

**MINUTES OF THE MEETING OF
THE INDIANA STATE ETHICS COMMISSION
July 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; and Sue Anne Gilroy. 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 Mader, Staff Attorney; and Nathan Baker, Legal Assistant.

Others present were Keith Beesley, General Counsel, State Personnel Department; Anne Valentine, Chief of Staff, Office of the Lieutenant Governor; David Holt, Chief Operating Officer, Indiana Destination Development Corporation; Joe Basile, Director of Legal Services, Office of the Lieutenant Governor; Erin Elam, Ethics Officer, Indiana Department of Health; Laura Parks, Staff Attorney, Indiana Department of Health; Jessica Keyes, Ethics Officer, Family and Social Services Administration; Tammera Glickman, Deputy General Counsel, Indiana Department of Administration; Matthew McCullough, Vocational Rehabilitation Counselor, Family and Social Services Administration; Whitney Downard, Reporter, Indiana Capital Chronicle; Kathleen Mills, Ethics Officer, Indiana Department of Environmental Management; Kevin Fitzgerald, Assistant General Counsel, Department of Workforce Development; Joshua Braucle, Intern, Department of Revenue; Caroline Stephens Ryker, Administrative Law Judge, Office of Administrative Law Proceedings; and Jami Sayeed, Ethics Officer, Office of Administrative Law Proceedings.

II. Adoption of Agenda and Approval of Minutes

Commissioner Finnerty moved to adopt the agenda, and Commissioner Gilroy seconded the motion, and the Commission passed the agenda (3-0).

Commissioner Gilroy moved to approve the Minutes of the June 9, 2022, Commission Meeting, and Commissioner Finnerty seconded the motion, which passed (3-0).

III. Request for Formal Advisory Opinion

2022-FAO-010

Anne Valentine, Chief of Staff

David Holt, Chief Operating Officer of IDDC

Office of Lieutenant Governor

Anne Valentine serves as Chief of Staff for the Office of the Lieutenant Governor and is the appointed Ethics Officer for the Office, as well as for the Indiana Destination Development Corporation (IDDC). She requested a formal advisory opinion on behalf of IDDC.

The General Assembly established IDDC as a quasi-governmental entity under [IC 5-33-3](#). IDDC is tasked with carrying out destination development functions for the State and assisting in the

development and promotion of Indiana’s tourist resources, facilities, attractions and activities. [IC 5-33-3-3](#) outlines IDDC duties and authorizes IDDC to “(r)eceive and expend funds, grants, gifts, and contributions of money, property, labor, and other things of value from public and private sources...”. Further, IDDC may “accept and expend such moneys as may be received from any source, including income from [IDDC’s] operations, for effectuating its corporate purposes”.

Pursuant to [IC 5-33-5-5](#), IDDC’s Board of Directors and IDDC employees are under the jurisdiction of the Commission and are subject to Code rules that apply to the executive branch of state government.

The Indiana Destination Development Foundation, Inc. (Foundation) is an Indiana nonprofit corporation exempt from federal taxation pursuant to Section 501(c)(3) of the Internal Revenue Code of 1986, as amended. The Foundation is further classified as a Code Section 509(a)(3) supporting organization that is organized and operated exclusively for the benefit of IDDC. The Lieutenant Governor, on behalf of IDDC, appoints the entire Foundation Board of Directors. The Foundation primarily supports IDDC through fundraising from the corporate and philanthropic community and making grants to IDDC.

Because the Foundation does not have its own staff, IDDC would like to leverage its employees to help support the Foundation in a manner that complies with Code rules and requirements. As supporting documentation for the IDDC’s formal advisory opinion request, which the Commission first considered at its June 9, 2022 meeting, IDDC provided a “Voluntary Services Policy” (Policy) that outlines the terms under which IDDC employees may perform services for the Foundation as part of their official IDDC duties. Following the Commission’s discussion of the Policy, the Commission tabled consideration of the formal advisory opinion request to a future meeting to permit IDDC to address the Commission’s questions regarding the Policy.

Following the Commission’s June 9, 2022 meeting and in support of the Commission’s continued consideration of IDDC’s formal advisory opinion request, IDDC submitted a revised draft policy titled “Standards for Indiana Destination Development Corporation Employees Who Perform Work on Behalf of the Foundation” (Revised Policy).

