

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

I. Call to Order

A regular meeting of the State Ethics Commission (“Commission”) was called to order at 10:00 a.m. Commission members present were Katherine Noel, Chair; Corinne Finnerty; Rafael Sanchez; and Sue Anne Gilroy (by telephone). Office of Inspector General staff present included David Cook, Inspector General; Tiffany Mulligan, Chief of Staff and Chief Legal Counsel; Sean Gorman, State Ethics Director; Mark Mitchell, Director of Investigations; Mark Mader, Staff Attorney; Doreen Clark, Staff Attorney; Jan Kruse, Special Agent; and Nathan Baker, Legal Assistant.

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

II. Adoption of Agenda and Approval of Minutes

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

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

III. Request for Formal Advisory Opinion

2022-FAO-008

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

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

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

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

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

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

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

The analysis stated the following:

A. Confidential Information

IC 4-2-6-6 prohibits Manion from accepting any compensation from any employment, transaction or investment that was entered into or made as a result of material information of a confidential nature.

The Commission finds that, so long as Manion receives no compensation resulting from confidential information she acquired during her state employment, her potential post-employment opportunity with the Firm would not violate IC 4-2-6-6.

B. Post-Employment

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

First, Manion is prohibited from accepting employment as a lobbyist for the entirety of the cooling off period. A lobbyist is defined as an individual who seeks to influence decision making of an agency and who is registered as an executive branch lobbyist under the rules adopted by the Indiana Department of Administration.

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

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

Second, Manion is prohibited from accepting employment for 365 days from the last day of her state employment from an employer with whom 1) she engaged in the negotiation or administration of a contract on behalf of a state agency and 2) was in a position to make a discretionary decision affecting the outcome of the negotiation or the nature of the administration of the contract.

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

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

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

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

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

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

Finally, Manion is subject to the post-employment rule's "particular matter" prohibition in her prospective post-employment. This restriction prevents her from representing or assisting a person on any of the following twelve matters if she personally and substantially participated in the matter as a state employee: 1) an application, 2) a business transaction, 3) a claim, 4) a contract, 5) a determination, 6) an enforcement proceeding, 7) an investigation, 8) a judicial proceeding, 9) a lawsuit, 10) a license, 11) an economic development project or 12) a public works project. The particular matter restriction is not limited to 365 days but instead extends for the entire life of the matter at issue, which may be indefinite.

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

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

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

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

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

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

IV. Request for Formal Advisory Opinion

2022-FAO-009

Susan Kemp, Local Program Director

Chris Serak, Ethics Officer

Indiana Department of Transportation

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

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

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

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

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

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

The analysis stated the following:

A. Confidential Information

IC 4-2-6-6 prohibits Kemp from accepting any compensation from any employment, transaction or investment that was entered into or made as a result of material information of a confidential nature.

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

B. Conflict of Interests

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

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

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

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

C. Post-Employment

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

First, Kemp is prohibited from accepting employment as a lobbyist for the entirety of the cooling off period. A lobbyist is defined as an individual who seeks to influence decision making of an agency and who is registered as an executive branch lobbyist under the rules adopted by the Indiana Department of Administration.

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

Second, Kemp is prohibited from accepting employment for 365 days from the last day of her state employment from an employer with whom 1) she engaged in the negotiation or administration of a contract on behalf of a state agency and 2) was in a position to make a discretionary decision affecting the outcome of the negotiation or the nature of the administration of the contract.

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

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

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

Finally, Kemp is subject to the post-employment rule's "particular matter" prohibition in her prospective post-employment. This restriction prevents her from representing or assisting a person on any of the following twelve matters if she personally and substantially participated in the matter as a state employee: 1) an application, 2) a business transaction, 3) a claim, 4) a contract, 5) a determination, 6) an enforcement proceeding, 7) an investigation, 8) a judicial proceeding, 9) a lawsuit, 10) a license, 11) an economic development project or 12) a public works project. The particular matter restriction is not limited to 365 days but instead extends for the entire life of the matter at issue, which may be indefinite.

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

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

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

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

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

V. Ethics Director's Report

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

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

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

VI. Adjournment

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

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



IC 4-2-6-11 Post-employment waiver

As the Appointing Authority of the Indiana Housing and Community Development Authority (IHCD), I am filing this waiver of the application of the Code of Ethics' post-employment restriction as it applies to Annette Richard in her possible future employment with RevTech 360.

I understand that I must file and present this waiver to the State Ethics Commission at their next available meeting. I further understand that this waiver is not final until approved by the State Ethics Commission.

