

**MINUTES OF THE MEETING OF  
THE INDIANA STATE ETHICS COMMISSION  
March 10, 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 Kenneth Todd (by telephone). Office of Inspector General staff present included David Cook, Inspector General; Tiffany Mulligan, Chief of Staff and Chief Legal Counsel and Interim State Ethics Director; Mark Mader, Staff Attorney; Doreen Clark, Staff Attorney; Jan Kruse, Special Agent; Cindy Scruggs, Director of Administration; 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; Jared Linder, Chief Information Officer, Family and Social Services Administration; Connor Norwood, Chief Data Officer, Family and Social Services Administration; and Sean Gorman.

**II. Adoption of Amended Agenda and Approval of Minutes**

Commissioner Finnerty moved to adopt the Agenda, and Commissioner Todd seconded the motion with the request that the Agenda be amended slightly to reserve some time at the end of the meeting for personal time to address the Commission. There was no objection to Commissioner Todd’s request, and the Commission passed the amended agenda (3-0).

Commissioner Todd moved to approve the Minutes of the February 10, 2022, Commission Meeting, and Commissioner Finnerty seconded the motion, which passed (3-0).

**III. Request for Formal Advisory Opinion  
2022-FAO-004**

WITHDRAWN

**IV. Request for Formal Advisory Opinion  
2022-FAO-005  
Dr. Frank Messina, Director of Clinical Operations  
Jessica Keyes, Ethics Officer  
Indiana Family and Social Services Administration**

Jessica Keyes is the Ethics Officer for the Indiana Family and Social Services Administration (FSSA). Ms. Keyes is requesting an advisory opinion on behalf of Dr. Frank Messina, the

new Director of Clinical Operations for FSSA's Office of Medicaid Policy and Planning (OMPP). Specifically, Ms. Keyes is requesting an opinion from the Commission to ensure that Dr. Messina's continued outside employment/professional activity with Eskenazi Health (Eskenazi) and Indiana University (IU) School of Medicine is acceptable under the Code while he is employed at FSSA.

Dr. Messina started in his role at FSSA on February 7, 2022. Prior to accepting his position with the State, Dr. Messina worked in the Emergency Department of Eskenazi. Dr. Messina wishes to continue this outside employment with Eskenazi while serving in his role as OMPP's Director of Clinical Operations.

Also, prior to accepting the position with the State, Dr. Messina was on the faculty with IU School of Medicine. Dr. Messina is on unpaid leave from the IU School of Medicine. He retains his faculty appointment, and he would like to maintain that appointment moving forward in his role as OMPP's Director of Clinical Operations.

Dr. Messina is directly employed by IU Health Physicians, which contracts with Eskenazi to staff its Emergency Department. IU Health Physicians pays Dr. Messina hourly, and Dr. Messina does not bill his patients or insurance directly. Dr. Messina is considered a supplemental employee. IU Health Physicians will continue to pay him on an hourly basis for his work at Eskenazi, rather than Dr. Messina billing patients or insurance. As Dr. Messina will be providing patient care in the Emergency Department, this could potentially include Medicaid patients similar to any other physician providing medical services for IU Health Physicians. His compensation would not be tied to the charges and collections that he generates or the payer mix of the patients for which he cares; however, his fees may be paid from general Medicaid funds.

As OMPP's Director of Clinical Operations, Dr. Messina's duties include providing medical oversight, expertise and leadership to projects and operations within OMPP. He reports to the Medicaid Director. Dr. Messina's position oversees all clinical operations within OMPP and as performed by the Managed Care Entities. He is generally not in a position to make decisions regarding specific Medicaid providers, and any direction he would provide regarding protocols, policies or procedures that might impact external stakeholders would apply to all clinical specialists, hospital administrators and any other providers uniformly.

Dr. Messina will work with FSSA's Pharmacy Team, led by a Pharmacy Director and Coverage and Benefits Team. Occasionally, Dr. Messina will assist FSSA's Program Integrity Team when the medical director is unavailable. The Program Integrity Team is primarily responsible for reviewing suspected cases of fraud and abuse and making recommendations regarding Medicaid providers. Usually, the OMPP Medical Director serves on the Program Integrity Team and participates in the meetings. Furthermore, the reviews conducted by the Program Integrity Team usually concern the actions of an individual and not an entity; therefore, it is unlikely FSSA would make a decision that would have a unique impact on IU Health Physicians, Eskenazi or their related entities. If the situation presented itself, FSSA would screen Dr. Messina from participating in such decisions by having his colleague, Dr. Mary Reilly, be given full authority to handle such matters independently.

At this time, Dr. Messina's role does not include any contract administration or rulemaking as OMPP's Director of Clinical Operations. There may be an opportunity for rule or contract review; however, these reviews would be on matters applicable to all Medicaid providers generally. Dr. Messina understands that he would need to be screened from any issues involving only IU Health Physicians or Eskenazi.

Dr. Messina's shifts with Eskenazi will generally be on Wednesdays, but he may assist in other shifts on evenings or weekends to assist with coverage. Dr. Messina has no concerns with being able to meet the weekly 37.5 regular work hours in his role as Director of Clinical Operations. Dr. Messina understands that he cannot use state funds for outside employment with either Eskenazi or IU School of Medicine.

Dr. Messina believes that it is important to continue to work in the Emergency Department to maintain skills through patient contact, which will allow continued access to real world issues that OMPP faces and oversees. Eskenazi is a safety-net hospital, meaning that it provides health care and related services to the uninsured, Medicaid members and other vulnerable populations regardless of the ability to pay.

Dr. Messina has and will continue to pay for his own licensing fees and certifications. He has not and will not serve in a managerial or leadership role with Eskenazi or IU Health Physicians, his direct employer.

Eskenazi and IU Health Physicians are Indiana Medicaid enrolled Providers. Each have Indiana Health Coverage Program provider agreements with FSSA and receive Medicaid reimbursement. Eskenazi has five active contracts with FSSA, specifically with FSSA's Division of Mental Health and Addiction (DMHA). DMHA also certifies Eskenazi's community mental health center. IU Health Physicians is affiliated with IU Health. FSSA's divisions have three active contracts with IU Health. The contracts with Eskenazi and IU Health are at the division level, and none are with OMPP. The FSSA divisions have ownership of the contracts. Ms. Keyes writes that Dr. Messina will not sign or negotiate these contracts as OMPP's Director of Clinical Operations.

Dr. Messina also would like to maintain his appointment with the IU School of Medicine while he is employed with FSSA. Dr. Messina has taken an unpaid leave of absence and has maintained his title and the full rights of a faculty member. He will not receive benefits or salary from IU School of Medicine during his leave of absence, but he must continue to abide by the professional standards of the medical school to remain a faculty member in good standing. This leave is renewed annually.

According to Ms. Keyes, Dr. Messina understands the duty to maintain confidential information learned through his employment with the State and that he is prevented from divulging confidential information or allowing anyone, including Eskenazi and IU Health Physicians, from benefitting from such information.

Ms. Keyes is seeking the Commission's opinion regarding the application of any of the rules

in the Code to Dr. Messina's continued outside employment with Eskenazi and IU School of Medicine.

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 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.

The Commission generally defers to an agency's ethics officer regarding outside employment opportunities since 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 opportunity.

Based on the information provided by Ms. Keyes, Dr. Messina's employment at Eskenazi would not create a conflict under this provision. Dr. Messina has not and will not serve in a supervisory or leadership role with Eskenazi or IU Health Physicians, his direct employer. Instead, he will be providing patient care in the Emergency Department.

His other outside employment/professional activity would not provide Dr. Messina with compensation of a substantial value. Dr. Messina is taking an unpaid leave of absence from his position with IU School of Medicine and will not receive any benefits or salary during this time.

