

**MINUTES OF THE MEETING OF
THE INDIANA STATE ETHICS COMMISSION
April 14, 2022**

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; Rafael Sanchez; and Sue Anne Gilroy (by telephone). Office of Inspector General staff present included David Cook, Inspector General; Tiffany Mulligan, Chief of Staff and Chief Legal Counsel; Sean Gorman, State Ethics Director; Mark Mitchell, Director of Investigations; Mark Mader, Staff Attorney; Doreen Clark, Staff Attorney; Jan Kruse, Special Agent; and Nathan Baker, Legal Assistant.

Others present were Jessica Keyes, Ethics Officer, Family and Social Services Administration; Beth Green, General Counsel/Ethics Officer, Department of Workforce Development; Jennifer Cooper, Ethics Officer, Management Performance Hub; John Walls, Chief Counsel and Ethics Officer, Indiana Attorney General’s Office; Kristi Shute, Deputy General Counsel, Indiana Department of Homeland Security; Erin McQueen, Chief ALJ and Ethics Officer, State Employee Appeals Commission; Raquel Ramirez, General Counsel and Ethics Officer, Indiana Law Enforcement Academy; Erin Elam, Ethics Officer, Indiana Department of Health; Laura Park, Staff Attorney, Indiana Department of Health; Chris Serak, Ethics Officer, Indiana Department of Transportation; and Susan Kemp, Local Program Director, Indiana Department of Transportation.

II. Adoption of Agenda and Approval of Minutes

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

Commissioner Finnerty moved to approve the Minutes of the March 10, 2022, Commission Meeting, and Commissioner Finnerty seconded the motion, which passed (4-0).

III. Request for Formal Advisory Opinion

2022-FAO-008

Lora L. Manion, former Administrative Law Judge
Indiana Department of Workforce Development

Lora Manion (Manion) is a former state employee who most recently served as an Administrative Law Judge (ALJ) at the Indiana Department of Workforce Development (DWD). Manion served in this role at DWD from September 2021 until her resignation from state employment effective March 23, 2022. Manion previously served as an ALJ at the Indiana Utility Regulatory Commission (IURC) until her resignation from that position in June 2021.

In her most recent role as an ALJ with DWD, Manion presided over unemployment hearings with former employees and employers and issued orders regarding benefit decisions. Her role did not involve her participation in the negotiation or administration of contracts.

In her previous role as an ALJ with IURC, Manion presided (often with IURC Commissioners) over hearings with utilities and interested parties and wrote Commission Orders reflecting the decisions of IURC Commissioners. This role did not involve her participation in the negotiation or administration of contracts.

Manion was recently offered an Of Counsel position with a private law firm (the Firm). Based on the information provided, the Firm is not a regulated utility nor is it a parent or subsidiary of a regulated entity. In this prospective employment, she would be an employee of the Firm and advise the Firm's clients on legal issues, including but not limited to, filings before the IURC. Manion does not anticipate engaging in lobbying activities as part of her employment with the Firm and acknowledges that she will not engage in any lobbying activities during the 365-day period after leaving state employment.

Manion's prospective employment as Of Counsel with the Firm, based on a mutual agreement between her and the Firm, is subject to the following two conditions: 1. Manion's receipt of a favorable formal advisory opinion from the Commission; and 2. Manion would refrain from representing or assisting on any "particular matter" as defined by IC 4-2-6-11(a) in which she personally and substantially participated during the course of her previous state employment, as required under IC 4-2-6-11(c) and IURC-04(IV)(b)(3).

Manion sought the Commission's formal advisory opinion on whether her proposed employment with the Firm is subject to the one-year restriction on certain employment or representation under IC 4-2-6-11(b). She also requested the Commission's formal advisory opinion on whether, in her prospective Of Counsel position with the Firm, she may immediately work on and appear before the IURC in matters in which she did not personally and substantially participate during her employment as an ALJ at IURC.

The analysis stated the following:

A. Confidential Information

IC 4-2-6-6 prohibits Manion 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.

The Commission finds that, so long as Manion receives no compensation resulting from confidential information she acquired during her state employment, her potential post-employment opportunity with the Firm 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 Manion from accepting employment from an employer for 365 days from the date that she left state employment under various circumstances.

First, Manion 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.

Based on the information provided, Manion does not anticipate engaging in lobbying activities in her prospective role as Of Counsel with the Firm and affirms that she will not engage in lobbying activities during the initial 365 day period following her last day as a state employee.

To the extent that Manion does not engage in executive branch lobbying for one year after the date she left state employment, the Commission finds that a post-employment position with the Firm would not violate this provision of the post-employment rule.

Second, Manion 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 on behalf of a state agency and 2) was in a position to make a discretionary decision affecting the outcome of the negotiation or the nature of the administration of the contract.

It is unclear whether the Firm has a contract with the State; however, Manion maintains that she had no involvement in any contract negotiations or administration, and as an ALJ for DWD and IURC, she was not in position to make discretionary decisions affecting contracts.

Third, Manion 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.