A. This waiver is provided pursuant to IC 4-2-6-11(g) and specifically waives the application of *(Please indicate the specific restriction in 42 IAC 1-5-14 (IC 4-2-6-11) you are waiving):*

- IC 4-2-6-11(b)(1): 365 day required "cooling off" period before serving as a lobbyist.
- IC 4-2-6-11(b)(2): 365 day required "cooling off" period before receiving compensation from an employer for whom the state employee or special state appointee was engaged in the negotiation or administration of a contract and was in a position to make a discretionary decision affecting the outcome of such negotiation or administration.
- IC 4-2-6-11(b)(3): 365 day required "cooling off" period before receiving compensation from an employer for which the former state employee or special state appointee made a directly applicable regulatory or licensing decision.



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IC 4-2-6-11(c): Particular matter restriction prohibiting the former state employee or special state appointee from representing or assisting 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 worker. *(Please provide a brief description of the specific particular matter(s) to which this waiver applies below):*

B. IC 4-2-6-11(g)(2) requires that an agency's appointing authority, when authorizing a waiver of the application of the post-employment restrictions in IC 4-2-6-11(b)-(c), also include specific information supporting such authorization. Please provide the requested information in the following five (5) sections to fulfill this requirement.

1. Please explain whether the employee's prior job duties involved substantial decision-making authority over policies, rules, or contracts:

Annette serves as IHCDA's Director of Information Technology. She started in that role in March 2020. In her role Annette provides guidance and assists staff in making IT procurement related decisions. IHCDA follow the policies of the Indiana Office of Technology as they relate to IT infrastructure and security policies, and also generally as it related to IT procurement. IHCDA also has its own procurement policies which are approved by the IHCDA board. Annette helps keep IT contracts on time and on budget, but decisions on those contracts are typically the responsibility of the staff who requested the service.

As it relates to IHCDA's relationship with RevTech 360 (formerly known as Revelant), IHCDA first engaged with RevTech360 in 2019 to begin an analysis of IHCDA's existing systems and make recommendations on potential paths forward to migrate from existing IHCDA systems, including an aging custom developed system which needed to be retired. This work was overseen by our prior IT Director and many of these recommendations made the argument for a move to a SalesForce platform based on the work and functions of IHCDA.

Annette joined IHCDA in the very early days of the COVID pandemic. Within a few months IHCDA was tapped to administer 2 rental assistance programs state-wide, necessitating the quick implementation of a software package. We chose speed over everything else and engaged with a product called Submittable. While sufficient and certainly quick to start up, this product was at most serviceable.

Early in 2021 it became apparent that a more robust system was needed for ease of administration and reporting, as IHCDA was awarded \$371M of additional rental assistance funds from the State Budget Agency. These funds originate from the U.S. Department of Treasury and are commonly referred to as ERAP or Emergency Rental Assistance Program funds or the Indiana Emergency Rental Assistance (IERA) program.

This program is jointly administered by IHCDA's Deputy Executive Director and Chief Real Estate Development Officer (Matt Rayburn) who oversees the policy and reporting for the program and Chief of Staff and Chief Operating Officer (Kyleen Welling) who oversees the day-to-day program operations and payments. The program also has two directors, one for the Policy side and one on the Operations side. All four work together on the Salesforce application as it supports both the reporting and analytics submitted to the U.S. Treasury department as well as the operations of the program. All four of these staff work with Annette to make sure that the system is providing what is needed programmatically and to propose changes, modifications, etc. that can make the program more efficient.

In consultation with the Indiana Office of Technology (IOT), it was recommended we explore a Salesforce platform to support online applications, staff administrative work, vendor payments and back-end reporting. As both IHCDA and IOT had prior experience with RevTech360, this seemed a natural partnership. RevTech360 is a Salesforce partner, providing development and support for Salesforce applications.

The scope of work for this engagement were vetted by both IHCDA program staff and IOT and this contract was entered into under IOT's MSP program, using an intermediary firm called Knowledge Services. RevTech360 contracts with Knowledge Services to perform the work, Knowledge Services bills IOT for the work, IOT pays Knowledge Services and then IHCDA reimburses IOT. IHCDA oversees the day to day work of the contract and helps refine the work, timelines and deliverables and prioritize the order the work is completed in. IHCDA has an IOT contact person we can escalate issues to if they arise with the contract.

IHCDA's original scope of work has been completed with RevTech360, though we are in the process of developing one for the next set of work needed to continue to upgrade the IERA system. IHCDA

earlier this year was awarded an additional \$234M for a second round of the IERA program which necessitates some changes to the platform and the reporting structure.

2. Please describe the nature of the duties to be performed by the employee for the prospective employer:

RevTech360 has offered Annette a position as a Service Delivery manager, responsible for delivering client applications on time and to the agreed upon specifications for Salesforce applications. This position works with private and public sector clients. It is hoped Annette will be allowed to work on future scopes of work for IHCDCA.