Ms. Keyes provides that Dr. Messina understands that he is prohibited from disclosing confidential information that he may have access to by virtue of his state employment in any of his outside positions. Nothing in the information presented suggests that Dr. Messina would use or attempt to use his state position for any unwarranted privileges or exemptions for anyone, including Eskenazi, IU Health Physicians or the IU School of Medicine. Dr. Messina held both of his outside positions prior to becoming the OMPP Director of Clinical Operations.

Accordingly, the Commission finds that Dr. Messina's outside employment positions with Eskenazi and IU School of Medicine would not create a conflict of interests for him under IC 4-2-6-5.5.

*B. Conflict of interests - decisions and votes*

IC 4-2-6-9 (a)(1) prohibits Dr. Messina 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 Dr. Messina from participating in any decision or vote, or matter relating

to that decision or vote, if a business organization which employs him has a financial interest in the matter.

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 seek an advisory opinion from the Commission or file a written disclosure statement.

Dr. Messina is serving as OMPP's Director of Clinical Operations and will be working in the Emergency Department at Eskenazi periodically. Dr. Messina will serve as a supplemental employee, and IU Health Physicians will pay him on an hourly basis for his work at Eskenazi through IU Health Physicians.

Accordingly, Dr. Messina would have a potential conflict of interests if he is in a position to participate in decisions or votes, or matters related to such decisions or votes, in which he, Eskenazi, IU Health Physicians or IU Health would have a financial interest in the outcome.

Ms. Keyes explains that Eskenazi and IU Health Physicians are Indiana Medicaid enrolled Providers. Each have Indiana Health Coverage Program provider agreements with FSSA and receive Medicaid reimbursement. Eskenazi has five active contracts with FSSA, specifically with DMHA. DMHA also certifies Eskenazi's community mental health center. IU Health Physicians is affiliated with IU Health. FSSA's divisions have three active contracts with IU Health. The contracts with Eskenazi and IU Health are at the division level, and none are with OMPP. The FSSA divisions have ownership of the contracts. Ms. Keyes writes that Dr. Messina will not sign or negotiate these contracts as OMPP's Director of Clinical Operations.

The Commission finds that Dr. Messina does not have an identified potential conflict of interests at this time. Should Dr. Messina as OMPP's Director of Clinical Operations be in a position to participate in a matter that could uniquely affect Eskenazi, IU Health Physicians or IU Health, FSSA must institute a screening mechanism whereby it would delegate any such decisions, and matters related to such decisions, to an FSSA colleague.

### *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. 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.

Ms. Keyes provides that Eskenazi has five active contracts with FSSA's DMHA. FSSA's divisions have three active contracts with IU Health.

Ms. Keyes and Dr. Messina informed the Commission that IU Health will not compensate Dr. Messina with funds from a state contract or state grant. They advised that Dr. Messina's fees may be paid from general Medicaid funds; such funds are not considered to be derived from a state contract.

The Commission find that FSSA has taken the appropriate steps to ensure Dr. Messina will not have a conflict of interests under both the Code and Indiana criminal code and that Dr. Messina would not have a financial interest in a state contract that would create a conflict of interests.

*D. Confidential information*

Dr. Messina 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 Dr. Messina 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 IU Health. In addition, the definition of “information of a confidential nature” is set forth in IC 4-2-6-1(a)(12).

To the extent Dr. Messina is exposed to or has access to such confidential information in his new position at FSSA, he would be prohibited not only from divulging that information but from ever using it to benefit any person, including any of his outside employers, in any manner.

*E. Use of state property and Ghost employment*

42 IAC 1-5-12 prohibits Dr. Messina 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 Dr. Messina 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 Dr. Messina observes these provisions regarding his outside employment/professional activities, his outside positions would not violate these ethics laws.

Subject to the foregoing analysis, the Commission finds that Dr. Messina’s continued outside employment positions with Eskenazi and IU School of Medicine would not create a conflict of interests under the Code of Ethics so long as FSSA implements a screen that would prohibit Dr. Messina from participating in any matters in which Eskenazi, IU Health Physicians or IU Health would have a unique financial interest.

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

**V. Request for Formal Advisory Opinion**

2022-FAO-006

Connor Norwood, Chief Data Officer

Jessica Keyes, Ethics Officer

Indiana Family and Social Services Administration

Jessica Keyes is the Ethics Officer for the Indiana Family and Social Services Administration (FSSA). Ms. Keyes is requesting an advisory opinion on behalf of Connor Norwood, Chief Data Officer (CDO) for FSSA, regarding a post-employment opportunity.

In his role as CDO with FSSA, Mr. Norwood supports the enterprise data warehouses for the Supplemental Nutrition Assistance Program (SNAP)/Temporary Assistance for Needy Families (TANF) and Medicaid data analytics; designs, develops and implements an agency-wide data governance strategy to support data-driven culture; conducts research studies and program evaluation to answer agency and state priorities around health policy and health services delivery; collaborates with the Office of the Governor and other state agencies to harness the power of data to achieve state policy goals; and fosters intra-division relationships and direct integration of data/analytics programs across the agency.

Mr. Norwood plans to leave state employment within the next couple of months and open his own solo practice consulting firm (Firm) as a limited liability company. The Firm will provide consultation regarding data and analytics and assist customers in data management and their data practice. Mr. Norwood initially will be the only employee in the Firm. He has been working on creating a business implementation plan for the Firm as he wraps up his state employment.

As part of his business implementation plan, Mr. Norwood has been in communication with a potential client, EImagine. EImagine provides technology consulting. Mr. Norwood's discussions with EImagine have centered around data management and EImagine's data practice and how that might fit in with Mr. Norwood's Firm. Mr. Norwood and EImagine also discussed information regarding EImagine's infrastructure and the systems and benefits EImagine has in place that could be beneficial to Mr. Norwood in starting the Firm. These systems and benefits include human resources services and similar systems and services.

EImagine is a current contractor with FSSA. FSSA contracted with EImagine to support the Care Management for Social Services system (CaMSS) for FSSA's Division of Aging, Division of Mental Health and Addiction and with an option to extend to the Bureau of Developmental Disability Services. This system is part of the larger integrated care and case management system initiative to modernize and consolidate various care management applications through FSSA. EImagine provides technology consulting, maintenance and operations support for CaMSS and system enhancement services to expand the CaMSS systems should other FSSA divisions desire to implement them. EImagine will work to plan, design, develop and implement solution enhancements with CaMSS. A recent contract amendment added cloud migration as a service under the contract, as well.

EImagine's current contract with FSSA is related to technology and does not have a data practice component. EImagine does not provide advance analytics or data science work/information for FSSA. Additionally, in his state employment, Mr. Norwood has not worked with EImagine and has not interacted with any of EImagine's employees working on the CaMSS contract. Mr. Norwood does not and has not overseen contract negotiation or administration regarding EImagine and does not make decisions or vote on matters directly related to EImagine in his role as CDO.

Mr. Norwood's Firm will perform work related to data management and practice. His discussions with EImagine have been to explore work he could contract with EImagine to perform on the data side of their practice. Mr. Norwood and EImagine have discussed resources that could be shared or referrals made regarding business infrastructure.

Ms. Keyes writes that Mr. Norwood will not be engaged in any lobbying for the Firm. Additionally, she provides that he was not involved in contract negotiation or administration involving EImagine and he did not make any regulatory or licensing decisions related to EImagine while with the State. Finally, Mr. Norwood has not worked on any particular matters as a state employee on which he will be working for EImagine while working for the Firm.

According to Ms. Keyes, Mr. Norwood understands that he would be prohibited from representing or assisting EImagine on any particular matter in which he personally and substantially participated as a state employee, and this restriction would apply to other contracts with the Firm as well. Mr. Norwood also understands the restrictions against divulging confidential information learned through state employment.

FSSA is seeking the Commission's opinion regarding the application of any of the rules in the Code to Mr. Norwood's post-employment opportunity and specifically his potential business relationship with EImagine.

