

**MINUTES OF THE MEETING OF
THE INDIANA STATE ETHICS COMMISSION
March 14, 2024**

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 were Katherine Noel, Chair; Corinne Finnerty; John Krauss; Sue Anne Gilroy; and Rafael Sanchez (who arrived shortly after meeting start). Office of Inspector General (OIG) staff present included David Cook, Inspector General; Sean Gorman, State Ethics Director; Mark Mitchell, Director of Investigations; Doreen Clark, Staff Attorney; Hope Blankenberger, Staff Attorney; Erin Deckard, Staff Attorney; Mike Lepper, Special Agent; Sam Stearley, Special Agent, and Nathan Baker, Legal Assistant.

Others present were Mattheus Mitchell, Compliance and Ethics Specialist, Indiana Department of Revenue; Amber Nicole Ying, Ethics Officer, Indiana Department of Revenue; April McManus, Business System Analyst, Indiana Department of Revenue; Kumar Patel, Business System Analyst, Indiana Department of Revenue; Alyson Bray, Legal Intern, Indiana Department of Revenue; Daniel Thomas, Senior Counsel, Indiana Department of Revenue; Josh Browelle, Legal Analyst, Indiana Department of Revenue; George Dremonas, General Counsel, Indiana Department of Financial Institutions; Michael Nickell, Field Examiner, Indiana Department of Financial Institutions; Matthew Gerber, Ethics Officer, Family and Social Services Administration; Amie Durfee, Ethics Officer, Indiana Department of Workforce Development; and, Erin Elam, Ethics Officer, Indiana Department of Health.

II. Adoption of Agenda and Approval of Minutes

Commissioner Gilroy moved to adopt the agenda. Commissioner Krauss seconded the motion, and the Commission passed the agenda (4-0).

Commissioner Krauss moved to approve the Minutes of the January 11, 2024, Commission Meeting, and Commissioner Gilroy seconded the motion, which passed (5-0).

III. Request for Formal Advisory Opinion

2023-FAO-002

Kumar Patel, Business System Analyst

Amber Nicole Ying, Ethics Officer

Indiana Department of Revenue

Amber Ying serves as Director/Special Counsel of Compliance and Ethics and is the agency Ethics Officer for the Indiana Department of Revenue (DOR). Ms. Ying requested the Commission’s

advisory opinion on behalf of Kumar Patel, a Business Systems Analyst with DOR. Specifically, Ms. Ying's request seeks the Commission's determination as to whether the Code permits Mr. Patel's proposed outside business venture while he works at DOR.

Mr. Patel's job duties at DOR include providing assistance in the development of technical standards and policies, recommending and facilitating quality improvement efforts, training and advising lower-level DOR business analysts, working with assigned DOR customers, analyzing business and user needs, participating in the development of strategic planning and facilitating the delivery of technical business solutions and products. Mr. Patel does not make hiring decisions in his DOR role.

Mr. Patel's proposed business would provide training and job placement services to clients seeking careers in the private sector information technology industry. Mr. Patel does not intend to solicit funds or grants from State of Indiana agencies nor does he plan to enter into contractual agreements with any state agencies. Mr. Patel will not use his DOR credentials in the marketing of his business' services.

Mr. Patel's proposed business would contract with and receive compensation from his clients' job placements. Mr. Patel's business would then directly pay its clients as its own employees.

DOR utilizes Knowledge Services and Computer Aid Inc. for DOR's temporary employee needs. Mr. Patel would ensure that his business would avoid placing job seekers in any employment positions with Indiana state government agencies or with staffing agencies that would place his proposed business' employees in state agencies. Further, Mr. Patel will include language in the contracts that his proposed business will enter into with clients requiring clients to notify him should the client enter into a working relationship with a state agency.

Mr. Patel has confirmed that he will dedicate his full efforts to his state responsibilities during his scheduled DOR work hours and that his proposed business venture will not compromise the quality of his DOR work.

Mr. Patel understands that he may not engage in any outside business or professional activity that would require him to disclose confidential information he has gained through his DOR role. Mr. Patel provides that in his proposed business venture, he will not disclose or utilize any confidential information he may have gained from his role in state government.

Ms. Ying's request for a formal advisory opinion invokes the Commission's consideration of the Code's provisions pertaining to Conflicts of Interests, Use of State Property, Ghost Employment and Benefitting from and Divulging Confidential Information. The application of each provision to Mr. Patel's proposed outside business venture is analyzed below.

A. Outside employment

Mr. Patel's proposed outside business opportunity would constitute a conflict of interests under IC 4-2-6-5.5 if it results in any of the following: 1) Mr. Patel receiving compensation of substantial value if the responsibilities of the employment are inherently incompatible with the responsibilities of public office or require his 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) Mr. Patel disclosing confidential information that was gained in the course of state employment; or 3) Mr. Patel 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.

Ms. Ying has discussed internal DOR policies and relevant Code provisions with Mr. Patel regarding his proposed business venture.

As mentioned previously, Mr. Patel confirmed that he will dedicate his full efforts to his state responsibilities during his scheduled DOR work hours and that his proposed business venture will not compromise the quality of his DOR work.

Mr. Patel will not use his DOR position or credentials in marketing for his proposed business venture. Nothing in the information presented suggests that Mr. Patel would use or attempt to use his DOR position to secure any unwarranted privileges or exemptions for himself, his proposed business, its clients or others.