Additionally, Manion is prohibited from accepting employment for 365 days from the last day of her state employment from an employer for whom she made a decision as an ALJ or for whom she presided over information gathering or order drafting proceedings that directly applied to the employer or its parent or subsidiary in a material manner.

Manion resigned from her position as an ALJ at IURC in June 2021 and provides that the decisions she made while presiding over hearings and the orders she drafted on behalf of the IURC applied to the utilities and interested parties involved and not to the private law firms representing those parties. She states that in her role as an ALJ at DWD, her authored opinions applied to the parties in the unemployment hearing and not to the private law firms representing the parties.

The Commission finds that these restrictions do not apply to Manion’s intended employment with Firm because, as a state employee, she was not in a position to make discretionary decisions affecting contracts, she did not make regulatory or licensing decisions affecting the Firm (or the

Firm's parent or subsidiary), nor did she make any decision as an ALJ that directly applied to the Firm (or the Firm's parent or subsidiary) in a material way.

Finally, Manion 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, Manion would be prohibited from representing or assisting the Firm, its clients, as well as any other person, in a particular matter in which she personally and substantially participated as a state employee.

Based on the information provided, Manion's initial negotiations for employment with the Firm resulted in a mutual agreement that Manion would refrain from representing or assisting the Firm or its clients on any particular matter in which she personally and substantially participated during her state employment.

To the extent that Manion is able to identify and refrain from representing or assisting the Firm, its clients or any other person in any particular matter in which she personally and substantially participated during her state employment, the Commission finds that Manion's employment with the Firm would not violate this restriction.

The Commission notes that this opinion is limited to the Code, and there are various rules of professional conduct that apply to government lawyers leaving to enter private practice as well as agency specific policies that might apply. Such other restrictions are outside of the scope of the Commission's authority to provide guidance on and are not addressed in this formal advisory opinion.

Subject to the foregoing analysis, the Commission finds that Manion's proposed employment with the Firm would not violate the post-employment restrictions found in IC 4-2-6-11. Based on the information provided, the Code does not prohibit Manion from immediately working for the Firm on matters before the IURC, provided she did not personally and substantially participate in the matter during her state employment.

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

IV. Request for Formal Advisory Opinion

2022-FAO-009

Susan Kemp, Local Program Director

Chris Serak, Ethics Officer

Indiana Department of Transportation

Susan Kemp (Kemp) is a Local Program Director (LPD) for the Indiana Department of Transportation (INDOT), Crawfordsville District. Kemp has recently entered into employment negotiations with Terre Haute Metropolitan Planning Organization (Terre Haute MPO).

As a LPD, Kemp performs certain ministerial functions related to the creation and administration of local projects funded by federal monies allocated to INDOT. Specifically, Kemp is responsible for receiving requests for projects from local entities, namely Metropolitan Planning Organizations (MPO), inputting those requests into INDOT software systems, generating project identification numbers (DES) and forwarding this information to the INDOT Contract Administrative Division for the purposes of generating an INDOT contract. Kemp creates purchase orders for each contract based on the information provided by MPOs, assigns an INDOT project manager and schedules periodic status meetings led by the assigned INDOT project manager. LPDs do not have an ongoing project-level or project-specific role in the actual delivery of jobs; rather, a LPD fulfills the same formulaic function for each local project in performing administrative tasks and ensuring creation and documentation of basic project framework.

Kemp has been offered a position as Transportation Planner with Terre Haute MPO. Terre Haute MPO facilitates local projects in the Terre Haute Metropolitan Planning Area. Terre Haute MPO receives federal dollars through INDOT for local road projects. In this role she would perform the following duties: Evaluate data from current and proposed transportation projects; interpret and apply regulatory requirements in the project planning context; develop and perform planning studies related to transportation; conduct analysis/development of transportation improvement plans; create requests for proposals for planned projects; collaborate with local entities to develop project concepts; plan for asset maintenance and delivery of projects; and work with stakeholders to develop public communications.

Kemp will perform some of the duties listed above in her role as a Transportation Planner with Terre Haute MPO for projects she worked on as a LPD at INDOT. The INDOT Ethics Officer identified the following projects in Vigo County that Kemp performed tasks on as LPD and which would likely be part of her work in a prospective role at Terre Haute MPO:

- Bridge 37
- Bridge 322
- Bridge 77
- Bridge 330 b

Kemp, in conjunction with the INDOT Ethics Officer, requested the Commission's advisory opinion as to whether Kemp's proposed employment with Terre Haute MPO is subject to any restrictions under the Code. INDOT's Ethics Officer specifically requested advice, on behalf of INDOT, regarding whether Kemp's LPD duties are considered "personal and substantial" for the purposes of determining her eligibility to assist a MPO or any other person in matters on which she worked as a state employee.

The analysis stated the following:

A. Confidential Information

IC 4-2-6-6 prohibits Kemp 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.

So long as any compensation Kemp receives does not result from confidential information, the Commission finds that her potential post-employment opportunity with Terre Haute MPO would not violate IC 4-2-6-6.