3. Please explain whether the prospective employment is likely to involve substantial contact with the employee's former agency and the extent to which any such contact is likely to involve matters where the agency has the discretion to make decisions based on the work product of the employee:

It is likely this employment would include substantial contact with IHCDCA as we do need to make some modifications to the current application and also need to build out a new, statutorily mandated Landlord application portal by August 30, 2022. Annette has irreplaceable knowledge of our rental assistance program and the standard operating procedures we use to approve files in the system. The loss of this knowledge would set this project back substantially and jeopardize our ability to launch the landlord application portal on time.

4. Please explain whether the prospective employment may be beneficial to the state or the public, specifically stating how the intended employment is consistent with the public interest:

This employment would be consistent with the public interest as it would provide much needed continuity for the Indiana Emergency Rental Assistance program, which provides much needed housing stability to low income Hoosier families. This program is currently set to continue through the 2024-2025 time frame and new policy changes implemented by the federal funding agency need to be incorporated quickly into our processes. We often need to make updates to questions in the application, add new fields and new workflows to implement these changes.

Additionally, the Landlord portal that was passed into law as a requirement during the 2021-22 legislative session is a heavy lift for both RevTech360 and IHCDa requiring substantial back end mapping to link the landlord and tenant files and which will require substantial testing before it's August 30, 2022 launch date to ensure it is functioning properly.

5. Please explain the extent of economic hardship to the employee if the request for a waiver is denied:


Annette is seeking this waiver so she can move to Kentucky where her husband's work has relocated him. He oversees construction of new steel plants and is required to be on-site 6 days per week, and he and most of the staff are actually living on site as this location.

As RevTech is a totally remote workplace, Annette can work for them from anywhere the internet exists. This move is important to Annette and her husband as she has just finished 4 months of 5 times weekly radiation treatments for cancer. As these treatments were Monday-Friday each week and the treatments left her worn down physically she was not able to see her husband during this time period. IHCDa is very supportive of this move and wishes to be supportive of our employee by granting this waiver.

C. Signatures

1. Appointing authority/state officer of agency

By signing below I authorize the waiver of the above-specified post-employment restrictions pursuant to IC 4-2-6-11(g)(1)(A). In addition, I acknowledge that this waiver is limited to an employee or special state appointee who obtains the waiver before engaging in the conduct that would give rise to a violation.



J. Jacob Sipe

5-11-2022

DATE

2. Ethics Officer of agency

By signing below I attest to the form of this waiver of the above-specified post-employment restrictions pursuant to IC 4-2-6-11(g)(1)(B).



S. Kyleen Welling

5/12/2022

DATE

D. Approval by State Ethics Commission

FOR OFFICE USE ONLY

Approved by State Ethics Commission

Katherine Noel, Chair, State Ethics Commission

Date

Mail to:

Office of Inspector General
315 West Ohio Street, Room 104
Indianapolis, IN 46202
OR

Email scanned copy to:
info@ig.in.gov

*Upon receipt you will be contacted
with details regarding the
presentation of this waiver to the
State Ethics Commission.*



May 11, 2022

Katherine Noel, Chairman
Indiana State Ethics Commission
315 W. Ohio Street, Room 104
Indianapolis, IN 46202

Dear Ms. Noel,

As the Executive Director of the Indiana Housing and Community Development Authority (IHCDA), I am writing to you to express my support and approval of the IHCDA waiver of post-employment restrictions for Annette Richard as she seeks employment opportunities with RevTech 360.

I regret that I am unable to attend in person to present the waiver and my support for Annette in her future endeavors. Unfortunately, I will be unable to attend due to a meeting happening with our partners in Lake County to discuss possible funding opportunities at the same time as the Ethics Commission meeting. However, I have asked IHCDA's Chief of Staff and Chief Operating Officer, Kyleen Welling, who also acts as our Ethics Officer, to attend the Commission meeting on my behalf. I understand that I.C. 4-2-6-11(g) requires the state appointing authority authorizing the waiver to present it to the Commission, and I greatly appreciate your granting my request for this alternative arrangement in advance of the June meeting.

I fully support and approve this waiver for Annette, as her employment with RevTech is a great opportunity for Annette's family as it will offer her the ability to move to Kentucky where her husband has been relocated for work. Annette has been a tremendous asset to our agency particularly as we have been given the privilege of administering a state-wide



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rental assistance program to help Hoosier impacted by COVID-19. She has been instrumental in getting an online portal off the ground to accept applications and also works tirelessly to help us refine and update that system. I wish her well in this new endeavor helping other public sector clients like IHCD use technology to provide services to our constituents. Annette's dedication and support to serving low income Hoosier families is admirable. The entire IHCD family will miss Annette and wishes her continued good health and quality time with her family.

