkins and Irene Jameson, and ISDH Project Manager, decided which MCPHD budget option was accepted. Mr. Gil did not have any influence or authority over the grant award.

Based on the information presented, we believe that Mr. Gil’s part-time employment is not incompatible with his duties at ISDH nor does it require recusal from his official responsibilities. Furthermore, in his role as the Informatics Director, he is not in a position to participate in any decisions or votes or other matters related to a decision or vote where MCPHDD would have a financial interest.

Ethics Commission

RE: Harold Gil

Page 2 of 13

Mr. Gil knows and understands that if permitted to pursue this outside part-time employment opportunity, the ethics code still applies. He understands and agrees to abide by the ethics code governing conflicts of interest, ghost employment, use of state property and confidential information.

Attached to this request is the informal advisory opinion prepared in August 2018, regarding this possible part-time employment wherein it was suggested to study the applicability of the screening and disclosure requirements in IC 4-2-6-9(b). Because Mr. Gil does not have any influence or authority over the award of grants, that process was not pursued.

Given that Mr. Gil's potential part-time employer MCPHD has a business relationship with ISDH, on behalf of Mr. Gil we seek a formal advisory opinion regarding whether he may accept the part-time employment opportunity without violating IC 4-2-6-10.5 and its prohibitions against an employee knowingly having a financial interest in a contract made by a state agency. We also seek a formal advisory opinion regarding the applicability of IC 4-2-6-5.5, 4-2-6-9, and the criminal conflict of interest statute set forth in IC 35-44.1-4.

Sincerely,

Deana M. Smith
Attorney and Agency Ethics Officer

From: Cooper, Jennifer

Sent: Wednesday, August 29, 2018 4:58 PM

To: Gil, Harold <HGil@isdh.IN.gov>

Subject: Ethics Informal Advisory Opinion, Gil, Outside employment

Harold,

Thank you for contacting our office for an informal advisory opinion regarding your part-time, outside employment opportunity. I understand you currently serve as the Director of Informatics for the Indiana State Department of Health (ISDH). Your job is to ensure that ISDH is getting the patient information that it needs from emergency departments, labs, and local health departments. Your other responsibility is to oversee drug and opioid use disorder surveillance being performed by your team.

The outside employment opportunity is a position as a part-time computer programming contractor for the Marion County Public Health Department (MCPHD) during your off-hours. You provide that in your current state position you cannot make any significant decisions that will benefit MCPHD.

However, around March 2019, you will be part of a decision that decides the amount of funds to allocate to MCPHD for emergency department data surveillance. You explain that when that time comes, you will work with your superiors to ensure that there is no concern regarding bias about how such funds should be allocated to MCPHD.

I understand you are requesting advice to determine if (1) you could work as a part-time computer programming contractor for the MCPHD; and (2) if you could continue in this position if you will be part of a decision regarding funds allocation to the MCPHD.

It does not appear that the Code of Ethics would prohibit you from working as a part-time computer contractor for the MCPHD. However, you will need to be mindful of a few of the ethics rules that could apply to this situation, particularly concerning conflicts of interests. I included all relevant rules and definitions at the end of this opinion for your reference.

IC 4-2-6-9 – Conflicts of Interests; Decisions and Votes

The first rule you should be aware of is IC 4-2-6-9, which prohibits you from participating in any decision or vote, or matter related to such decision or vote, in which certain persons, including a business organization in which you are serving as an employee, has a financial interest. If/when a state employee learns of a *potential* conflict of interests, subsection (b) requires him to notify his ethics officer and appointing authority in writing and either 1) request a formal advisory opinion from the State Ethics Commission or 2) file a disclosure with our office.

The Code does not define “business organization,” and it is unclear if the Commission would find that MCPHD is a business organization under this rule. Therefore, if MCPHD ever has a financial interest in a decision or vote that you might otherwise participate in as a state employee, you may wish to err on the side of caution by notifying your appointing authority or ethics officer in writing and following the steps outlined in subsection (b) of the rule by either seeking a formal advisory opinion from the Commission or filing a written disclosure statement with the Commission.