The analysis stated the following:

*A. Confidential Information*

IC 4-2-6-6 prohibits Mr. Norwood 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 Mr. Norwood receives does not result from confidential information, his potential employment with the Firm and business relationship with EImagine would not violate IC 4-2-6-6.

*B. Conflict of Interests*

IC 4-2-6-9(a)(1) prohibits Mr. Norwood from participating in any decision or vote, or matter related 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) and (4) prohibit him from participating in any decision or vote or matter related to a decision or vote, in which a business organization in which he is serving as a member, partner or employee or with whom he 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, Mr. Norwood has already begun negotiations with EImagine as a potential client of the Firm. As such, Mr. Norwood would be prohibited from participating in any decision or vote,



or matter related to a decision or vote, in which he, by virtue of his prospective business relationship with EImagine, would have a financial interest in the outcome of the matter.

Ms. Keyes writes that Mr. Norwood has not worked with EImagine and has not interacted with any of EImagine's employees working on the CaMSS contract; therefore, FSSA has not yet identified a potential conflict of interests. If a potential conflict of interests is identified during Mr. Norwood's remaining employment with the State, IC 4-2-6-9(b) requires Mr. Norwood to notify his agency's appointing authority and ethics officer in writing and either (1) seek a formal advisory opinion from the Commission; or (2) file a written disclosure form with the OIG.

Furthermore, Mr. Norwood must ensure he continues to refrain from participating in any decisions or votes, or matters relating to any such decisions or votes, in which he, the Firm or EImagine has a financial interest in the outcome of the matter for the remainder of his state employment.

### *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 Mr. Norwood from accepting employment from an employer for 365 days from the date that he leaves state employment under various circumstances.

First, Mr. Norwood 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, Mr. Norwood would not be engaging in any lobbying activities in his prospective employment with the Firm. To the extent that Mr. Norwood does not engage in executive branch lobbying for one year after leaving state employment, his intended employment with the Firm and business relationship with EImagine would not violate this provision of the post-employment rule.

Second, Mr. Norwood is prohibited from accepting employment for 365 days from the last day of his state employment from an employer with whom 1) he 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 nature of the administration of the contract.

EImagine has an active contract with FSSA; however, Mr. Norwood does not and has not overseen contract negotiation or administration with EImagine, and he does not make decisions or votes directly related to EImagine in his role as CDO. Accordingly, this restriction would not prohibit Mr. Norwood from working for the Firm or pursuing a business relationship with EImagine upon leaving state employment.

Third, Mr. Norwood is prohibited from accepting employment for 365 days from the last day of his state employment from an employer for whom he made a regulatory or licensing decision that directly applied to the employer or its parent or subsidiary.

Ms. Keyes provides that Mr. Norwood has not made any regulatory or licensing decisions related to EImagine in his role with the State. Accordingly, this provision of the cooling off restriction would not prohibit Mr. Norwood from working for the Firm or pursuing a business relationship with EImagine.

Fourth, Mr. Norwood is prohibited from accepting employment from an employer if the circumstances surrounding the hire suggest the employer's purpose is to influence him in his official capacity as a state employee. The information presented to the Commission does not suggest that EImagine has discussed working with Mr. Norwood in an attempt to influence him in his capacity as a state employee. Accordingly, the Commission finds that this restriction would not apply to Mr. Norwood's intended employment opportunity with the Firm or his potential business with EImagine.

Finally, Mr. Norwood is subject to the post-employment rule's "particular matter" prohibition in his prospective post-employment. This restriction prevents him from representing or assisting a person on any of the following twelve matters if he 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, Mr. Norwood would be prohibited from representing or assisting the Firm, EImagine or any other person, in a particular matter in which he personally and substantially participated as a state employee.

Ms. Keyes provides that Mr. Norwood understands that he would be prohibited from representing or assisting EImagine on any particular matter in which he personally and substantially participated as a state employee, and this would apply to other contracts for the Firm as well.

Mr. Norwood should keep in mind that he is prohibited from assisting the Firm, EImagine or any other person on any of the other particular matters listed above on which he may have personally and substantially worked during his state employment.

Subject to the foregoing analysis, the Commission finds that Mr. Norwood's post-employment opportunity with the Firm and potential business relationship with EImagine would not violate the post-employment restrictions found in IC 4-2-6-11.

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

**VI. Request for Formal Advisory Opinion**

2022-FAO-007

Jessica Keyes, Ethics Officer

Jared Linder, Chief Information Officer

## Indiana Family & Social Services Administration

Jessica Keyes is the Ethics Officer for the Indiana Family and Social Services Administration (FSSA). Ms. Keyes is requesting an advisory opinion on behalf of FSSA.

Ms. Keyes asks how the Code would apply to an FSSA employee holding a voting position as a member of the Indiana Health Information Exchange (IHIE) Board (Board). IHIE is seeking to add a voting member from FSSA to the Board, through updating their bylaws. FSSA does not currently have a member on the Board; however, IHIE has requested an FSSA voting member be added to the Board due to the needs of FSSA for certain information/data. FSSA also has a unique voice/perspective on issues relating to exchange of health information, which can change what data is used/collected and how it is integrated to improve access to the same. Ms. Keyes writes that there is no known compensation available for the FSSA role on the Board.

The Regenstrief Institute founded IHIE in 2004 as a non-profit organization. IHIE is a 501(c)(3) supporting organization. IHIE facilitates sharing of patient medical records between providers and makes health information available to approximately 50,000 providers in Indiana and surrounding states. IHIE is the main information exchange for patient records, serving all of Indiana. IHIE operates the Indiana Network for Patient Care (INPC), which is the clinical data repository where contracted providers both send and utilize data. Indiana Medicaid is a provider of data to the INPC, along with the hospital systems.

The composition of the IHIE board includes hospital systems, healthcare associations, academia, state representatives and community members. The information sent and received can include data, such as lab results, radiology reports, hospital admissions and hospital discharge.

FSSA has at least three active contracts with IHIE at present. The first requires IHIE to provide a customized clinical data repository and reporting for FSSA's Maternal Opioid Misuse Indiana Initiative program, including admission, discharge and transfers (ADT) reporting regarding the usage of healthcare resources and reduced healthcare costs, clinical value reporting regarding clinical data from the data repository in consumable format and care manager access to analyze data for a specific segment of the Medicaid population.

The second contract is a two-part contract involving a data use agreement for IHIE to obtain data and provide ADT alerts regarding the usage of healthcare resources and a joinder agreement creating membership in the INPC.

Finally, the third contract requires IHIE to work with FSSA and the Indiana Department of Health (IDOH) to refine the difference between quantitative pregnancy tests and qualitative results and other services related to the OB Navigator Program.

Ms. Keyes writes that FSSA would like to pursue a voting position on the Board to allow for a voice on data exchange and improving information for members and future members of FSSA services. Due to the current, and likely ongoing, contracts between FSSA and IHIE relating to

information exchange and data sharing/refining, the FSSA employee who serves as a voting member of the Board could have a conflict of interests due to being a member of the Board, which has a financial interest in FSSA decisions.

Ms. Keyes writes that, to avoid a potential conflict of interests, FSSA could remove any FSSA employee who negotiates, administers or oversees/implements any contracts with IHIE or with decision making/voting authority from consideration for the FSSA position on the Board. She further writes that FSSA is prepared to file a screen for the FSSA employee who would serve on the Board, if approved by the Commission, to screen the employee from participating in decisions, votes or matters relating to decisions or votes in which IHIE would have a financial interest. Furthermore, FSSA will remind any FSSA Board member of the Code rules prohibiting state employees from benefitting from or divulging confidential information learned through state employment.

In February of 2022, the Commission approved allowing the State Health Commissioner or another IDOH employee to serve as a voting member of the Board with the appropriate screening and application of Code requirements. This question is similar to the issue raised by IDOH.