The Commission finds that based on the information before it, Mr. Patel's proposed business venture would not be inherently incompatible with his DOR duties and would not require his recusal from DOR work such that his ability to perform his DOR duties would be materially impaired.

The Commission further finds that based on the information before it, Mr. Patel understands that he may not engage in any outside business or professional activity that would require his disclosure of confidential information he gained from his state role.

Based on the information before it, the Commission finds that Mr. Patel's proposed outside business venture will not violate IC 4-2-6-5.5 (a)(1) or (a)(2).

B. Conflict of interests - decisions and votes

IC 4-2-6-9 (a)(1) prohibits Mr. Patel 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. Patel from participating in any decision or vote, or matter relating to that decision or vote, if a business organization, such as his proposed business, has a financial interest in the outcome of the matter.

Accordingly, Mr. Patel would have a potential conflict of interests if he were in a position to participate in decisions or votes, or matters related to such decisions or votes, in which he or his proposed business would have a financial interest in the outcome.

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

Ms. Ying has counseled Mr. Patel on the processes for both filing a conflict of interests disclosure and implementing a screen upon the identification of a potential conflict of interests.

The Commission finds that based on the information before it, Mr. Patel is not in a position at DOR to participate in matters in which he himself or his proposed outside business has a financial interest. Furthermore, the Commission finds that Mr. Patel's outside business would not require his recusal from his DOR duties or a disclosure of a potential conflict of interests. The Commission advises Mr. Patel to continuously evaluate for the potential conflict of interests when assigned new DOR matters and as his proposed business venture develops.

C. Conflict of interests - contracts

Pursuant to IC 4-2-6-10.5, Mr. Patel may not knowingly have a financial interest in a contract made by an agency. This prohibition does not apply so long as he does not participate in or have contracting responsibility for the contracting agency, and he files the prescribed written statement with the Inspector General prior to the execution of such a contract.

Mr. Patel does not have the authority to enter or participate in the negotiation of contracts in his role at DOR. He will not seek to do business with the State of Indiana, and he does not intend to solicit funds or grants from State of Indiana agencies. Mr. Patel does not plan to enter into any contractual agreements with any state agency, and he will not place his clients with staffing agencies that may source his clients to a state agency.

So long as Mr. Patel does not receive any compensation derived from state contract or grant funds through his proposed business venture, the Commission finds that he would not have a financial interest in a state contract that would create a conflict of interests under the Code or Criminal Code.

D. Confidential information

Mr. Patel 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. Patel 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, such as Mr. Patel’s proposed business. 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. Patel is exposed to or has access to such confidential information in his DOR role, the Commission reminds Mr. Patel that he would be prohibited not only from divulging that information but from ever using it to benefit any person, including his proposed business or its clients, in any manner.

E. Use of state property and Ghost employment

42 IAC 1-5-12 prohibits Mr. Patel 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. Patel 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. Patel observes these provisions regarding his outside business venture, the Commission finds that the operation of his proposed business while employed at DOR would not violate these ethics laws.

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

IV. Consideration of Agreed Settlement

In the Matter of Loretta Lewis
Case Number 2023-08-0276
Hope Blankenberger, Staff Attorney
OIG

Hope Blankenberger presented the proposed Agreed Settlement in this matter to the Commission for their approval.

Commissioner Sanchez moved to approve the Agreed Settlement, and Commissioner Krauss seconded the motion, which passed (5-0).

V. Ethics Director's Report

State Ethics Director Sean Gorman provided the following to the State Ethics Commission:

OIG has issued 47 IAOs since the January meeting. We are seeing a spike in the number of requests for guidance regarding employees' prospective post-employment plans. We are also seeing more political activity questions.

The 2024 legislative session has concluded and there were no bills or discussions that directly impacted the Code of Ethics, the State Ethics Commission, or the Inspector General's office statutes.

One item of interest that we saw is HB1338, which is currently on the Governor's desk. This legislation was originally dedicated to issues about public meeting decorum. Late in the session, language was added that specifies that: (1) the public access counselor serves at the pleasure of the governor; and (2) when issuing an advisory opinion, the public access counselor may consider only the plain text of the public access laws and valid Indiana court opinions. Indiana's public access counselor is who we would go to if we had questions about the interpretation of the open-door law for our public meetings or the access to public records act issues.

We are scheduling an ethics officer roundtable remote meeting to take place on April 10, 2025. In advance of this meeting to determine agenda topics, I reached out to our agency ethics officers and was resoundingly informed that they would like to discuss the political activity rule.

2023 OIG statistics:

- o 186 IAOs issued
- o 446 hotlines screened – no jurisdiction in 348 of those complaints received
- o 50 new investigations opened
- o 43 investigations closed
- o 2 cases presented to local prosecutors for criminal action
- o 4 cases presented to the SEC for a probable cause finding and permission to file a complaint before the SEC

At our January meeting, I reported the departure due to the retirement of Mark Mader. Erin Deckard has joined the Inspector General's office as our newest staff attorney. Erin has an undergraduate background in public policy and is a Maurer School of Law graduate. She joins us after a stint in private practice. In her short tenure here so far, she has already worked on the issuance of 2 IAOs and has demonstrated that she is a quick learner. I'm sure you will be seeing more of her soon.

VI. Adjournment

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

The public meeting adjourned at 10:42 a.m.