IDDC has also provided a letter of support and explanation from Indiana legislators who authored and sponsored the 2019 legislation creating IDDC. In this letter, the legislators explain that creation of the Foundation for fundraising is critical in assisting IDDC to accomplish its intended mission, and the legislators intended to allow IDDC to create a Foundation in their 2019 legislation. The letter further indicates that the legislators plan to introduce legislation in 2023 to specifically allow IDDC to create the Foundation.

Finally, IDDC provided the Commission with a Conflict of Interest form that the agency intends to implement as referenced in the Revised Policy outlining IDDC employees’ work on behalf of the Foundation.

The analysis stated the following:

Ms. Valentine's request for a formal advisory opinion invokes consideration of the provisions of the Code pertaining to Use of State Property, Ghost Employment and Gifts. The application of each provision to IDDC employees is analyzed below.

A. Use of State Property and Ghost Employment

IC 4-2-6-17 (42 IAC 1-5-12), the use of state property rule, prohibits a state officer, employee or special state appointee from using 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 the Commission has approved.

Likewise, 42 IAC 1-5-13, the ghost employment rule, prohibits a state officer, employee or special state appointee 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.

If performing certain work for the Foundation is part of an employee's official duties, then the work would not implicate either the use of state property or ghost employment rules. If performing certain work for the Foundation is not part of an employee's official duties, then it would implicate these rules.

Based on the information provided, the Foundation was organized and operated exclusively for the benefit of IDDC, primarily through fundraising from private sector sources and using those funds to provide grant funding to IDDC. Further, IDDC's Revised Policy identifies the terms under which IDDC employees can provide services to the Foundation as part of the IDDC employees' official duties.

IDDC's Revised Policy designates specific IDDC staff as authorized employees and outlines their respective responsibilities with respect to work performed as part of their official state duties on behalf of the Foundation. Because IDDC has defined the work authorized employees are to perform on behalf of the Foundation as part of their official state duties, these activities do not violate the Code's use of state property and ghost employment rules.

B. Gifts Rule

The Gifts rule prohibits state employees from knowingly soliciting or accepting any gift, favor, service, entertainment, food, drink, travel expenses or registration fees from:

- 1) a person who has a business relationship with the employee's agency; or
- 2) a person who is seeking to influence an action by the employee in his or her official capacity.

Based on the information provided, the Foundation's primary function involves fundraising from private sector sources and using those funds to provide grant funding to IDDC. Pursuant to prior Formal Advisory Opinions issued by the Commission, the Gifts rule does not prohibit

an agency from accepting gifts. As a result, so long as gifts are made for the benefit of the Foundation or IDDC as an agency and not for any individual employees or appointees, IDDC employees could accept donations to the Foundation without violating the Gifts rule; however, the Gifts rule would prohibit IDDC employees from soliciting donations from persons with a business relationship with IDDC or persons who are seeking to influence an action by an IDDC employee in his or her official capacity.

The IDDC Revised Policy identifies several positions as Authorized Employees who can engage in fundraising activities on behalf of the Foundation. As such, the work would implicate the Gifts rule, and IDDC employees are prohibited from soliciting donations from persons with a business relationship with IDDC or persons who are seeking to influence an action by an IDDC employee in his or her official capacity. The Revised Policy specifically prohibits Authorized Employees from soliciting donations from anyone who has a business relationship with IDDC.

The Commission finds that IDDC filed the agency's Revised Policy with the Commission pursuant to the requirements of 42 IAC 1-6-1. The Commission further finds that, to the extent that IDDC employees' work on behalf of the Foundation is performed as part of the employees' official state duties as documented in the IDDC Revised Policy, IDDC employee activities performed on behalf of the Foundation do not violate the use of state property or ghost employment provisions in the Code. Finally, the Commission finds that the Revised Policy is at least as strict as the Code, and that IDDC employees continue to be subject to the Code's provisions, such as the requirements under the Gifts rule.

Commissioner Gilroy moved to approve the Commission's findings, and Commission Chair Noel seconded the motion, which passed (2-1).