Thank you for consideration of this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'J. Sipe', written in a cursive style.

J. Jacob Sipe

Executive Director

Cc: Indiana Office of Inspector General

Baker, Nathaniel P

From: Gorman, Sean M
Sent: Friday, April 29, 2022 11:32 AM
To: Valentine, Anne
Cc: Holt, David (LG); Baker, Nathaniel P
Subject: RE: Request for a formal advisory opinion of the Indiana Ethics Commission

Anne,

Thank you for the additional information. We will add this to the June 9 ethics commission agenda.

I'll reach out early next week if any other questions arise.

Thanks again, Sean

Sean Gorman

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From: Valentine, Anne <AValentine@ig.IN.gov>
Sent: Friday, April 29, 2022 11:21 AM
To: Gorman, Sean M <SGorman@ig.IN.gov>
Cc: Holt, David (LG) <DHolt@iddc.IN.gov>
Subject: RE: Request for a formal advisory opinion of the Indiana Ethics Commission

Sean,

Thank you for the email. I've added David Holt, IDDC's chief of staff, to the email. In addition to answering your questions and providing additional information, can we move this item to the June Ethics Commission meeting? David isn't available for the May meeting and we should both be in attendance to answer questions. Let us know.

Answers to the two questions below in red. We're also sending the attached document referenced – the Voluntary Services Policy.

I would also like to add to the request an advisory opinion on the following: In what ways (and on what terms) can the employees of the Lieutenant Governor's business office support the Foundation during working hours?

Thank you,
Anne

From: Gorman, Sean M <SGorman@ig.IN.gov>
Sent: Wednesday, April 27, 2022 2:33 PM
To: Valentine, Anne <AValentine@lg.IN.gov>
Subject: RE: Request for a formal advisory opinion of the Indiana Ethics Commission

Hi Anne,

Thank you for submitting your request for a formal advisory opinion from the State Ethics Commission. I wanted to follow up with a couple of questions and offer some thoughts about how this will proceed at the May 12 Commission meeting.

First, although these scenarios may not be precisely on point, the Commission has weighed in re: state staff/resources for foundation activities in previous FAOs. See the following if you haven't already.

1. 21 FAO 005 - [2021-FAO-005-DNR-REDACTED.pdf \(in.gov\)](#)
2. 13-I-31 - [s13-I-31_ISDH-G_COIdv_SP_GE.pdf \(in.gov\)](#)

A couple of questions for you that might assist with the Commission's analysis:

- Is the IDDF created by statute that you are aware of? I'll search Indiana Code if you aren't sure, but if you know off hand that would be helpful.
 - **IDDF is not created by statute.**
- Do you have specific tasks that IDDC employees would perform for IDDF? The Commission will likely pursue this line of questioning at the public meeting if further details aren't provided in advance. It may be helpful to address this in more detail beforehand so the Commission can be provided with additional information, such as a policy or a list of specific tasks that would be considered part of IDDC employees job duties. For example, they may want to know whether IDDC employees would be conducting fundraising activities, and whether such activities would potentially involve soliciting from a person with a business relationship with IDDC.
 - **The primary services that IDDC provides for IDDF are administrative in nature (i.e., scheduling and staffing IDDF board meetings, etc.). IDDC employees also engage in fundraising and sponsorship development activities, with some of those fundraising and sponsorship dollars being received by the IDDF. The IDDC has only engaged in a couple RFP vendor selections (i.e., WeCreate), and none of those vendors have been solicited for fundraising contributions to the IDDF. As part of its operating procedure, IDDC and IDDC would not solicit fundraising contributions from entities that have business before IDDC. IDDC has also entered into a Voluntary Services Policy to outline the terms on which IDDC employees provide services to IDDF.**

The more detail you can provide, the better able the Commission will be to prepare for the meeting and the discussion with you regarding your formal advisory opinion request. I will certainly bring your request to them as is if you prefer, but it is possible that they may request such detail be provided in writing prior to issuance of a formal advisory opinion.

Finally, I will note that the Commission can only speak to their interpretation of the Ethics Code under IC 4-2-6, IC 4-2-7, 40 IAC 2, and 42 IAC 1, and cannot provide clarification of the criminal code provisions at IC 35-44.1 (although it can provide a formal approval that would shield against criminal liability for the criminal conflict of interest offense – see IC 35-44.1-1-4(c)(5)). Historically, the Commission will defer to the agency as to what the agency has defined as an employee's state duties.