Your transparency with your supervisor regarding this future, potential conflict of interests is a great first step, but as noted above, the rule requires you to be screened from all participation in the matters in which MCPHD would have a financial interest and complete the disclosure and notification requirements outlined in IC 4-2-6-9(b). I would recommend you speak with ISDH’s Ethics Officer, Deana Smith, about this and whether it is possible to screen you from this decision so that you do not violate this rule.

IC 4-2-6-5.5 – Outside Employment/Professional Activity

Please also be aware of the outside employment/professional activity rule, which prohibits state employees from:

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

In general, you may not accept other employment if it triggers any of the above listed matters. Assuming that you will be earning compensation of substantial value through your part-time position, subsection (1) requires analysis of whether your responsibilities as a computer programmer for the MCPHD are compatible with your state employment. You provide that your responsibilities for each position would not overlap. However, you also provide that you expect to be part of a funding decision involving MCPHD in March of 2019.

It is unclear whether this situation would require recusal from matters so central or critical to the performance of your official duties that your ability to perform them would be materially impaired. Your agency may be in a better position to determine the extent to which recusal may trigger subsection (1) of this rule, and you should confirm with your supervisor and Ethics Officer

that your employment as a contractor for MCPHD is not so incompatible with your state employment that it violates subsection (1).

Regarding subsection (2), you must ensure that your outside employment position would not require disclosure of confidential information gained through state employment. Further, in order to not violate subsection (3), you must not use your official position to secure unwarranted privileges or exemptions that are of substantial value and not properly available to similarly situated individuals outside state government.

If you choose to pursue the outside employment opportunity, I advise that you work with ISDH's Ethics Officer, Deana Smith, to create a screen that can be implemented in any circumstance requiring recusal or which presents the appearance of impropriety. This would include screening you from any participation in funding decisions involving the MCPHD. Ms. Smith can also advise of any agency-specific policy on outside employment that is not in the scope of this opinion. In addition, only the State Ethics Commission (Commission) can provide conclusive proof that an outside employment position would not violate the Code (i.e. approval of an outside position). If you would like such a statement, you can find instructions for submitting a request for a formal advisory opinion from the Commission on our website:

<http://www.in.gov/ig/2334.htm>. Please let me know if you have any further questions about the formal advisory opinion process.

IC 4-2-6-10.5 – Conflicts of Interests; Contracts

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

It is unclear based on the information provided whether the MCPHD has any contracts with the State. You should be aware of this rule and its disclosure requirements if you determine that MCPHD has a contract with the State and your compensation from MCPHD is derived from such contract. Please feel free to contact our office or Ms. Smith if you have further questions regarding the application of this rule.

In addition to the Code's rule described above, the Indiana Criminal Code also prohibits state employees from having certain financial interests in contracts. The criminal statute can be found at IC 35-44.1-1-4. Our office does not provide advice on the Criminal Code, but we recommend that you familiarize yourself with the statute and ensure you comply with it.

IC 4-2-6-17 and 42 IAC 1-5-13 – Use of State Property and Ghost Employment

Please keep in mind IC 4-2-6-17, which is the use of state property rule, and 42 IAC 1-5-13, which is the ghost employment rule. The use of state property rule provides that a state employee may

not use state materials, funds, property, personnel, facilities, or equipment for purposes other than official state business unless the use is expressly permitted by a general written agency, departmental, or institutional policy or regulation that has been approved by the Commission. The ghost employment rule provides that a state employee shall not engage in work other than the performance of official duties during working hours, except as permitted by general written agency, departmental, or institutional policy or regulation.

In this case, you may not use state property for activities related to your outside employment position. For example, you cannot use your state computer, state email account or state phone to complete any of your work for MCPHD. You must also complete all work for MCPHD outside of your state working hours.