IV. Request for Formal Advisory Opinion

2022-FAO-014

Logan McCullough, Intake Vocational Rehabilitation Counselor

Jessica Keyes, Ethics Officer

Family and Social Services Administration

Commissioner Finnerty moved to table further discussion of this matter to the next State Ethics Commission Meeting until more information, including a proper screening policy, could be provided from the requesting party. Commissioner Gilroy seconded the motion, which passed via (3-0).

V. Request for Formal Advisory Opinion

2022-FAO-015

Caroline A. Stephens Ryker, Administrative Law Judge

Jami Sayeed, Ethics Officer

Office of Administrative Law Proceedings

Caroline A. Stephens Ryker (Ms. Ryker) is an employee of the Indiana Office of Administrative Law Proceedings (OALP). Ms. Ryker currently serves as an Administrative Law Judge (ALJ) in the General Government Division of OALP, and on July 11, 2022, Ms. Ryker will transition to a new position as a Chief Administrative Law Judge for the Social Services Division of the OALP.

Outside of work, Ms. Ryker serves as a board member of the National Association of Hearing Officials (NAHO) as the Central Representative. She began serving as the Central Representative in January of 2022, and her term will end in December of 2024. NAHO is a nonprofit organization committed to providing education on best practices for Administrative Law Judges. OALP currently purchases memberships from NAHO for select employees so that they can take advantage of NAHO's training opportunities.

Each year, NAHO holds a conference on best practices for ALJs. NAHO covers the cost of the conference for board members, along with some of the travel expenses incurred by board members, because the day before the conference, NAHO holds a day-long board meeting. NAHO also covers some travel costs and the cost of the conference for speakers who present at the conference. As a board member, Ms. Ryker is eligible to have her conference fee covered by NAHO, along with some of her travel expenses. Additionally, Ms. Ryker plans to speak at the conference, which would result in a similar coverage of her conference expenses by NAHO. This year, the conference will be held during the second week of August.

Ms. Ryker will not use state resources to complete her NAHO related responsibilities, including the preparation and presentation of her NAHO class. If she needs to attend to a NAHO issue during work hours, she will either make the time up or use leave time. Her participation in NAHO as a board member is not part of her state job, although she has agreed to maintain her NAHO certification status while an ALJ with OALP.

The August 2022 NAHO Conference will address topics that are relevant to Ms. Ryker's current and future job with OALP. Specifically, in both roles, she serves as an ALJ, and in her new role, she will be training and supervising ALJs. A conference on best practices for ALJs will allow her to stay current on issues in administrative law as well as in the practice of serving as an adjudicator. She will be able to use the skills that she learns for the adjudication of her own cases and will be able to pass the skills she learns on to other ALJs within OALP. Attending this kind of conference falls within Ms. Ryker's job duties. Ms. Ryker has conferred with the OALP Ethics Officer, who has represented to her that OALP will consider waiving the gift rule provided it addresses the relevant ethical issues.

The analysis stated the following:

A. Gifts and Donor Restrictions

The Gift rule prohibits state employees from knowingly soliciting or accepting any gift, favor, service, entertainment, food, drink, travel expenses or registration fees from:

- 3) a person who has a business relationship with the employee's agency; or

- 4) a person who is seeking to influence an action by the employee in his or her official capacity.

The donor restrictions rule mirrors the Gift rule and prohibits those with a business relationship with a state employee's agency from offering a gift in that same circumstance.

"Business relationship" is defined in IC 4-2-6-1(a)(5) to include the dealings of a person with an agency seeking, obtaining, establishing, maintaining, or implementing a pecuniary interest in a contract or purchase with the agency.

Ms. Ryker states that OALP purchases NAHO memberships for select OALP employees to take advantage of training opportunities. Accordingly, NAHO obtains a pecuniary interest in a purchase with OALP, and a business relationship exists between OALP and NAHO for the purposes of the Gift rule.

Further, the waiver of the conference registration fee and reimbursement of travel expenses constitute prohibited gifts under the Gift rule, unless an exception to the Gift rule applies. Based on the information provided, none of the exceptions to the Gift rule apply to the conference registration fee and reimbursement of travel expenses; therefore, Ms. Ryker's acceptance of these gifts is prohibited under the Gift rule unless OALP's appointing authority or the appointing authority's designee files with the Commission a waiver that meets the requirements outlined in 42 IAC 1-5-19(c).