Let me know if you'd like to discuss further. We have until May 2 to receive any additional information in preparing the Commission's background materials and finalizing the agenda, should you wish to provide anything additional.

Thank you,

Sean

Sean Gorman

Indiana State Ethics Director
Office of the Inspector General
315 W. Ohio Street, Room 104
Indianapolis, IN 46202
317-234-4108

www.in.gov/ig

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From: Valentine, Anne <AValentine@lg.IN.gov>
Sent: Friday, April 22, 2022 10:46 AM
To: Gorman, Sean M <SGorman@ig.IN.gov>
Cc: Holt, David (LG) <DHolt@iddc.IN.gov>
Subject: Request for a formal advisory opinion of the Indiana Ethics Commission

As the Ethics Officer for the Office of Lieutenant Governor and the Indiana Destination Development Corporation, I am writing to request an advisory opinion for the Indiana Destination Development Corporation.

Indiana Destination Development Foundation, Inc. (the "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 "Code"). The Foundation is further classified as a Code Section 509(a)(3) supporting organization that is "organized and operated exclusively for the benefit of" the Indiana Destination Development Corporation ("IDDC"). The Lt. Governor, on behalf of the IDDC, appoints the entire Foundation Board of Directors. The Foundation's core mission is to support the IDDC, primarily through fundraising from the corporate and philanthropic community and making grants to the IDDC.

Because the Foundation does not have its own staff, the IDDC would like to leverage its employees to help support the Foundation in a manner that complies with Ind. Code Section 35-44.1. In what ways (and on what terms) can the IDDC employees support the Foundation during working hours?

Sincerely,

Anne Valentine



Anne Valentine
Chief of Staff

Office of the Lieutenant Governor
200 W Washington Street, Room 333
Indianapolis, IN 46204
Phone: 463-245-7728
avalentine@lg.in.gov

**INDIANA DESTINATION DEVELOPMENT
CORPORATION VOLUNTARY SERVICES
POLICY**

*Posted on the public Board webpage and copies are available from the
Indiana Destination Development Corporation ("IDDC") office*

Pursuant to Ind. Code § 35-44.1-1-3 and 42 IAC 1-5-13, the Indiana Destination Development Corporation Board ("Board") adopts the following Policy regarding the provision of voluntary services on behalf of the Indiana Destination Development Foundation ("IDDF") by IDDC employees. This Policy was issued by the executive officer of IDDC, adopted by the Board and made effective on _____.

I. Recitals: Policy Considerations

This Policy is promulgated, and shall be interpreted to:

- A. Permit IDDC employees to provide voluntary services on behalf of IDDF;
- B. Follow Ind. Code § 35-44.1-1-3, and any amendments thereto, in a manner consistent with the State of Indiana's "ghost employment" policy; and,
- C. Follow 42 IAC 1-5-13, and any amendments thereto, in a manner consistent with the State of Indiana's "ghost employment" policy.

II. Policy Provisions

A. Pursuant to Ind. Code § 35-44.1-1-3(f), an IDDC employee who voluntarily performs services for the benefit of IDDF, an organization that is exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code, is considered to be performing duties related to the operation of IDDC under the following circumstances:

- 1. The services performed must not (a) promote religion, (b) attempt to influence legislation or governmental policy or (c) attempt to influence elections to public office;
- 2. The services performed must be provided for the benefit of IDDF;
- 3. The services performed must be performed with the approval of the executive officer of IDDC;
- 4. The services performed are in compliance with this written policy issued by the executive officer of IDDC; and,
- 5. The services performed during normal hours of employment must be limited in time per calendar year as follows:

a) During normal hours of employment, an individual IDDC employee shall not perform more than one thousand nine hundred fifty (1,950) total hours of voluntary services on behalf of IDDF in any calendar year.

B. IDDC employees shall not accept payment from IDDF for providing the voluntary services described herein.

C. IDDC employees shall maintain a log of services performed for IDDF that shall:

- 1. Include the number of hours utilized to perform said services (a) during normal hours of employment, and (b) outside of normal hours of employment; and,
- 2. Be submitted to the executive officer of IDDC and to the State Personnel Department ("SPD") representative for the Office of the Lieutenant Governor.

May 26, 2022

Dear Ethics Commission,

I am requesting formal guidance from the commission pertaining to Lochmueller Group's potential pursuit of the construction inspection RFP for B-40589, currently advertised on the June listing.

I am a former INDOT employee who worked approximately 7 years for the state. I began in 2015 as a Highway Technician 3 and was promoted to a Highway Technician 1 in the Maintenance Department. In 2018 I transferred into the Construction Department where I was a Highway Technician 1 for three years. Midyear of 2021 I was promoted to Construction Project Supervisor. I ended my employment with INDOT on March 4, 2022. On March 7, 2022 I began working for my current employer, Lochmueller Group as a Construction Inspector 1.

