

**MINUTES OF THE MEETING OF
THE INDIANA STATE ETHICS COMMISSION
December 10, 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 Lori Torres, Inspector General; 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; and Nathan Baker, Legal Assistant, Office of Inspector General.

Others present were: Deana Smith, Ethics Officer, Indiana State Department of Health; Ed Feigenbaum, Indiana Legislative Insight; Tammera Glickman, Deputy General Counsel, Indiana Department of Administration; Sylvia Watson, General Counsel and Ethics Officer, Indiana State Library; Latosha N. Higgins, Managing Attorney/Ethics Officer, Family and Social Services Administration; Mattheus Mitchel, Compliance & Ethics Specialist, Indiana Department of Revenue; Rachel Russell, Ethics Officer, Department of Child Services; Christine Macdonald, Internal Affairs Officer, Department of Child Services; Beth Green, General Counsel & Ethics Officer, Indiana Department of Workforce Development; Ted Cotterill, General Counsel, Management Performance Hub; Jessica Allen, Executive Secretary and Ethics Officer, Alcohol & Tobacco Commission; Kristi Shute, Deputy General Counsel and Ethics Officer, Indiana Department of Homeland Security; Amy Owens, Staff Attorney, Indiana Department of Health; Whitney Fritz, Staff Attorney, Department of Child Services; Mikel Fort, EMS District manager, Indiana Department of Homeland Security; Sarah Caffery, Pesticide Product Registration Specialist, Office of Indiana State Chemist; Brian Spillane, Revenue Tax Supervisor, Department of Revenue; Michael Minch, Out of State Field Auditor, Department of Revenue; Jonathan Whitham, General Counsel, Indiana Department of Homeland Security; Dr. Mark LeBlanc, Director, Office of Indiana State Chemist, Purdue University; Bill Anthony, Deputy Attorney General, Office of the Attorney General; and Carrie Leach, Quality Assurance Director and Ethics Officer for the Office of Indiana State Chemist, Purdue University.

II. Adoption of Agenda and Approval of Minutes

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

Commissioner Gilroy moved to approve the Minutes of the November 12, 2020 Commission Meeting and Commissioner Todd seconded the motion which passed (5-0).

III. Consideration of Office of Indiana State Chemist Waiver of Post-Employment Restrictions for Sarah Caffery

Carrie A. Leach, Ethics Officer for the Indiana State Chemist, 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 Todd seconded the motion which passed (5-0).

IV. Request for Formal Advisory Opinion

2020-FAO-015

Mikel Fort, EMS District Manager

Kristi K. Shute, Deputy General Counsel and Ethics Officer

Indiana Department of Homeland Security

Kristi Shute serves as Deputy General Counsel and Ethics Officer for the Indiana Department of Homeland Security (IDHS). Ms. Shute is requesting an advisory opinion on behalf of Mikel Fort addressing outside employment and conflicts of interests.

Mr. Fort's role with the State of Indiana began in June 2017. He serves as an EMS District Manager within the State Fire Marshal's Office. In this role, Mr. Fort is responsible for oversight of ambulance services, the EMS training center and EMS Supervising Hospital certifications for Districts 1, 2 and 4. His oversight of ambulance services includes routine ambulance compliance inspections, investigations into complaints and reports of violations and renewal of provider certifications, which is done every two years. Due to the lack of ambulance transport services and delays in transports in Districts 1, 2 and 4, he provides hospitals with a point of contact for ambulance services if the hospitals are unable to find a service to transport patients.

Mr. Fort also serves as a part-time Advanced Emergency Medical Technician (AEMT) for Pulaski County EMS, which is located in District 2. In addition to working part-time as an AEMT, Mr. Fort also teaches EMR, EMT and AEMT classes for the Pulaski County EMS Training Center and CPR for Pulaski Memorial Hospital. IDHS implemented a screen in July 2017 allowing Mr. Fort to engage in these activities (Mr. Fort filed the disclosure form, which includes a description of the screen, with the OIG).

