

**MINUTES OF THE MEETING OF
THE INDIANA STATE ETHICS COMMISSION
October 8, 2020**

I. Call to Order

A regular meeting of the State Ethics Commission (“Commission”) was called to order at 10:00 a.m. The meeting was held virtually using Microsoft Teams. Commission members present were Katherine Noel, chair; Corinne Finnerty; Sue Anne Gilroy; Rafael Sanchez; and Kenneth Todd. Staff present included Jennifer Cooper, State Ethics Director; Tiffany Mulligan, Chief Legal Counsel, Office of Inspector General; Kelly Elliott, Staff Attorney, Office of Inspector General; Luba Gore, Staff Attorney, Office of Inspector General; Mike Lepper, Special Agent, Office of Inspector General; Chuck Coffin, Special Agent, Office of Inspector General; and Nathan Baker, Legal Assistant, Office of Inspector General.

Others present were: Amber Nicole Ying, Special Counsel/Director and Ethics Officer, Compliance and Ethics, Department of Revenue; Deana Smith, Ethics Officer, Indiana State Department of Health; Ed Feigenbaum, Indiana Legislative Insight; Kathleen Mills, Ethics Officer, Indiana Department of Environmental Management; Tammera Glickman, Deputy General Counsel, Indiana Department of Administration; Sylvia Watson, General Counsel and Ethics Officer, Indiana State Library, Joan Blackwell, General Counsel and Ethics Officer, Office of Attorney General; Amy Owens, Staff Attorney, Indiana State Department of Health; Latosha N. Higgins, Managing Attorney/Ethics Officer, Family and Social Services Administration; Mattheus Mitchel, Compliance & Ethics Specialist, Indiana Department of Revenue; Ed Hamilton, former Engineering Director, Ports of Indiana; Andrea Hermer, General Counsel, Ports of Indiana; Eric Beers, Workforce Development Coordinator, Indiana State Department of Health; Jessica Allen, Executive Secretary and Ethics Officer, Indiana Alcohol and Tobacco Commission; and, Kim Olmos, DNP student, Valparaiso University.

II. Adoption of Agenda and Approval of Minutes

Commissioner Sanchez moved to adopt the Agenda and Commissioner Todd seconded the motion which passed (5-0).

Commissioner Gilroy moved to approve the Minutes of the September 10, 2020 Commission Meeting and Commissioner Finnerty seconded the motion which passed (4-0) Commission Chair Noel abstained from voting due to her absence at the September meeting.

III. Consideration of Ports of Indiana Waiver of Post-Employment Restrictions for Ed Hamilton

Andrea L. Hermer, General Counsel for Ports of Indiana, presented the proposed Waiver of Post-Employment Restrictions in this matter to the Commission for their approval.

Commissioner Sanchez moved to approve the Waiver, and Commissioner Gilroy seconded the motion which passed (5-0).

IV. Request for Formal Advisory Opinion

2020-FAO-010

Eric Beers, Workforce Development Coordinator

Deana M. Smith, Staff Attorney and Ethics Officer

Indiana State Department of Health

Deana Smith is the Ethics Officer for the Indiana State Department of Health (ISDH). She seeks an opinion from the Commission on behalf of Eric Beers, the Workforce Development Coordinator for ISDH's Office of Public Health Performance Management.

In his position as the Workforce Development Coordinator, Mr. Beers is responsible for managing ISDH's workforce development plan. He is involved in projects related to employee engagement, organizational change efforts, health equity and leadership development. He oversees ISDH's internship program as well.

Mr. Beers also serves as the administrator of IN-Train, which is an e-learning platform that ISDH manages. He is the lead point of contact for the platform, and he assists ISDH's program areas with the technical creation of online courses for public health education and improvements. He does not assist in the creation of the content for these courses nor does he develop online courses related to organizational change management. He also does not provide this service to the public.

Additionally, Mr. Beers is involved with a technical assistance grant (Grant) that the de Beaumont Foundation (Foundation) provides to ISDH. The Foundation is a philanthropic organization that works to advance policies, build partnerships and strengthen public health to create communities where people can achieve their best possible health. The Foundation offers a variety of grants and technical assistance programs to governmental public health organizations.