42 IAC 1-5-10 and 42 IAC 1-5-11 – Confidential Information

Finally, please keep in mind the ethics rules pertaining to confidential information found at 42 IAC 1-5-10 and 42 IAC 1-5-11. These rules would prohibit you from benefitting from, permitting another person to benefit from, or divulging information of a confidential nature except as permitted by law. To the extent that you will possess information of a confidential nature by virtue of your position at ISDH that could be used to benefit any person, including MCPHD, you would need to ensure you comply with these rules.

Thank you again for submitting your inquiry. Please let me know if you have any questions regarding this opinion. Please note that this response does not constitute an official advisory opinion. Only the Commission may issue an official advisory opinion. This informal advisory opinion allows us to give you quick, written advice. The Commission will consider that an employee or former employee acted in good faith if it is determined that the individual committed a violation after receiving an informal advisory opinion, and the alleged violation was directly related to the advice rendered. Also, remember that the advice given is based on the facts as I understand them. If this e-mail misstates facts in a material way, or omits important information, please bring those inaccuracies to my attention.

Sincerely,

Jen Cooper
Indiana Office of Inspector General

Please take a few moments to provide feedback on your experience:

<https://www.surveymonkey.com/r/OIGInformals>. Thank you!

IC 4-2-6-1

Definitions

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

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

(11) "Financial interest" means an interest:

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

(B) involving property or services.

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

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

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

(B) which:

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

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

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

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

42 IAC 1-5-5 Outside Employment

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

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

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

IC 4-2-6-5.5

Conflict of interest; advisory opinion by commission

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

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

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

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

(A) of substantial value; and

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

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

42 IAC 1-5-10 Benefiting from confidential information

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

Affected: IC 4-2-7

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

42 IAC 1-5-11 Divulging confidential information

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

Affected: IC 4-2-7

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

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

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

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

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

IC 4-2-6-9

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

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

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

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

- (3) A business organization in which the state officer, employee, or special state appointee is serving as an officer, a director, a member, a trustee, a partner, or an employee.
- (4) Any person or organization with whom the state officer, employee, or special state appointee is negotiating or has an arrangement concerning prospective employment.
- (b) A state officer, an employee, or a special state appointee who identifies a potential conflict of interest shall notify the person's appointing authority and ethics officer in writing and do either of the following:
 - (1) Seek an advisory opinion from the commission by filing a written description detailing the nature and circumstances of the particular matter and making full disclosure of any related financial interest in the matter. The commission shall:
 - (A) with the approval of the appointing authority, assign the particular matter to another person and implement all necessary procedures to screen the state officer, employee, or special state appointee seeking an advisory opinion from involvement in the matter; or
 - (B) make a written determination that the interest is not so substantial that the commission considers it likely to affect the integrity of the services that the state expects from the state officer, employee, or special state appointee.
 - (2) File a written disclosure statement with the commission that:
 - (A) details the conflict of interest;
 - (B) describes and affirms the implementation of a screen established by the ethics officer;
 - (C) is signed by both:
 - (i) the state officer, employee, or special state appointee who identifies the potential conflict of interest; and
 - (ii) the agency ethics officer;
 - (D) includes a copy of the disclosure provided to the appointing authority; and
 - (E) is filed not later than seven (7) days after the conduct that gives rise to the conflict.
- A written disclosure filed under this subdivision shall be posted on the inspector general's Internet web site.
- (c) A written determination under subsection (b)(1)(B) constitutes conclusive proof that it is not a violation for the state officer, employee, or special state appointee who sought an advisory opinion under this section to participate in the particular matter. A written determination under subsection (b)(1)(B) shall be filed with the appointing authority.

IC 4-2-6-10.5

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

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

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

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

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

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

(2) An affirmation that the contract:

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

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

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

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

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

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

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

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

(2) files a deficient statement;

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

IC 4-2-6-17

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

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

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

42 IAC 1-5-13 Ghost employment

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

Affected: IC 4-2-7

Ethics Commission

RE: Harold Gil

Page **11** of **13**

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.