B. Conflict of Interests

IC 4-2-6-9(a)(1) prohibits Kemp from participating in any decision or vote, or matter related to that decision or vote, if she has a financial interest in the outcome of the matter. Similarly, IC 4-2-6-9(a)(4) prohibits her from participating in any decision or vote or matter related to a decision or vote, in which a business organization with whom she is negotiating employment or has an arrangement concerning prospective employment has a financial interest in the outcome of the matter. The definition of financial interest in IC 4-2-6-1(a)(11) includes, “an interest arising from employment or prospective employment for which negotiations have begun.”

In this case, Kemp has already begun negotiations with Terre Haute MPO as a prospective employer because she has been offered a position as Transportation Planner with Terre Haute MPO. As such, Kemp would be prohibited from participating in any decision or vote, or matter related to a decision or vote in which Terre Haute MPO would have a financial interest in the outcome of the matter.

On April 5, 2022, INDOT’s Ethics Officer filed Kemp’s Ethics Disclosure Statement with the Commission, describing the potential conflict of interests in Kemp’s role as a LPD at INDOT. The filed Ethics Disclosure Statement provides that INDOT’s Ethics Officer executed a formal screen preventing Kemp from working with Terre Haute MPO or otherwise participating in any decision or vote, or matter related to such decision or vote, as an INDOT employee involving Terre Haute MPO or in which Terre Haute MPO has an interest. The screen applies until Kemp leaves her position at INDOT or ceases negotiations with Terre Haute MPO, whichever occurs first.

Kemp must ensure she continues to refrain from participating in any decisions or votes, or matters relating to any such decisions or votes, in which Terre Haute MPO has a financial interest in the outcome of the matter for the remainder of her state employment, or until the cessation of employment negotiations with Terre Haute MPO, whichever occurs first.

C. Post-Employment

IC 4-2-6-11 consists of two separate limitations: a “cooling off” period and a “particular matter” restriction. The first prohibition, commonly referred to as the cooling off or revolving door period, prevents Kemp from accepting employment from an employer for 365 days from the date that she left state employment under various circumstances.

First, Kemp 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.

Based on the information provided, it does not appear that Kemp would be engaging in lobbying activities in her prospective role as Transportation Planner at Terre Haute MPO. To the extent that Kemp does not engage in executive branch lobbying for one year after the date she leaves state employment, the Commission finds that a post-employment position at Terre Haute MPO would not violate this provision of the post-employment rule.

Second, Kemp 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 on behalf of a state agency and 2) was in a position to make a discretionary decision affecting the outcome of the negotiation or the nature of the administration of the contract.

Terre Haute MPO maintains contracts with the State; however, based on the information provided, Kemp's involvement with Terre Haute MPO as a LPD at INDOT was limited to administrative functions in the formulaic creation of contract elements, and she was not in position to make discretionary decisions affecting contracts. According, the Commission finds that this restriction would not prohibit Kemp from immediately accepting employment with Terre Haute MPO.

Third, Kemp 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.

Based on the information before the Commission, Kemp did not make any regulatory or licensing decisions related to Terre Haute MPO in her role as LPD at INDOT. This provision of the cooling off restrictions would not prohibit Kemp from immediately accepting employment with Terre Haute MPO.

Finally, Kemp 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.

If Kemp leaves her position at INDOT, she would be prohibited from representing or assisting Terre Haute MPO, as well as any other person, in a particular matter in which she personally and substantially participated as a state employee.

The Commission finds that, based on the information provided, Kemp has no discretion as to selection, procurement, delivery or management of projects she processes for MPO

implementation. Further, Kemp's professional contact with MPOs is limited to the exchange of information and generation of project framework as prescribed by INDOT's standardized format. Based on the ministerial nature of Kemp's role in INDOT contracts with Terre Haute MPO, her lack of discretion in applying INDOT's processes for preparing standardized documentation and her limited involvement in contracts with MPOs after the creation of the contract, the Commission finds that her LPD activities at INDOT do not rise to the level of personal and substantial participation in INDOT projects involving the Terre Haute MPO. As such, the Commission finds that the particular matter restriction would not prohibit Kemp from working on the projects she has identified working on while with INDOT if she accepts employment as a Transportation Planner with Terre Haute MPO.

Subject to the foregoing analysis, the Commission finds that Kemp's proposed employment with Terre Haute MPO would not violate the post-employment restrictions found in IC 4-2-6-11. Based on the information provided, the Code does not prohibit Kemp from accepting employment with Terre Haute MPO and working on transportation projects she worked on as an LPD with INDOT.

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

V. Ethics Director's Report

State Ethics Director Sean Gorman reported that the OIG has issued 26 Informal Advisory Opinions (IAOs) since the March 2022 State Ethics Commission meeting. Most of the IAOs were regarding the Code of Ethics on post-employment, outside employment, conflicts of interest, and gifts.

He continued that the Financial Disclosure Statement submissions for 2021 are now complete with the final Statement being provided in March.

Finally, Mr. Gorman noted that since he began as State Ethics Director in March that he has spoken to several Ethics Officers from various State agencies to introduce himself and get more information about the challenges they experience. He hopes obtaining this information will help in formulating ideas to improve ethics matters in State government.

VI. Adjournment

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

The public meeting adjourned at 10:25 a.m.