The Grant does not provide ISDH any funds but instead offers four ISDH employees webinars and coaching related to organizational changes. The Foundation also covers the travel costs for these employees to attend two in-person meetings related to these trainings. The four employees also serve as members of the Foundation's Cohort of Public Health Practitioners. Mr. Beers is one of the four ISDH employees that receives training through the Grant. The Foundation does not have any other contracts or grants with ISDH or any other state agency.

Mr. Beers is interested in seeking outside employment as a consultant with the Foundation. In his prospective position with the Foundation, he would assist in creating content for eleven short digital learning classes or "microlearns." He would help create content relating to organizational development, which is his area of expertise. Specifically, he will be providing expert content for the "microlearns", regarding using a change management strategy known as Appreciative Inquiry (AI). Mr. Beers has studied and practiced AI as part of his master's degree studies.

According to Mr. Beers, his work for the Foundation would not require him to disclose confidential information learned through his employment with the State. His consultation work for the Foundation would be unrelated to any certifications that ISDH requires him to obtain/maintain as a part of his state employment. Mr. Beers plans to provide five hours of consulting work for the Foundation each week. He does not believe that his compensation from the Foundation will come from funds derived from a state contract or grant.

Aside from his work with the Foundation through the Grant, Mr. Beers' only other interaction with the Foundation has been related to a survey the Foundation administered to assess the nation's governmental public health workforce. The Foundation solicited feedback from Mr. Beers regarding the survey on behalf of ISDH.

On September 4, 2020, Mr. Beers submitted ISDH Form 53182-Outside Employment Disclosure Form to Ms. Smith to seek an ethics opinion concerning his work as a consultant for the Foundation. Ms. Smith's opinion was that the issue warranted review through an opinion from the Office of Inspector General (OIG).

Mr. Beers proceeded to request an informal advisory opinion from the OIG; the informal advisory opinion, which the OIG issued on September 25, 2020, recommended that Mr. Beers seek a formal advisory opinion from the Commission.

Ms. Smith is now seeking a formal advisory opinion from the Commission addressing whether Mr. Beers would have any conflicts of interests under the Code if he were to accept the outside employment opportunity with the Foundation while serving as Workforce Development Coordinator for ISDH.

According to Ms. Smith, Mr. Beers' supervisor does not have concerns about his outside work with the Foundation, and Mr. Beers is in good standing as an ISDH employee. Mr. Beers understands and agrees that he may not use state time to work for the Foundation. Additionally, he is confident that he will meet the 37.5 hour work-week requirement for ISDH. Ms. Smith provides that Mr. Beers' outside employment activities will help maintain and build upon his professional skills, such that he may better be able to meet the essential functions of his position as the Workforce Development Coordinator, including identifying opportunities to collaborate and develop change management strategies and initiatives with other national stakeholders that support governmental public health and workforce development.

The analysis stated the following:

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 when the responsibilities of the employment are inherently incompatible with the responsibilities of public office or require the employee's recusal from matters so central or critical to the performance of his 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.

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).

The Commission generally defers to an agency's ethics officer regarding outside employment opportunities as these individuals are in a better position to determine whether a conflict of interests might exist between an employee's state duties and an outside employment/professional activity opportunity.

Based on the information provided by Ms. Smith, Mr. Beers' prospective outside position as a consultant for the Foundation does not appear to be incompatible with his ISDH responsibilities as Workforce Development Coordinator. In his ISDH position, Mr. Beers is responsible for managing ISDH's workforce development plan and is involved in projects related to employee engagement, organizational change efforts, health equity and leadership development. He is also the administrator of IN-Train, an e-learning platform ISDH manages, and assists with the technical (but not content) creation of online courses related to organizational change management. Mr. Beers is also one of four employees at ISDH who receive coaching and training through the Grant from the Foundation. He does not, however, work on projects for or with the Foundation through his state position.

His outside employment as a consultant for the Foundation would involve creating content for short digital learning classes, or "microlearns". Though the creation of these "microlearns" would draw upon his expertise in the area of AI and e-learning, it does not appear that the work would conflict with or require his recusal from any of his state responsibilities. The work he would perform for the Foundation would be different from any learning he is involved with at ISDH and would also not be related to the Grant.