B. Additional compensation

The Additional compensation rule prohibits a state employee from soliciting or accepting compensation for the performance of official duties other than provided for by law.

"Compensation" is defined in IC 4-2-6-1(a)(7) as 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.

Ms. Ryker's activities as a NAHO board member and a conference speaker are not part of her state duties. Based on the information provided, NAHO offered to waive Ms. Ryker's conference registration fee and reimburse her travel expenses because she is a NAHO board member and because she is speaking at the conference, not in return for Ms. Ryker's attendance at the rest of the conference, which is part of her state duties.

Because NAHO is providing the waiver of the conference registration fee and travel reimbursement to Ms. Ryker for activities that Ms. Ryker engages in as part of her board duties outside of state employment, such items do not constitute prohibited additional compensation under this rule.

C. Honorarium

The honoraria rule prohibits state employees from personally accepting an honorarium for any activity that may be considered part of the state employee's official duties. The definition

of “honorarium” includes a payment of money for an appearance, a speech or an article but excludes payment or reimbursement for travel expenses.

NAHO is waiving the conference registration fee to Ms. Ryker because she is a NAHO board member and speaker at the conference, and not as payment for her attendance or participation in the conference as a state employee. To the extent that NAHO’s fee waiver is an honorarium, it is not a prohibited honorarium because it is not for activity that is part of her official duties; therefore, Ms. Ryker’s acceptance of the conference fee waiver from NAHO is not prohibited under this rule.

D. Ghost employment and Use of state property for other than official business

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. The use of state property rule provides that an 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 State Ethics Commission.

Ms. Ryker is attending the NAHO conference both in her capacity as a NAHO board member and as part of her state duties at OALP. She states that she will not use state equipment or time in preparation for her NAHO board activities. She further provides that she will not use state time or equipment during the portion of her attendance at the NAHO conference when she is engaging in board related activities or for the session at which she is presenting.

Ms. Ryker states that her NAHO board activities will be conducted using non-state resources and on her own time, such as after regular working hours, on the weekends or during authorized leave. So long as Ms. Ryker does not use state time or state property for work other than her OALP duties, she will not be in violation of these rules.

The Commission finds that NAHO maintains a business relationship with OALP for the purposes of the Code’s applicability. The Commission finds that Ms. Ryker’s acceptance of a conference registration fee waiver and reimbursement for travel expenses from NAHO is prohibited under the Gift rule unless OALP’s appointing authority or the appointing authority’s designee files with the Commission a waiver that meets the requirements outlined in 42 IAC 1-5-19(c). The Commission further finds that Ms. Ryker’s acceptance of a conference registration fee waiver and reimbursement for travel expenses from NAHO do not constitute prohibited additional compensation or honoraria under the Code. Finally, the Commission finds that Ms. Ryker’s activities on behalf of NAHO in her role as a NAHO Board member would not violate the Code’s provisions regarding the use of state property or ghost employment, so long as Ms. Ryker does not use state time or state property for any work other than her official state duties at OALP.

Commissioner Gilroy moved to approve the Commission’s findings, and Commissioner Finnerty seconded the motion, which passed (3-0).

VI. Consideration of the Final Report

In the Matter of Kris Meltzer
Case Number 2021-12-0347

Commission Chair Noel moved to approve the Final Report and Commissioner Gilroy seconded the motion which passed (3-0).

VII. Ethics Director's Report

State Ethics Director Sean Gorman reported that the Auditors and Investigators Conference presented by the Office of Inspector General was held on June 22, 2022. The conference was held in person and a video recording of the conference was available at the OIG website.

Director Gorman also reported that OIG Personnel presented at the Attorney General's Contracts Seminar on July 13, 2022, where they presented information on ethics considerations regarding State contracts.

Finally, that the OIG has issued 21 Informal Advisory Opinions (IAOs) since the June 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.

VIII. Adjournment

Commissioner Gilroy moved to adjourn the public meeting of the State Ethics Commission. Commissioner Finnerty seconded the motion, which passed (3-0).

The public meeting adjourned at 10:39 a.m.