Mr. Fort proposes creating and operating an ambulance transport company with his brother. The transport company would focus on interfacility and skilled nursing facility transports. The proposed business would operate in the Districts that Mr. Fort manages.

Mr. Fort understands and agrees to comply with the ghost employment, use of state property and confidentiality provisions of the Code. He also understands that he is not to use his IDHS position to secure unwarranted privileges or exemptions that are of substantial value and not properly made available to similarly situated individuals outside state government. Further, IDHS is prepared to implement a screen to ensure that he is not involved in any decisions, votes, or other matters in which his ambulance transport company would have a financial interest.

The analysis stated the following:

A. Outside employment

An outside employment or professional activity 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.

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 finds that it is unable to provide a statement that Mr. Fort's outside employment opportunity in forming and operating an ambulance transport service company would not violate subsection (a)(1) or (a)(2). The Commission has concerns about conflicts of interests under this rule and under IC 4-2-6-9 (See Section B below). The Commission finds that in order to avoid a conflict of interests under IC 4-2-6-9, Mr. Fort would likely have to recuse himself from matters that are central and/or critical to the performance of his official duties (including his duties related to routine ambulance compliance inspections, investigations into complaints and reports of violations and renewal of provider certifications for ambulance transport services within the Districts he oversees) such that his ability to perform them may be materially impaired.

Accordingly, the Commission does not approve Mr. Fort's outside employment with his prospective ambulance transport business.

B. Conflict of interests - decisions and votes

IC 4-2-6-9 (a)(1) prohibits Mr. Fort 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. Fort from participating in any decision or vote, or matter relating to that decision or vote, if he or a business organization for which he serves as a partner or employee has a financial interest in the matter. The definition of "financial interest" in IC 4-2-6-1(a)(11) includes, in part, "an interest arising from employment".

Mr. Fort serves as an IDHS EMS District Manager and would like to operate an outside ambulance transport service, a business organization in which he would presumably be a partner, director, member and/or employee. As an EMS District Manager, Mr. Fort's responsibilities include oversight of ambulance service for Districts 1,2 and 4. He also

provides hospitals with a point of contact for ambulance services if the hospitals are unable to find a service to transport patients.

The Commission finds that decisions Mr. Fort would have to make in his IDHS capacity could have a financial impact on his outside business, as his proposed business would provide ambulance transport services within the Districts he manages. This presents a potential conflict of interests under IC 4-2-6-9(a).

IC 4-2-6-9(b) requires that an employee who identifies a potential conflict of interests notify his Ethics Officer and Appointing Authority and seek an advisory opinion from the Commission or file a written disclosure statement with the OIG.

Both options require the implementation of a screen that would ensure the employee does not participate in the matters that would create a conflict of interests.

It is unclear if Mr. Fort has notified the IDHS appointing authority, but Ms. Shute and Mr. Fort have requested this formal advisory opinion, and Ms. Smith has indicated that IDHS is prepared to implement a screen to prevent Mr. Fort from participating in any decisions, votes or other matters in which his ambulance transport company would have a financial interest.

IDHS is prepared to implement a screen to ensure that Mr. Fort is not involved in any decisions, votes or other matters in which his ambulance transport company would have a financial interest; however, the Commission finds that it would not be possible to screen Mr. Fort from *all* decisions/votes in which he or his business would have a financial interest in the outcome of the matter, as the proposed screening procedures would not prevent a conflict of interest from arising for Mr. Fort under IC 4-2-6-9.

Mr. Fort's responsibilities include oversight of the ambulance services operating in the Districts he manages as an EMS District Manager. Even if IDHS were able to screen him from participating in the certifications/inspections of his own ambulance service, he would still be required to make such decisions that could affect competing ambulance services in his Districts. Consequently, if he operates his proposed ambulance transport company in the Districts he manages, this would create a potential conflict of interests under this rule because his company would have a financial interest in the outcome of most, if not all, decisions he would make concerning oversight and compliance regulation related to other ambulance services within his Districts.