While employed by INDOT, I was assigned to complete a Stage 2 constructability review for contract B-40589. I was provided a set of plans and engineers estimate of pay items and quantities for the contract. I looked over the plans and quantities to ensure that everything had be computed correctly. I then provided a list of questions and suggestions for the designers to look at and make changes if need be. The list was small, there were a few minor things that were found such as the estimate, and plans had differing sign quantities and needed to be corrected. Prior to my departure at INDOT, I was slated to serve at Project Supervisor overseeing construction of this contract.

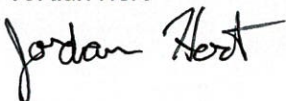
Moving forward to today, and more particular to my current employer's interest, the Vincennes District recently released the attached RFP for B-40589. Lochmueller Group is interested in submitting a proposal for this RFP. They would like to list me as the proposed HT or Inspector as I live only a few miles from the proposed jobsite. If selected, my duties as Inspector would be measuring, keeping track of quantities and paying for such quantities. I would also be doing a large portion of the material and testing requirements for this contract. I would also have to ensure that the contractor would be following all of the INDOT standards and specifications to ensure that the work is done correctly for the best product at the end of the job.

My understanding is this that this construction contract will be let in November of 2022 and the selected consultant construction inspection staff will begin work in January of 2023, approximately 10 months after I left INDOT in March of 2022. However, the proposal for the advertised construction inspection must be submitted in June of 2022.

As a former INDOT employee, that did perform a constructability review on B-40589 during the design stage, could I ethically inspect the construction of this contract for Lochmueller Group? Any guidance or official ruling to this question would be much appreciated.

Sincerely,

Jordan Hert

A handwritten signature in black ink that reads "Jordan Hert". The signature is written in a cursive style with a large initial "J" and "H".



Item Details

RFP #: 2206 Item #: 13 ItemID: 14416

Vincennes District / Construction

Allowable Profit Rate: 9.0% Plus overhead factor
RFP Date: 06/14/2022
of Firms to Select: 1
Term of Contract:
Will this Item involve 2 step scoring: No

Compensation Method: Negotiated Labor Rate
Is Federal Funding Involved: Yes
Prequalification Required: Yes
BE Goals: DBE:3%
Scoresheet: 1763

Item Description

Construction Inspection Services - Contract B-40589 Des No. 1700155 located on SR450, Bridge Replacement, Over Opossum Creek, 6.30 miles East of US-50, in Martin County

Item Work Description

The anticipated Letting Date is June 15, 2022. This contract will have a delayed start on it for February 1, 2023. The projected time period of need for construction inspection through substantial completion is estimated from January 2023 through November 2023.

The CONSULTANT's personnel shall work under the INDOT Area Engineers or their designated representative. INDOT anticipates needing a total of 1 Project Engineer(s)/Supervisor(s) and 1 Project Inspector(s). The work type and the contractor's schedule will ultimately determine the length of time each Project Engineer(s)/Supervisor(s) and Project Inspector(s) will work on this contract. INDOT may require personnel to work in any season, work for up to twelve (12) hours per day, or work at night.

The CONSULTANT shall furnish all construction field testing equipment necessary to sample and test materials in accordance with INDOT procedures. The CONSULTANT shall furnish all necessary safety equipment needed for inspection and sampling and testing of materials. The consultant shall provide personnel local to the project such that neither lodging nor subsistence expenses will be incurred.

The Letter of Interest (LOI) must specify the names of the Project Engineer(s)/Supervisor(s) and Project Inspector(s) who will be supplying the services on the construction contracts. Also, a map showing the residential locations of these personnel must be provided in the LOI. Personnel identified in the LOI who are not full-time employees at the time of LOI submittal shall be identified with explanation of employment status.

The LOI must identify the specific subject area certifications that personnel have obtained through the INDOT Certified Technician Program (CTP) unless the personnel are exempt. Information on this program can be found at: <http://www.in.gov/indot/2403.htm> INDOT will not reimburse for any time or expense incurred in obtaining certifications at any time.

INDOT does not allow consultants that performed design for the contract to be the prime consultant for inspection and does not allow these consultants to provide the Project Engineer/Supervisor services. See the INDOT Conflict of Interest Policy for more information.

The selected consultant's fee proposal shall be due 15 calendar days after the selection date for this RFP item. A field overhead rate will be used for this contract. Consultants without audited field overhead rates may propose a field rate at the time of contract negotiation.