Ms. Keyes seeks a formal advisory opinion on behalf of FSSA on this matter to ensure full compliance with the Code and to avoid any appearance of impropriety that may arise.

The analysis stated the following:

*A. Conflict of interests - decisions and votes*

IC 4-2-6-9 (a)(1) prohibits an FSSA employee from participating in any decision or vote, or matter relating to that decision or vote, if he or she has a financial interest in the outcome of the matter. Similarly, IC 4-2-6-9(a)(3) prohibits an FSSA employee from participating in any decision or vote, or matter relating to that decision or vote, if he or she or a business organization in which the employee serves as a director or a member has a financial interest in the outcome. In addition, the rule requires state employees who recognize a potential conflict of interests to notify their agency's appointing authority and ethics officer in writing and either (1) seek a formal advisory opinion from the Commission or (2) file a written disclosure form with the Office of Inspector General.

If an FSSA employee were to serve as a voting member of the Board, the employee would be a director or member of IHIE. Thus, IC 4-2-6-9 would prohibit the FSSA representative on the Board from participating in any decision or vote, or matter related to a decision or vote, for FSSA in which IHIE would have a financial interest. Also, it would trigger the disclosure requirements in IC 4-2-6-9(b) if the participating FSSA employee identifies a potential conflict of interests.

Ms. Keyes provides that FSSA has contracts with IHIE. If the FSSA employee who serves on the Board is in a position to participate in decisions or votes in which IHIE would have a financial interest, such as decisions involving IHIE's contracts with FSSA, then the employee must notify his or her appointing authority and Ethics Officer in writing and either seek a formal advisory opinion or file a written disclosure statement with the Commission.

The Commission finds that FSSA should execute an appropriate screen that prohibits the FSSA employee who sits as a voting member of the Board from participating in any decisions or votes, or matters related to decisions or votes, at FSSA in which IHIE would have a financial interest. So long as FSSA executes an appropriate screen, the Commission finds that the participating FSSA employee would not be in violation of IC 4-2-6-9.

*B. Outside Employment/Professional Activity*

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 or her official duties that his or her 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 or her official position to secure unwarranted privileges or exemptions of substantial value that are not properly available to similarly situated individuals outside state government.

The Commission generally defers to an agency's ethics officer regarding outside employment or professional activity opportunities since 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 or professional activity opportunity.

Based on the information provided by Ms. Keyes, the participating FSSA employee would be serving on the Board in his or her official capacity; therefore, subsections (1) and (2) would not prohibit the FSSA employee from serving on the Board. Regarding subsection (3), the participating FSSA employee is prohibited from using his or her FSSA position to secure unwarranted privileges or exemptions for IHIE or anyone else that subsection (3) prohibits.

*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. 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.

Ms. Keyes confirmed that no IDOH employee would receive compensation, including reimbursement for expenses, from IHIE for serving on the Board. Thus, this rule will not apply.

*D. Gifts*

The participating FSSA employee also should be aware of 42 IAC 1-5-1, which is the gift rule. The gift rule states, in part, that a state employee shall not knowingly solicit, accept or receive 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.

"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 (i) a pecuniary interest in a contract or purchase with an agency; (ii) a license or permit requiring the exercise of an agency's judgment or discretion; or (iii) a lobbyist.

The general prohibition on gifts is subject to the eight exceptions outlined in subsection (b) of 42 IAC 1-5-1, or the agency's appointing authority may waive its application in certain circumstances as provided for in subsections (c) and (d).

Ms. Keyes provides that FSSA has a contract with IHIE. As such, IHIE has a business relationship with FSSA, and an FSSA employee is prohibited from accepting any gifts from IHIE, unless an exception applies or the FSSA employee obtains a gift waiver.

#### *E. Confidential information*

The participating FSSA employee 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. To the extent that the participating FSSA employee will possess information of a confidential nature by virtue of his or her position with FSSA that could be used to benefit the Board, IHIE or any other person or entity, the participating FSSA employee must ensure that he or she complies with these rules.

Subject to the foregoing analysis, the Commission finds that the participating FSSA employee would have a potential conflict of interests under IC 4-2-6-9 if he or she were to participate in decisions or votes, or matters related to such decisions and votes for FSSA in which IHIE would have a direct financial interest in the outcome of the matter. The Commission further finds that FSSA should implement a screening mechanism to ensure the participating FSSA employee does not participate in any decisions or votes, or matters relating to such decisions and votes, in which IHIE has a financial interest.

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

## **VII. Interim Ethics Director's Report**

Tiffany Mulligan, OIG's Chief of Staff and Chief Legal Counsel, started by reporting that Sean Gorman has been hired as the new State Ethics Director and will have his first day on March 14, 2022. The OIG is very excited for Mr. Gorman to begin as Ethics Director, and he will take over providing reports to the Commission beginning with the April meeting.

Ms. Mulligan then took the opportunity to introduce the two new Staff Attorneys, Mark Mader and Doreen Clark, to the Commission at this first in-person meeting since 2020.

Ms. Mulligan went on to report that OIG staff has issued 23 informal advisory opinions since the previous last meeting. The majority of these requests dealt with questions concerning conflicts of interests, use of state property, ghost employment, outside employment, post-employment and gifts.

The deadline for the 2021 Financial Disclosure Statement filing period was February 2, 2022. As of this meeting date, less than five filers remained, and the OIG anticipates that we will have full compliance with this requirement by the April Commission meeting. Ms. Mulligan also indicated that the OIG is still working on the Ethics Training, which should be completed later this year.

Ms. Mulligan yielded the floor to Inspector General David Cook who took the opportunity to address the Commission. He first introduced himself as this was the first time he was able to do so in-person. The Inspector General then addressed Commissioner Todd regarding his tenure with the Commission, and because this was the Commissioner's final meeting, Inspector General Cook thanked Commissioner Todd for his service and presented a Certificate to Commissioner Todd to show gratitude for his years of service.

#### **VIII. Personal Time – Commissioner Kenneth Todd**

Commissioner Todd began his personal time to thank Inspector General Cook for the Certificate and gratitude shown. He said it had been an honor and privilege to serve on the State Ethics Commission and with his fellow Commissioners. Commissioner Todd also thanked the OIG Staff for their ongoing facilitation of the Commission meetings.

Commissioner Todd ended by wishing his fellow Commissioners well in their continued service. Both Commissioner Finnerty and Commission Chair Noel offered their thanks to Commissioner Todd and also wished him well.

#### **IX. Adjournment**

Commissioner Todd 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 10:35 a.m.

Ms. Lora L. Manion, Esq.  
Email: lmanion@manionlawyer.com  
Phone/Text: 317-698-5188

March 30, 2022

Indiana Ethics Commission  
Office of the Inspector General  
315 West Ohio Street, Room 104  
Indianapolis, Indiana 46202  
Via Email: info@ig.in.gov

RE: Request for Formal Opinion of the Indiana State Ethics Commission, Former ALJ  
Manion's Pre-Employment Negotiations with a Law Firm

**Request for Formal Opinion of the Indiana State Ethics Commission**

Dear Chairperson Katherine Noel and members of the Ethics Commission:

**Applicable Law:** Ind. Code § 4-2-6-11(a)-(f), and IURC Policy No. IURC-04 (*see* Exhibit A).<sup>1</sup>

**Questions:** (1) Does the one-year cooling off period apply to my proposed employment with a private law firm ("Firm")? (2) May I immediately work on, and appear before the Indiana Utility Regulatory Commission ("IURC") in matters I did not personally and substantially participate in during my employment with the State of Indiana ("State") as an Administrative Law Judge ("ALJ")?