Accordingly, the Commission finds that IDHS would be unable to adequately screen Mr. Fort from participation in all matters in which his proposed company would have a financial interest. As a result, he cannot operate his proposed business in his assigned Districts while he is a state employee and avoid violation of this rule.

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

V. Request for Formal Advisory Opinion

2020-FAO-016

Michael Minch, Field Examiner

Brian Spillane, Tax Auditor Supervisor

Amber Nicole Ying, Special Counsel/Director Compliance and Ethics & Ethics Officer

Department of Revenue

Michael Minch is an Out of State Auditor in the Indiana Department of Revenue (DOR). He is requesting an opinion from the Commission addressing whether it would be a conflict of interests for him to accept outside employment as a Tax Collector.

Mr. Minch is assigned to conduct audits of companies in the Northeast region of the United States. He is currently conducting audits in Massachusetts, New York, New Jersey and Pennsylvania. All of the companies that he is currently auditing have a distribution center, warehouse, retail store or other financial interest in Indiana.

In Mr. Minch's position, he performs income tax audits and sales and use tax audits. There are audits that are specifically associated with income taxes, such as S-Corporations, partnerships and withholding taxes. Likewise, there are audits specifically associated with sales and use taxes, such as motor vehicle rental tax or food and beverage tax audits depending on the company being audited. He does not audit property taxes. Mr. Minch cannot enter into any contracts or modify any current contracts with the companies that he audits. Only upper management can enter into or modify contracts with the companies

When Mr. Minch is auditing a company, he works with the tax managers and staff members of the company who gather the documentation he requests. He also works with CEOs, CFOs and accounting professionals that represent the company. During his audit, he ensures that the company has filed the necessary returns that Indiana law requires, and if the company has not, he makes adjustments to ensure that the company is tax compliant. He explains to the company why all the adjustments have been made during the final conference of the audit. During the final conference, he also informs the company that it has the right to contest the audit.

Mr. Minch is interested in an outside employment opportunity as a Tax Collector in Langhorne Manor Borough, Pennsylvania (Borough), where he currently resides. This is an elected position that is held for four years. As Tax Collector, he will be responsible for sending property tax bills to the Borough's homeowners and for collecting the property taxes. The funds from the property taxes will be deposited into a checking account and then remitted to the Borough and the school board, Neshaminy School District. If a homeowner becomes delinquent in paying property taxes that are due, a lien will be sent out, but it will not be his responsibility to send out this lien. As Tax Collector, Mr. Minch will not have the authority to assess payees, determine the amount of taxes a payee owes or determine whether liens are appropriate measures. His position would be part-time and require a minimal time investment of two to three hours per week. He would perform these duties in the evening or on the weekends outside of his normal DOR working hours.

The only business in the Borough is that of Cairn University, and it does not have any kind of nexus to Indiana. Cairn University's main area of education is bible study, but it also offers programs in English, History, Liberal Arts and Psychology. Mr. Minch does not and has not conducted any audits of Cairn University in his position with DOR.

Mr. Minch consulted with Amber Ying, Ethics Officer for DOR, about this outside employment opportunity, and she referred him to the Office of Inspector General (OIG) for an informal advisory opinion. The OIG issued an informal advisory opinion to Mr. Minch on December 1, 2020. Mr. Minch is now requesting a final determination from the Commission regarding whether he can accept this outside employment opportunity under the Code.

The analysis stated the following:

Mr. Minch's request for a formal advisory opinion invokes consideration of the provisions of the Code pertaining to Conflicts of Interests, Political Activity, Use of State Property, Ghost Employment and Benefitting from and Divulging Confidential Information. The application of each provision to Mr. Minch 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.

Based on the information provided, Mr. Minch's outside employment position as a Tax Collector would not create a conflict under this provision. Mr. Minch's role and responsibilities as a Tax Collector would be very different from his role as an Out of State Auditor with DOR, and it does not appear that the positions would overlap in any meaningful way.