As for subsection (a)(2), Mr. Beers provides that he will not be required to and will not disclose any confidential ISDH information through his outside work with the Foundation. Accordingly, Mr. Beers would not violate subsection (2) of this rule.

So long as Mr. Beers does not use his official ISDH position to secure unwarranted privileges or exemptions for the Foundation or its customers/clients that are not available to similarly situated businesses or individuals outside of state government, he would not violate subsection (3) of this rule.

Accordingly, the Commission finds that IC 4-2-6-5.5 does not prohibit Mr. Beers from working as a consultant for the Foundation while also working for ISDH.

B. Conflict of interests-decisions and votes

IC 4-2-6-9 (a)(1) prohibits Mr. Beers 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. Similarly, IC 4-2-6-9(a)(3) prohibits Mr. Beers from participating in any decision or vote, or matter relating to that decision or vote, if a business organization in which he is serving as an officer, a director, a member, a trustee, a partner or an employee has a financial interest in the matter.

The Code defines “financial interest” in IC 4-2-6-1(a)(11) to include “an interest . . . in a purchase, sale, lease, contract, option, or other transaction between an agency and any person; or . . . involving property or services. . .”

A potential conflict of interests would arise for Mr. Beers if he participates in any matter related to a decision or vote for ISDH in which the Foundation would have a financial interest in the outcome of the matter. This restriction goes beyond the actual decision or vote and prohibits his participation in any matter related to the decision or vote.

As discussed above, Mr. Beers receives coaching and training from the Foundation, but he does not provide work for or work on any projects involving the Foundation for ISDH. Besides the coaching and training he receives from the Foundation, the only other interaction he has had with the Foundation was related to providing feedback on a survey the Foundation administered to assess the nation’s governmental public health workforce.

Accordingly, the Commission finds that Mr. Beers is currently not in a position with ISDH in which he participates in decisions or votes, or matters related to such decisions or votes, in which the Foundation would have a financial interest in the outcome.

If, however, Mr. Beers’ circumstances change and a potential conflict of interests is identified in the future, he must follow the disclosure requirements in IC 4-2-6-9(b), including notifying his agency’s ethics officer and appointing authority in writing and either (1) seeking a formal advisory opinion from the Commission; or (2) filing a written disclosure form with the OIG.

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

Mr. Beers states that the Grant that the Foundation provides to ISDH does not involve any money but rather provides trainings to four ISDH employees. Ms. Smith confirmed this and added that she did not find any other state contracts held by the Foundation. In addition, to the best of Mr. Beers' knowledge, the Foundation does not have any other contracts or grants with ISDH or any other state agencies.

Accordingly, the Commission finds that Mr. Beers would not have a financial interest in a state contract if he were to accept the consultant position with the Foundation.

D. Confidential information

Mr. Beers 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. Beers from accepting any compensation from any employment, transaction or investment that is entered into or made as a result of material information of a confidential nature. The term "person" is defined in IC 4-2-6-1(a)(13) to encompass both an individual and a corporation. In addition, the definition of "information of a confidential nature" is set forth in IC 4-2-6-1(a)(12).

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

E. Use of state property and Ghost employment

IC 4-2-6-17 prohibits Mr. Beers from using state property for any purpose other than for official state business unless the use is expressly permitted by a general written agency, departmental or institutional policy or regulation. Likewise, 42 IAC 1-5-13 prohibits Mr. Beers 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 Mr. Beers observes these provisions, his outside employment would not violate these ethics laws.

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

V. Director's Report

State Ethics Director, Jen Cooper, stated that since the last Commission meeting, the Office of Inspector General had issued 15 informal advisory opinions with the majority of opinions on the subjects of post-employment restrictions, conflicts of interests, outside employment, and gifts.

Director Cooper also reported that the OIG will be holding the annual Legal & Ethics Conference virtually this year with plans to hold it during the week of November 16th with a final date to be determined. The final agenda is being finalized as well along with confirming that three hours of Continuing Legal Education will be available to participating attorneys.

VI. Adjournment

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

The public meeting adjourned at 10:22 a.m.