**Background:** I am an Indiana-licensed lawyer, a former State employee, and a former ALJ for two State agencies.

After gaining legal and technical experience at large, international utilities, I was employed as an ALJ for nearly four years at the IURC until my June 2021 resignation. At the IURC, ALJs preside (often with IURC Commissioners) over hearings with utilities and interested parties and write Commission Orders that strictly reflect the decisions of the Commissioners. The decisions I made while presiding over hearings with utilities and interested parties and the orders I drafted for Commissioners applied "directly" to the parties appearing before the IURC, and not to the private law firms representing those parties. IURC ALJs do not engage in the negotiation or the administration of contracts, and do not make discretionary decisions affecting the outcome of negotiations, or the nature of administration.

I was employed as an ALJ at the Indiana Department of Workforce Development ("DWD") from September 2021 until my resignation effective March 23, 2022. At the DWD, ALJs preside over unemployment hearings with former employees and employers. ALJs make benefit decisions, which are appealable to the Review Board. The decisions I made as an ALJ at DWD applied

---

<sup>1</sup> IURC Policy No. IURC-04, effective January 1, 2019. Author confirmed with General Counsel policy continues to be effective as of March 30, 2022.



“directly” to the parties appearing before the DWD, and not to the private law firms representing those parties. DWD ALJs do not engage in the negotiation or the administration of contracts, and do not make discretionary decisions affecting the outcome of negotiations, or the nature of administration.

**Proposed Post-Employment:** I was recently offered an Of Counsel position with the Firm, a private law firm and not a regulated utility or a parent or subsidiary of a regulated utility. I would be a Firm employee and advise Firm clients on legal issues, including, but not limited to, filings before the IURC. I do not anticipate engaging in lobbying activities at all as part of my employment with the Firm, and I will not engage in lobbying activities during the initial 365-day period after leaving State Employment.

During pre-employment negotiations with the Firm, the Firm and I mutually agreed as follows:

- (1) my proposed Firm employment would be subject to receiving a favorable IEC opinion;
- (2) I would refrain from representing or assisting on any “particular matter” defined by Ind. Code § 4-2-6-11(a) that I personally and substantially participated in during my State employment pursuant to Ind. Code § 4-2-6-11(c) and IURC-04(IV)(b)(3).

**Discussion on Questions:**

(1) Does the one-year cooling off period apply to my proposed employment with the Firm? The one-year cooling off period in Ind. Code § 4-2-6-11(b)(3) and IURC-04(IV)(b)(2) does not apply here because as a State employee and ALJ, I did not make any regulatory or licensing decision that directly applied to the Firm or to a parent or subsidiary of the Firm. Therefore, I may be employed by the Firm immediately.

(2) May I immediately work on and appear before the IURC in matters I did not personally and substantially participate in during my employment with the State as an ALJ? Ind. Code § 4-2-6-11(a) and (c) and IURC-04(IV)(b)(3) forbid representing or assisting a person in a “particular matter” involving the State that I personally and substantially participated in as a State employee. Requirements do not forbid me from representing or assisting on matters involving the State that I did not personally and substantially participate in as a State employee; therefore, I may immediately work on and appear before the IURC in those matters.

Thank you for your consideration. If you have any questions, I am available by phone, email, and video conference.

Respectfully submitted,



Ms. Lora L. Manion, Esq.  
14227 Vindel Circle  
Fort Myers, FL 33905

## Exhibit A

Ind. Code § 4-2-6-11(a)-(f)

(a) As used in this section, “particular matter” means any of the following:

- (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.
- (12) A public works project.

The term does not include the proposal or consideration of a legislative matter or the proposal, consideration, adoption, or implementation of a rule or an administrative policy or practice of general application.

(b) A former state officer, employee, or special state appointee may not accept employment or receive compensation:

- (1) as a lobbyist;
- (2) from an employer if the former state officer, employee, or special state appointee was:
  - (A) engaged in the negotiation or the administration of one (1) or more contracts with that employer on behalf of the state or an agency; and
  - (B) in a position to make a discretionary decision affecting the:
    - (i) outcome of the negotiation; or
    - (ii) nature of the administration; or
- (3) from an employer if the former state officer, employee, or special state appointee made a regulatory or licensing decision that directly applied to the employer or to a parent or subsidiary of the employer; before the elapse of at least three hundred sixty-five (365) days after the date on which the former state officer, employee, or special state appointee ceases to be a state officer, employee, or special state appointee.

(c) A former state officer, employee, or special state appointee may not represent or assist a person in a particular matter involving the state if the former state officer, employee, or special state appointee personally and substantially participated in the matter as a state officer, employee, or special state appointee, even if the former state officer, employee, or special state appointee receives no compensation for the representation or assistance.

(d) A former state officer, employee, or special state appointee may not accept employment or compensation from an employer if the circumstances surrounding the employment or compensation would lead a reasonable person to believe that:

- (1) employment; or
- (2) compensation;

is given or had been offered for the purpose of influencing the former state officer, employee, or special state appointee in the performance of the individual's duties or responsibilities while a state officer, an employee, or a special state appointee.

(e) A written advisory opinion issued by the commission certifying that:

- (1) employment of;
- (2) consultation by;
- (3) representation by; or
- (4) assistance from;

the former state officer, employee, or special state appointee does not violate this section is conclusive proof that a former state officer, employee, or special state appointee is not in violation of this section.

(f) Subsection (b) does not apply to the following:

- (1) A special state appointee who serves only as a member of an advisory body.
- (2) A former state officer, employee, or special state appointee who has:
  - (A) not negotiated or administered any contracts with that employer in the two (2) years before the beginning of employment or consulting negotiations with that employer; and
  - (B) any contract that:
    - (i) the former state officer, employee, or special state appointee may have negotiated or administered before the two (2) years preceding the beginning of employment or consulting negotiations; and
    - (ii) is no longer active

**Exhibit A (con't)**

Scanned Copy of IURC Policy No. IURC-04, Restrictions on Employment with Utilities

## **Indiana Utility Regulatory Commission**

### **Policy No. IURC-04**

#### **Restrictions on Employment with Utilities**

##### **I. Purpose**

In compliance with Indiana law, the Indiana Rules of Professional Conduct, and opinions of the Indiana State Ethics Commission, this policy addresses and clarifies the position of the Indiana Utility Regulatory Commission (“IURC” or “Commission”) regarding Commissioners and Commission staff and employment with the public utilities under the Commission’s jurisdiction.

##### **II. Scope**

This policy applies to all Commissioners and Commission employees, according to their respective positions with the Commission.

##### **III. Definitions**

For the purposes of this policy, the following definition applies:

“Negotiating for employment” occurs when the utility responds to an application for employment with anything more than general information regarding the job posting or a denial letter. The State Ethics Commission has held that the unilateral submission of an application or resume (i.e., one way communication) does not constitute “negotiating for employment.” Negotiations for prospective employment commence when the utility contacts the Commission employee in response to the employee’s application or resume, or, in other words, when back and forth communications between the utility and the employee occur. Negotiating for employment can occur without a formal application.

##### **IV. Policy Statement**

The work of public utilities and the regulation of public utilities is a specialized area of technical and legal expertise. Because this type of employment is so specialized, there is a tendency for public utilities to employ those who have gained knowledge and experience by working for a regulator, such as the Commission, and for the Commission to hire those who have gained knowledge and experience by working for a public utility. However, such employment must strictly conform to Indiana ethics statutes (Ind. Code ch. 4-2-6) and the Code of Ethics for the Indiana Utility Regulatory Commission (Executive Order No. 93-12).