Accordingly, the Commission finds that Mr. Minch's responsibilities as a Tax Collector would not be inherently incompatible with his DOR responsibilities nor would they require his recusal from matters that are critical to the performance of his state duties.

In addition, the Commission confirmed that Mr. Minch would not be required to disclose confidential information to which he may have access by virtue of his state employment in his outside position as a Tax Collector.

Nothing in the information presented suggests that Mr. Minch would use or attempt to use his state position for any unwarranted privileges or exemptions. Mr. Minch must continue to

ensure he does not use or attempt to use his official DOR position for any unwarranted privileges or exemptions.

The Commission finds that Mr. Minch's outside employment opportunity as a Tax Collector would create a conflict of interests for him under this rule.

B. Conflict of interests - decisions and votes

IC 4-2-6-9 (a)(1) prohibits Mr. Minch 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. Minch from participating in any decisions or votes, or matters related to such decisions or votes, in which the Borough would have a financial interest in the outcome.

Based on the information provided about his role at DOR, Mr. Minch would not be required to participate in any decision or vote, or matter relating to a decision or vote, for DOR in which the Borough would have a financial interest.

Accordingly, he does not have an identified potential conflict of interests at this time; however, if a potential conflict of interests is identified in the future, he must ensure that he meets all the disclosure and notification requirements in IC 4-2-6-9(b). Mere recusal from matters that could create a potential conflict of interests would not be enough to satisfy the requirements.

C. Political activity

Because the role of Tax Collector is an elected position, Mr. Minch will need to ensure he complies with the political activity rule, found in 42 IAC 1-5-4. This rule prohibits a state employee from engaging in political activity, including solicitation of political contributions from (a) other state employees or special state appointees; or (b) any other person when on duty or acting in his or her official capacity. When not on duty or acting in his official capacity, Mr. Minch can engage in political activity so long as he does not solicit political contributions from any state employees or special state appointees that he directly supervises or from a person who has a business relationship with DOR.

The Commission reminded Mr. Minch to be cautious of this rule and follow the guidance it provided in its opinion in [2018-FAO-0016](#). In this opinion the Commission advised a state employee that he could run for State Representative while serving as a state employee; however, the Commission cautioned him not to do any of the following: engage in political activity while on duty or acting in his official capacity, use his official state title on campaign materials, solicit campaign contributions from his direct reports or from anyone who has a business relationship with his state agency, use his official position to secure unwarranted privileges or exemptions of substantial value, participate in decisions or votes in which the legislature would have a financial interest, use state property for non-official work performance during work hours, and benefit from or divulge confidential information. The

Commission also advised the employee to add a disclaimer to his campaign material and website regarding unsolicited political contributions.

In addition, the Commission advised Mr. Minch to maintain and provide a list of all political contributions he receives to DOR to ensure he does not solicit or accept campaign contributions from anyone who has a business relationship with DOR.

D. Confidential information

Mr. Minch 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. Minch 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 governmental agency or political subdivision, such as the Borough. 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. Minch is exposed to or has access to such confidential information in his position with DOR, he is prohibited not only from divulging that information but from ever using it to benefit any person, including his outside employer, in any manner.

E. Use of state property and Ghost employment

42 IAC 1-5-12 prohibits Mr. Minch 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. Minch 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. Minch observes these provisions regarding his outside employment activities, his outside position as a Tax Collector would not violate these ethics laws.

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

VI. Director’s Report

State Ethics Director, Jen Cooper, stated that since the last Commission meeting, the Office of Inspector General had issued 26 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 Financial Disclosure Statement filing period for required filers for 2020 will begin on January 1, 2021. Lists with the names and contact information for the

required filers are being compiled so that e-mails can be sent out ahead of the February 1, 2021 deadline for filing.

Director Cooper ended her report by thanking the Commissioners for their work this year on the State Ethics Commission.

Commissioner Gilroy asked how Financial Disclosure Statements are filed. Director Cooper indicated that Statements can be filed online from the Inspector General website, or by sending in a hard copy form to the OIG office.

VII. Adjournment

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

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