Jen Cooper | State Ethics Director
Indiana Office of Inspector General/
State Ethics Commission
315 W. Ohio Street, Room 104
Indianapolis, IN 46202
Tel: 317.234.4108
Email: jcooper@ig.in.gov
Web: www.in.gov/ig

From: Gil, Harold
Sent: Tuesday, August 28, 2018 8:26 AM
To: Cooper, Jennifer <JCooper@ig.IN.gov>
Subject: RE: Advice

Hi Jen,

I wrote my answers below.

Thanks,
Harold

Harold Gil
Informatics

*Epidemiology Resource Center
Indiana State Department of Health
Office: 317.234.8038
2 North Meridian Street, Selig 7th Floor
Indianapolis, IN 46204
Email: HGil@isdh.IN.gov
www.StateHealth.in.gov*

From: Cooper, Jennifer
Sent: Monday, August 27, 2018 4:04 PM
To: Gil, Harold <HGil@isdh.IN.gov>
Subject: RE: Advice

Harold,

Thank you very much for contacting our office for advice. I am in the process of drafting an informal advisory opinion for you, but I had a couple of questions.

Ethics Commission

RE: Harold Gil

Page 12 of 13

Would your work as a part-time computer programmer for MCPHD overlap in any way with your responsibilities as the Director of informatics for ISDH? If so, how would they overlap?

They do not overlap.

You note that in your current state position you cannot make any significant decisions that would benefit MCPHD. Can you currently make *any* decisions (significant or not) that would financially impact MCPHD?

As of right now, there is going to be one time in the next year where I will have the opportunity to influence how much grant funding we sub-contract to MCPHD. We will decide on that funding when we write a grant application around March 2019. This is something I have already made transparent to my supervisor at ISDH and am happy to share with the rest of my chain of command. Besides this, there's no other form of favoritism or benefits I can provide to MCPHD.

Would you be using any information you gained as a state employee in your work for MCPHD?

No.

Thank you very much for taking the time to provide this additional information. I look forward to your response.

Jen Cooper | State Ethics Director
Indiana Office of Inspector General/
State Ethics Commission
315 W. Ohio Street, Room 104
Indianapolis, IN 46202
Tel: 317.234.4108
Email: jcooper@ig.in.gov
Web: www.in.gov/ig

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

Sent: Friday, August 24, 2018 2:31 PM

To: IG Info <info@ig.IN.gov>; ccarrasco@ig.in.gov; Cooper, Jennifer <JCooper@ig.IN.gov>

Subject: Advice

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



*Formstack Submission For: [ig 2334](#)
Submitted at 08/24/18 2:30 PM*

Name: Harold Gil

Email:	hgil@isdh.in.gov
Phone:	(305) 282-4792
State Agency:	Indiana State Department of Health
Description of Your State Occupation:	I am the Director of Informatics for ISDH. My job is to ensure that we are getting the patient information that we need from emergency departments, labs, and local health departments. My other responsibility is to oversee drug and opioid use disorder surveillance being performed by my team.
What is your ethics question?:	<p>My first question is: Can I work as a part-time computer programming contractor for the Marion County Public Health Department (MCPHD) during my off-hours?</p> <p>My second question is for a situation that will happen about 6 months from now. Right now, in my state employee role I can't make any significant decisions that will benefit MCPHD. Around March 2019, I will be part of a decision that decides how much funds to allocate to MCPHD for emergency department data surveillance. When that time comes, I will work with my superiors to ensure that there is no concern regarding bias about how such funds should be allocated to MCPHD. Assuming proper communication (and controls) with my superiors and with OIG, I would like continue my potential work as a part-time computer programming contractor for MCPHD. Will that be allowed?</p> <p>I am happy to provide more information over the phone or by email.</p>

INDIANA
OFFICE OF INSPECTOR GENERAL

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

June 26, 2019

To: Indiana State Ethics Commission Members

Thru: Jennifer Cooper, State Ethics Director
Indiana State Ethics Commission

From: Tiffany Mulligan, Chief Legal Counsel
Office of Inspector General and State Ethics Commission

Kelly Elliott, Staff Attorney
Office of Inspector General and State Ethics Commission

RE: FYI on Rule Promulgation – 40 IAC 2

Title 40, Article 2 of the Indiana Administrative Code (IAC) outlines the procedures for the Indiana State Ethics Commission (SEC). The SEC has the statutory authority to promulgate rules under IC 4-2-6-4(a)(5). The SEC first promulgated most of the rule sections found in 40 IAC 2 in either 1988 or in 1991, prior to the creation of the Office of Inspector General (OIG) in 2005. As a result, many of the rule sections found in 40 IAC 2 are outmoded, ineffective or unnecessary.