Because they make decisions that directly apply to a regulated utility, Commissioners of the Indiana Utility Regulatory Commission may not accept employment or compensation from a regulated utility or a parent or subsidiary of the regulated utility before at least 365 days after ceasing employment with the State of Indiana. See Ind. Code § 4-2-6-11(b). Under Indiana

Code § 4-2-6-11(h), this 365 day moratorium also applies to former state employees or appointees “who (1) made decisions as an administrative law judge; or (2) presided over information gathering or order drafting proceedings.” As a result, the 365-day moratorium applies to the Commission’s ALJs, as well as to attorneys in the Office of General Counsel who preside over information gathering proceedings such as the public hearings for rulemakings. It is important to note that the 365-day moratorium starts when the employee leaves state employment, not just employment with the IURC. In other words, moving to another state agency delays the start of the moratorium period, which would start if the employee wanted to move from that other state agency to a utility regulated by the IURC.

In addition, Indiana Code § 4-2-6-11(c) prohibits Commission staff who subsequently work for a utility from working on any particular matter in which the employee personally and substantially participated during the course of their state employment. Indiana Code § 4-2-6-11(d) also prohibits Commission staff from accepting employment if circumstances surrounding that employment “would lead a reasonable person to believe” that undue influence was involved. Public confidence in the impartiality of the Commission is important, as well as the avoidance of the appearance of impropriety.

Consequently, the following restrictions on employment with utilities before and after employment with the Commission apply:

#### **A. Screening While Employed at the IURC**

Indiana Code § 4-2-6-9(a)(4) states that an employee may not participate in any decision if the employee has knowledge that a party has a “financial interest” in a Commission matter and if the employee is “negotiating or has an arrangement concerning prospective employment.” In order to avoid any appearance of impropriety (Executive Order No. 93-12, § 2.), the IURC employee shall immediately report the potential conflict to the employee’s supervisor **BEFORE** “negotiating for employment” occurs with a utility; and immediate action must be taken by the supervisor to screen off the employee from any further participation in decisions, analysis, or research involving the utility with which the employee is negotiating. The employee and/or the supervisor must also inform the IURC’s Ethics Officer of the potential conflict and the screening procedures put into place.

If an IURC employee negotiates for employment with a regulated utility before screening is put into place, then that IURC employee must notify the Chairman and the IURC’s Ethics Officer of the situation and must also either (1) seek a formal advisory opinion from the State Ethics Commission, or (2) file a written disclosure statement with the State Ethics Commission, under Ind. Code 4-2-6-9(b), both of which are very public processes.

#### **B. Restrictions on Employment with a Utility After Working for the IURC**

- 1) Commissioners are decision makers under Indiana Code § 4-2-6-11(b) and, as such, are prohibited from lobbying the executive branch or employment with a utility regulated by the Commission until the elapse of at least 365 days from the date the Commissioner ceases to be a state employee.

- 2) IURC ALJs are Presiding Officers on IURC cases with Commissioners; and attorneys in the Commission's Office of General Counsel preside over rulemaking public hearings. Therefore, pursuant to Indiana Code § 4-2-6-11(h) and to avoid the appearance of impropriety, IURC ALJs and General Counsel attorneys who preside at hearings are prohibited from becoming an employee of a utility regulated by the Commission until the elapse of at least 365 days from the date the ALJ or attorney ceases to be a state employee<sup>1</sup>.
- 3) All former IURC employees who represent or become employed by a utility are prohibited by Indiana Code § 4-2-6-11(c) from representing or assisting their utility employer on any "particular matter" in which they substantially participated while at the IURC (for example, an IURC cause on which the employee was assigned staff). This particular restriction is not limited by time or subject matter.

**C. Restrictions on Employment with the Commission After Working for a Utility**

From the effective date of this policy, no employee of the IURC who formerly worked for a utility will participate in any decision, analysis, or research involving the employee's former utility employer for a period of one (1) year from the date their utility employment terminated.

**V. References**

- Ind. Code § 4-2-6-11 (One Year Restriction on Certain Employment or Representation)
- Executive Order No. 93-12 (Code of Ethics for IURC)
- Formal Ethics Advisory Opinion No. 10-1-7 (An ALJ with the IURC submitted his resume seeking employment with a utility regulated by his agency and sought advice on when "negotiations" began, thereby invoking the restrictions under IC 4-2-6-9 and requiring that he be screened from any cases involving the utility.)

Effective Date: January 1, 2019

Supersedes: Policy No. IURC-04 Restrictions on Employment with Utilities, dated September 1, 2015

Amends: N/A

Approved:  Date: 12-27-18  
 James F. Huston, Chairman

<sup>1</sup> This policy is not intended to place any restrictions on the right to practice law after termination of employment with the IURC, in accordance with Rule 5.6 of the Rules of Professional Conduct, which governs all attorneys in Indiana.

Request for a Formal Advisory Opinion for the April 14-2022 agenda

Post Employment from INDOT for new Hire at Terre Haute MPO

Susan Kemp

[skemp@indot.in.gov](mailto:skemp@indot.in.gov)

765-714-5508 cell

**Description of State Occupation**

INDOT – Local Program Director July 2010 -present Assists in the coordination of roads, bridges and traffic projects through the planning process, as they affect local public agencies (LPA); Develops personal contacts with LPA's and consultants and assists them on the various issues facing program development; Assist in the coordination of project reviews, meetings, conferences and other program coordination meetings as deemed necessary; Provides follow up to LPA's on project schedules and target dates, meeting with LPA's to review quarterly reports. Maintains schedules for all assigned projects, including the production schedule; Provides on-site inspections of problems and advice to LPA's as requested; Oversees scheduling of projects for bid letting which meet production schedule timeframes and requirements; Reviews 12 month letting list monthly to ensure schedules are current. Reviews local project agreements for completeness and accuracy and provides recommended changes to LPA's; Ensures all LPA or elected officials requests are answered in a timely manner; Attends LPA meetings, Metropolitan Planning Organization (MPO) meetings, Local Public Hearings as needed, and is the local contact for all local programs. Communication with LPA's and public speaking is expected; Assist with TIP/STIP reviews with LPA's and MPO's; Keeps a log of various activities for each project from Proposal to Active status in Scheduling & Project Management System (SPMS); Proposes new projects in SPMS, maintains accurate project budget in SPMS, coordinating changes with the LPA and Central Grants Administration; Review and update funding in SPMS for all LPA projects. Coordinate with Central Grants Administration to ensure that Program targets and constraints are met; Update SPMS for MPO projects in accordance with TIP and other authorized changes; Work with MPO's on quarterly project reviews; Assures necessary Project LPA Development Phases are in current Transportation Improvement Program (TIP)/Indiana State Transportation Improvement Program (INSTIP) documents and prepares Amendment requests for phases not included in the current TIP/INSTIP; Initiate FMIS requests for project development phases as needed; Provide assistance to all Local Public Agencies in regards to the Local Federal Aid Program. Review, evaluate, and score applications submitted for federal funding (e.g., Group 3, 4, Local Bridge, Transportation Alternative). Attend the Project Selection Committee Meeting to recommend projects for federal funding. Hold Early Coordination meeting with those award recipients to begin development of their project; Receive quarterly reports for all federal aid projects (Group 3, 4, Local Bridge, Transportation Alternative). Update SPMS to reflect the cost estimates as shown in the quarterly report. Provide the quarterly report to the respective project manager to review the anticipated project timelines and scheduling. Update SPMS; accordingly, Review invoices to LPAs for accuracy. Notify LPA's who are not current with payments to resolve any issues. Notify and establish acceptable payment plans with Local Public Agencies who owe funds to INDOT.



**MPO Job Description**

Transportation Planner

TERRE HAUTE AREA METROPOLITAN PLANNING ORGANIZATION (THAMPO)

Terre Haute, IN United States

**Job Summary**

The Transportation Planner studies, analyzes, and evaluates data from current and proposed transportation projects and systems.

**Examples of Duties**

Interprets and applies federal, state, and local regulations, codes and ordinances relating to transportation planning and programming.

Develops planning studies and reports in support of new and updated transportation related plans, programs, and regulations.