This contract will utilize the INDOT eInvoice application.

Please refer to the Supporting Documents for additional information.

Des 1700155 Work Description

SR 450, Bridge Replacement, Over Opossum Creek, 06.30 miles East US-50, in Martin Co. RP 006+243 to RP 006+243, Est. Construction Amt. \$1,843,637.00.

Required Prequalification Categories (Combination of Prime and Sub Consultants)

Prequalification Required:Yes, with the following worktypes.

13.1 Construction Inspection

Additional Qualification: No additional qualification.

Item Details

RFP #: 2206 Item #: 13 ItemID: 14416

Past Performance Evaluation scores for this item will be calculated by these Performance types.

Performance Type	Weight
Construction Inspection	100.00

Supporting Documents

User Document Description	Created Date
12 Month List approval email	03/10/2022
Appendix A	03/25/2022

Deliverables not identified.



May 27, 2022

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

Re: Request for Formal Opinion Regarding Tipped Employees of the Indiana State Park Inns Authority

Dear Chair Noel and members of the Indiana State Ethics Commission,

The Indiana Department of Natural Resources (DNR), on behalf of the Indiana State Parks Inns Authority (Inns), requests a formal advisory opinion from the Indiana State Ethics Commission (Commission) regarding whether it would be a violation of the ethics rules to allow Inns employees classified as tipped employees to receive a tip from patrons.

Background of Indiana State Park Inns and Senate Enrolled Act (SEA) 186

Indiana State Parks were a centennial gift to the citizens of the State of Indiana in 1916. From its inception and throughout the system's 106-year history, Indiana State Park Inns have been a necessary and integral part of Indiana State Parks. Indiana State Park Inns were present in the first seven state parks developed. Today seven state park inns and lodges operate nearly 700 hotel and cabin rooms, a Pete Dye Championship Golf Course, and a central reservation system. In addition, plans are being developed for two more lodges at Potato Creek and Prophetstown State Parks.

The operation and management of the Indiana State Park Inns were originally a part of the political spoils system where an individual appointed by the county chair would run the inn. After the elimination of the political spoils system, the inns were brought under DNR but never codified. Over the last several decades, the Indiana State Park Inns operated upon an enterprise system of accounting, rather than a traditional corporate structure. Under this system, employees were not considered state employees. While this provided the flexibility required to respond to market conditions and event planning, it became a challenge to offer affordable benefits and retirement packages to recruit and retain staff necessary to remain competitive within the hospitality industry.

The inns system has evolved over time, and like most businesses, it is routinely evaluated and restructured to remain relevant and in alignment with industry standards and best practices. Currently, the system faces substantive challenges that merit attention. As a result, it became time to modernize the operation once again to take Indiana State Park Inns to the next level. During the 2022 legislative session, the General Assembly passed SEA 186, which created the Indiana State Park Inns Authority as a public body corporate and politic. Under this new statutory framework, the executive director and the employees of the Inns are still not state employees, but they would be allowed to participate in state benefits and retirement options offered to state employees. In addition, the legislation allowed the Inns to adopt a separate personnel system from the state's personnel

system; however, Inns employees would remain subject to the ethic rules adopted by the Commission, and the ethics rules and requirements that apply to the executive branch of state government.

Proposed Inns' Personnel System and Policies

Under State Personnel Department's pay plan rules, a state employee's salary is the total remuneration for the employee, and an employee is prohibited from supplementing their state salary for the work performed on state property.¹ As a result, state employees are prohibited from accepting tips; however, the Inns intend to adopt a separate personnel system that allows tips to be included in the remuneration of certain positions that customarily receive tips as part of their income, such as service/wait staff and housekeeping. To DNR's knowledge, the Inns personnel system would be the only personnel system under the authority of the Commission with employees in professions that traditionally have tips considered part of their remuneration, especially since no other state agency has staff operating inns and restaurants.

Several safeguards will be implemented to restrict tips only for staff in positions classified as tipped employees. First, a personnel policy will be adopted that prohibits all other inns employees from accepting tips. Second, Inns will require all tipped employees to sign a form that acknowledges they have been informed of the tax laws and require all cash tips will be entered into the time clock system (credit card tips similarly handled via the time clock system as well). Attached is a copy of this form as well as a draft of the proposed personnel policy for tips.

Allowing service, wait and housekeeping staff to accept tips is important for the fiscal viability of the operation. Since tips are considered income, the Inns are able to use a "tip credit" and offer hourly positions below the minimum wage. Therefore, instead of having to pay \$7.25 per hour (federal minimum wage), the employer only has to pay \$2.13, assuming the amount of tips exceeds the federal minimum wage. Furthermore, allowing tipped employees also enables the Inns to maintain and hire a professional workforce for these important positions. Since the Inns compete with the private sector in retaining and hiring staff, not being able to allow these positions to accept tips would make it extremely difficult, if not impossible, to hire staff in a profession that relies on tips as part of their income. Both of these topics were the driving force behind SEA 186.