The SEC last readopted 40 IAC 2 in 2013; therefore, the rules are set to expire on January 1, 2020. As such, the OIG is currently in the process of revising 40 IAC 2 for adoption by the SEC. In the revised rules, we propose repealing several sections of the rules that are repetitive or unnecessary and revising several sections that are contrary to other Indiana statutes or administrative code rules. The proposed rules will provide the procedures for how the SEC will conduct public meetings, issue formal advisory opinions, and enforce the Code of Ethics. A copy of the proposed rules can be found at: <http://iac.iga.in.gov/iac/20190626-IR-040190265PRA.xml.html>.

The process for promulgating administrative rules has many steps and requires strict compliance to the rulemaking process outlined in state statute and policy. The OIG began the process of revising the rules for adoption at the beginning of this year. Currently, the OIG is scheduled to hold a public hearing on July 25 to receive public comments on the proposed rules. The OIG will consider any comments received on the rules. **Thereafter, the OIG plans to submit the proposed rules to the SEC for adoption at the August 8 meeting.** Should the SEC adopt the proposed rules at the August 8 meeting, the OIG will submit the rules to the Office of Attorney General and Governor's Office for final approval. We currently estimate that the proposed rules will become effective on November 8, 2019. The rulemaking docket for 40 IAC 2, which outlines the process for adopting the rules, can be found at: <https://www.in.gov/ig/2685.htm>.

STATE OF INDIANA) INDIANA STATE ETHICS COMMISSION
)SS:
COUNTY OF MARION) CASE: 2018-08-0233

IN RE THE MATTER OF JADA MOCABY

FINAL REPORT OF THE INDIANA STATE ETHICS COMMISSION

Comes now the Ethics Commission for the State of Indiana (“Commission”), and hereby reports its findings of fact, conclusions of law, and sanctions in the above captioned matter.

FINDINGS OF FACT

1. The Respondent and the Inspector General entered into an Agreed Settlement (“Agreement”) which was accepted by the Commission during their May 9, 2019 meeting.
2. Pursuant to the Agreement, the Respondent, a former employee of the Indiana State Department of Health, admitted to a violation of the Indiana Code of Ethics; specifically she admitted to a violation of Ind. Code § 4-2-6-1 l(b)(3), the ethics rule pertaining to the cooling off provision of the post-employment rule.
3. Pursuant to the Agreement, Respondent admitted that she violated Ind. Code § 4-2-6-1 l(b)(3) by accepting employment and receiving compensation from Aperion Care (Aperion) less than 365 days after leaving state employment after making a regulatory or licensing decision that directly applied to Aperion during her employment with ISDH.

CONCLUSIONS OF LAW

Said conduct, admitted and acknowledged by Respondent, constitutes a violation of Ind. Code § 4-2-6-11(b)(3).

SANCTIONS

The Commission sanctions the Respondent a fine in the amount of Seven Thousand Five Hundred Dollars (\$7500.00) to be paid to the “Indiana State Ethics Commission” in no more than four (4) installments of at least One Thousand Eight Hundred and Seventy-Five Dollars (\$1875) within two hundred and forty (240) days from May 9, 2019, the date that the Commission approved the settlement agreement.

Approved on July 11, 2019.

Katherine Noel, Chair

Corinne Finnerty, Commissioner

Sue Anne Gilroy, Commissioner

Priscilla Keith, Commissioner

Kenneth Todd, Commissioner