Performs and participates in short- and long-range studies concerning the planning of transportation facilities and services and their impact on the study area's transportation network, land use, and air quality.

Supports the analysis and development of user-friendly information to describe the Fiscally Constrained Metropolitan Transportation Plan (MTP) and its elements.

Conducts the analysis and development of the Metropolitan Transportation Improvement Program (MTIP).

Recommends priorities, schedules, and funding sources to implement transportation improvements plans and programs.

Assists with updates and maintenance of Land Use and Area Plans and land development regulations.

Conducts extensive research in specific or general project areas.

Writes and presents formal and technical reports, working papers, and correspondence. Prepares Request for Proposals (RFPs) in program areas and manages assigned contracts.

Works in collaboration with unit member local governments to identify, recommend, develop, implement, and support effective communication and public relations that meet the needs.

Work involves internal and external communication with the public, local media and the development and delivery of informational and promotional materials through various outlets.

Signature Susan Kemp 3-30-2022  
Susan Kemp



# INDIANA DEPARTMENT OF TRANSPORTATION

100 North Senate Avenue  
Room N758  
Indianapolis, Indiana 46204

PHONE: (855) 463-6848

**Eric Holcomb, Governor**  
**Michael Smith, Commissioner**

April 6, 2022

Katherine Noel, Chair  
Indiana State Ethics Commission  
315 West Ohio Street, Room 104  
Indianapolis, Indiana 46202

RE: Request for Formal Opinion, INDOT Employee Susan Kemp's Participation in Certain Particular Matters for Terre Haute Metropolitan Planning Organization

## **Request for Formal Opinion of the Indiana State Ethics Commission**

**Applicable Law:** Ind. Code § 4-2-6-11

**Procedural History:** Indiana Department of Transportation ("INDOT" or "Department") employee Susan ("Susie") Kemp, Crawfordsville District Local Program Director, was approached by the Terre Haute Metropolitan Planning Organization ("Terre Haute MPO") concerning potential employment in March of 2022. Employee Kemp subsequently filed an informal opinion request with the Office of the Inspector General, which was delivered on March 29, 2022. The opinion in part directed Susie Kemp to obtain a decision and voting conflict of interest screen and disclosure from the undersigned ethics officer, which was filed stamped by the OIG on April 5, 2022 (see attached [Exhibit A](#)). This formal opinion request is being made in order to obtain direction regarding the application of the particular matter restriction to employee Kemp's role in the attached identified projects (see attached [Exhibit B](#)).

**Questions:** (1) Does the particular matter restriction (Ind. Code § 4-2-6-11(c)) apply to INDOT employee Susan Kemp's participation in local projects on behalf of the Department, including those projects listed in [Exhibit B](#)? (2) Is Susan Kemp's role in the ministerial administration of local projects "personal and substantial" for the purposes of determining the employee's eligibility to assist future employers with those same matters?

## **Background**

### *Functions & Duties of District Local Program Director*

Susan ("Susie") Kemp is the Local Program Director for the Indiana Department of Transportation- Crawfordsville District. In this role, Susie performs certain ministerial functions related to the creation and administration of local projects funded by federal monies allocated to INDOT. Specifically, Susie is responsible for receiving requests for projects from local entities, namely Metropolitan Planning Organizations (MPOs), inputting those requests into INDOT software systems, generating project identification numbers (DES), and forwarding said information to the agency's Contract Administration Division for the purposes of generating an INDOT contract.<sup>1</sup> Susie also creates purchase orders for each contract based on the information provided by the MPOs. As is true with all contract documentation related to local projects, purchase orders created by district Local Program Directors are formulaic in nature and generated by a software system based on basic information input into the system. Once a project and its underlying construction contracts are created, Susie assigns an INDOT project manager and schedules periodic status meetings that are led by the assigned project manager. The district Local Program Director does not have an ongoing project-level or project-specific role in the actual delivery of jobs, which is facilitated by the local project owner and assigned INDOT field personnel. Rather, the Local Program Director fulfills the same formulaic function for each local project, serving as the conduit for the administrative creation and documentary edifice of the underlying contract.

---

<sup>1</sup>The listed duties are performed for all local projects in the Crawfordsville District, including the projects identified in [Exhibit B](#).

## *Local Projects & Metropolitan Planning Organizations*

The Indiana Department of Transportation received federal funds specifically earmarked for local projects. Such dollars are allocated by INDOT using a formula to statutory entities known as Metropolitan Planning Organizations (MPOs), which manage public works in distinct geographical zones referred to as Metropolitan Planning Areas. MPOs are creatures of federal law, created by the Federal Highway Administration through its rulemaking authority to better manage the development and delivery of federally funded public works projects on the local level (*see* 23 CFR 450.300 *et seq.*). This is critical to the construction and maintenance of public assets by less sophisticated and resourced local government entities. MPOs receive federal funding through state DOTs based on a statutorily prescribed formula and in turn identify public works priorities, develop project concepts, make project requests to their state DOT, and administer the procurement and delivery of the underlying design and construction contracts. The duties and responsibilities of MPOs is generally referred to as the *metropolitan transportation planning process*, which is introduced under 23 CFR 450.306.<sup>2</sup> MPOs are obliged to work in conjunction with state DOTs to coordinate local planning with the statewide transportation planning process required by 23 USC § 135 (23 CFR 450.306(f)).

Accordingly, INDOT's role in federally funded local projects administered by MPOs is largely limited to the coordination of priorities at the executive level, supplemented with certain rote ministerial functions at the administrative. As introduced above, INDOT allocates funds, receives project requests, creates contract documents, and assigns project managers for each local job it endows with federal dollars. In the context of the Local Program Director's workflow, professional contact with MPOs is limited to the exchange of information and generation of a basic project framework, documented in INDOT's standardized format. As a Local Program Director, Susie Kemp has no discretion in terms of the selection, procurement, delivery, or management of the projects she frames for MPO implementation. In this role, Susie has very limited participation in a project once it is formatted into INDOT local contracts, beyond scheduling progress meetings that are led by INDOT's assigned project manager.

### *Susan Kemp's Proposed Role with Terre Haute MPO*

Susie Kemp has been offered the position of Transportation Planner with the Terre Haute MPO. In this role she would: evaluate data concerning past, present, and future transportation projects; interpret and apply governing law in project planning context; perform studies related to transportation and asset maintenance; create public facing information sources concerning planning area projects and assets; conduct analysis/development of transportation improvement plans; create requests for proposals for planned projects; collaborates with local entities to develop project concepts, plan for asset maintenance, delivery projects; and work with stakeholders to develop public communications. Subject to the guidance of the SEC, in her role as Transportation Planner for Terre Haute MPO, Susan Kemp would perform some of these duties in conjunction with the delivery of projects listed in Exhibit B, for which Susie previously performed the function of Local Program Director on behalf of INDOT.

**Conclusion:** On behalf of the Indiana Department of Transportation, and in conjunction with INDOT employee Susan Kemp, the below signed ethics officer is hereby requesting the formal opinion of the State Ethics Commission as to whether Ms. Kemp is eligible to participate in the attached described projects (Exhibit B) on behalf of future employers, including the Terre Haute Metropolitan Planning Organization.

Respectfully Submitted:

*/s/ Christopher Bradley Serak*

Christopher B. Serak,  
Director of Prequalification &  
Construction Compliance  
Ethics Officer  
Indiana Department of Transportation

---

<sup>2</sup> *See also* 23 USC 150(b); 49 USC 5301(c); 23 USC 119(e); 49 USC 5326; and all relevant provisions of 23 CFR 450.300 *et seq.*



**ETHICS DISCLOSURE STATEMENT**  
**CONFLICTS OF INTEREST – DECISIONS AND VOTING**  
 State Form 55860 (R / 10-15)  
 OFFICE OF THE INSPECTOR GENERAL  
 IC 4-2-6-9

INDIANA  
 STATE ETHICS COMMISSION

APR 5 2022

**FILED**

In accordance with IC 4-2-6-9, you must file your disclosure with the State Ethics Commission no later than seven (7) days after the conduct that gives rise to the conflict. You must also include a copy of the notification provided to your agency appointing authority and ethics officer when filing this disclosure. This disclosure will be posted on the Inspector General's website.

Name (last) Kemp	Name (first) Susan	Name (middle)
Name of office or agency Indiana Department of Transportation- Crawfordsville District		Job title Local Program Director
Address of office (number and street) 41 West 300 North		City Crawfordsville
Office telephone number ( 765 ) 361-5228		ZIP code 47933
Office e-mail address (required) skemp@indot.in.gov		

Describe the conflict of interest:  
 Susan Kemp is Local Program Director for the Indiana Department of Transportation (INDOT)- Crawfordsville District. Susan Kemp recently entered employment negotiations with Terre Haute Metropolitan Planning Organization ("Terre Haute MPO"). Metropolitan Planning Organizations are Congressionally established entities created to help manage federally funded public works projects on the local level. 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. The Department provides certain administrative support for federally funded MPO projects. As such, Susan Kemp's employment negotiations with Terre Haute MPO created a potential decisions and voting conflict under IC 4-2-6-9; this disclosure is being filed in anticipation of that apparent conflict. Susan Kemp is not subject to the mandatory cooling off period (IC 4-2-6-11(b)) as Local Program Director. Pending formal opinion of the State Ethics Commission, Susan Kemp may be subject to the particular matter restriction with regard to certain matters that might arise in her work flow as an employee of Terre Haute MPO. This disclosure was provided to Susan Kemp's appointing authority, Commissioner Michael J. Smith, on April 5, 2022. Evidence of said disclosure to Commissioner Smith is filed herewith pursuant to IC 4-2-6-9(b)(2)(D). Pursuant to IC 4-2-6-9(b)(2), this disclosure was executed and filed with the SEC within seven days (7) of the potential conflict being identified by the below signed ethics officer.

Describe the screen established by your ethics officer: *(Attach additional pages as needed.)*

A formal screen was executed with INDOT's ethics officer preventing Susan Kemp from working with Terre Haute MPO, or otherwise participating in any decision or vote, or matter related to such decision or vote, involving Terre Haute MPO, or in which Terre Haute MPO has an interest. Subject to the contrary opinion of the State Ethics Commission, Ms. Kemp is also screened from assisting Terre Haute MPO, and any other future employer, with any matter in which she personally and substantially participated while employed by INDOT. This provision will expire upon determination by the SEC that the particular matter restriction does not apply to Susan Kemp, or will otherwise persist in perpetuity. Decisions and voting provisions of the screen will apply until Susan Kemp leaves INDOT or ceases negotiations with Terre Haute MPO, whichever occurs first. The screen was executed on April 5, 2022, a copy of which was sent to Commissioner Michael J. Smith.

**AFFIRMATION**

Your signature below affirms that your disclosures on this form are true, complete, and correct to the best of your knowledge and belief. In addition to this form, you have attached a copy of your written disclosure to your agency appointing authority and ethics officer.

Signature of state officer, employee or special state appointee

*Susan Kemp*

Date signed (month, day, year)

April 5, 2022

Printed full name of state officer, employee or special state appointee

Susan Kemp

**FOR ETHICS OFFICER USE ONLY**

Your signature below affirms that you have reviewed this disclosure form and that it is true, complete, and correct to the best of your knowledge and belief. You also attest that your agency has implemented the screen described above.

Signature of ethics officer

*/s/ Christopher Serak*

Date signed (month, day, year)

April 5, 2022

Printed full name of ethics officer

Christopher B. Serak

**CONFLICT OF INTEREST SCREEN FOR SUSAN KEMP**

April 4, 2022

**I. RECITALS**

WHEREAS, Susan Kemp is a Local Program Director for the Indiana Department of Transportation (“INDOT” or “Department”); and

WHEREAS, Susan Kemp has entered employment negotiations with the Terre Haute Metropolitan Planning Organization (“Terre Haute MPO”); and

WHEREAS, Terre Haute MPO receives annual funding from INDOT for local projects; and

WHEREAS, as a Local Program Director for INDOT, Susan Kemp could be assigned to work with Terre Haute MPO or to participate in matters in which the company has an interest as part of her regular duties; and

WHEREAS, Susan Kemp’ employment negotiations with Terre Haute MPO created a potential decision and voting conflict of interest under IC 4-2-6-9 requiring disclosure and a formal screen; and

WHEREAS, a formal opinion request regarding the application of the particular matter restriction to Susan Kemp’s work flow is currently pending before the Indiana State Ethics Commission, and Ms. Kemp may be determined to be subject to the particular matter restriction under IC 4-2-6-11(a) with regard to certain matters, including matters in which Terre Haute MPO may have direct participation; and

WHEREAS, Susan Kemp may have obtained confidential information in the course of her employment with INDOT and has an affirmative duty to protect such information from disclosure and to refrain from relying on such information for the benefit of herself or future employers.<sup>1</sup>

NOW THEREFORE, Susan Kemp, Local Program Director for INDOT, for her remaining tenure with the Department, or until she discontinues employment negotiations with Terre Haute Metropolitan Planning Organization, agrees to in all ways follow, adhere to, and satisfy the terms of the following Conflict of Interest Screen. Susan Kemp must adhere to terms three (3) and four (4) in perpetuity, or until otherwise directed by the State Ethics Commission.

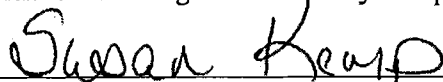
**II. CONFLICT OF INTEREST SCREEN**

1. Susan Kemp shall not participate in any decision or vote, or any matter related to such decision or vote, in which Terre Haute Metropolitan Planning Organization has a financial interest.
2. Susan Kemp is screened from participating in any present/future contract or other matter involving Terre Haute MPO during her tenure with INDOT or until she discontinues negotiations with the local entity.
3. Pending the formal opinion of the State Ethics Commission, Susan Kemp shall not assist any future employers, including Terre Haute MPO, with any matter she personally and substantially participated in while employed by INDOT. This restriction applies in perpetuity, or until otherwise directed by the State Ethics Commission.
4. Pursuant to her duty under Ind. Code §5-14-3-10, Susan Kemp shall not disclose or otherwise rely upon information classified as confidential under Ind. Code §5-14-3-4. This restriction applies in perpetuity, so long as the subject information is deemed confidential.

**III. EMPLOYEE AFFIRMATION**

I have read and understand the terms of the foregoing Conflict of Interest Screen, and will in all ways follow, adhere to, and satisfy the above stated restrictions on my participation in any decision or vote in which Terre Haute Metropolitan Planning Organization has a financial interest. I understand that the first two (2) terms of this screen terminate upon my leaving the Department or the discontinuation of negotiations with Terre Haute Metropolitan Planning Organization, whichever occurs first. I further understand that terms three (3) and four (4) regarding particular matters and confidential information respectively, apply in perpetuity, for the life of each subject matter and so long as the subject information is deemed confidential. I have shared and discussed this Conflict of Interest Screen and its requirements with my supervisor.

Executed and agreed this 4<sup>th</sup> day of April 2022, by:



Susan Kemp, Local Program Director  
Indiana Department of Transportation

<sup>1</sup> State employees have an affirmative duty under Ind. Code §5-14-3-10 to protect from disclosure and to refrain from relying upon information defined as confidential under Ind. Code §5-14-3-4.

## Susan Kemp- Particular Matter Project List

Des. No.	Project Location	County
1700437	Bridge 37	Vigo County
1700438	Bridge 322	Vigo County
1700439	Bridge 77	Vigo County
1700440	Bridge 330 b	Vigo County

### Exhibit B