Issue for Consideration

Whether tips received by an employee classified as a tipped employee under the proposed Inns personnel system violates the State Ethics rules, particularly 42 IAC 1-5-1 (Gifts; travel expenses; waivers), 42 IAC 1-5-2 (Donor Restrictions), and 42 IAC 1-5-8 (Additional Compensation).

State and Federal Laws Concerning Tips and Wages

In preparation for submission of this formal request, DNR would like to provide the Commission with information regarding how the state and federal governments view tips and wages for positions considered tipped employees, which DNR believes would be beneficial for the Commission in consideration of this request.

¹ See, 31 IAC 5-5-1(d) and (g)(3)

Fair Labor Standards Act

The U.S. Department of Labor considers a “tipped employee” as an employee that “engages in an occupation in which he or she customarily and regularly receives more than \$30 per month in tips.”² In addition, “an employer may not keep tips received by its employees for any purposes, including allowing managers or supervisor to keep any portion of its employees’ tips, regardless of whether or not the employer takes a tip credit.”³ Therefore, a tip is a wage that has been earned by the tipped employee and is income of the employee, not the employer.

Also under the Fair Labor Standards Act, “an employer of a tipped employee is only required to pay \$2.13 per hour in direct wages if that amount combined with the tips received at least equals the federal minimum wage. If the employee's tips combined with the employer's direct wages of at least \$2.13 per hour do not equal the federal minimum hourly wage, the employer must make up the difference.”⁴ Attached is a copy of “Fact Sheet #15: Tipped Employees under the Fair Labors Standard Act (FLSA).”

Indiana’s Unemployment Compensation System

Under Indiana’s Unemployment Compensation System, wages are defined to include tips.⁵

Federal Income Tax Law

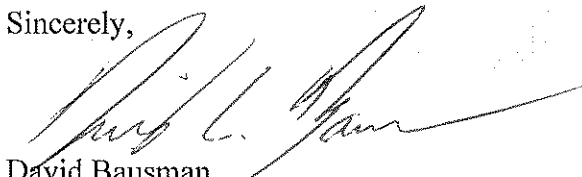
The Internal Revenue Service (IRS) considers tips as part of the pay. Employees are required to include tips on their tax return.⁶

Summary

Based upon the legal research and information provided, DNR does not believe that tipped employees, such as service, wait and housekeeping staff, who customarily receive tips from patrons would be gifts or additional compensation under the ethics rules, since the Inns personnel system has included as part of their remuneration for the position. Allowing tipped employees for the Inns supports the two main policy initiatives behind SEA 186 that created the Indiana State Park Inns Authority. Without these traditionally tipped positions, the Inns will face a significant cost increase to the operation, and it will make it extremely difficult, if not impossible, to recruit and retain professional staff for these essential positions.

Since this is an issue of first impression with respect to tipped employee positions, DNR seeks a formal advisory opinion on this matter to ensure full compliance with the ethics rules but also to avoid any appearance of impropriety. If you have any questions or need additional information, please free to contact at [dbauman@dnr.in.gov](mailto:dbausman@dnr.in.gov) or (317) 233-6094.

Sincerely,



David Bausman
General Counsel and Ethics Officer
Indiana Department of Natural Resources

Enclosure

²See, Fair Labor Standards Act , 29 U.S.C. § 203(t) (2020).

³ See, Fair Labor Act, 29 U.S.C. § 203(m)(2)(B) (2020).

⁴<https://www.dol.gov/general/topic/wages/wagestips#:~:text=A%20tipped%20employee%20engages%20in,equals%20the%20federal%20minimum%20wage>

⁵ See, I.C. 22-4-4-2(a).

⁶ See, “Tips” section on page 39 of “Tax Guide 202 For Individuals.” <https://www.irs.gov/pub/irs-pdf/p17.pdf>.

Fact Sheet #15: Tipped Employees Under the Fair Labor Standards Act (FLSA)

In the Consolidated Appropriations Act, 2018 (Act), Congress vacated the Department's 2011 regulations that barred tip pooling when employers do not claim a tip credit under section 3(m) of the Fair Labor Standards Act. Statements in this document to the contrary are no longer WHD policy. The Act did not impact WHD's enforcement when an employer claims a tip credit. For further information, see [FAB 2018-3](#).

For current guidance on dual jobs and related duties under Section 3(m) of the Fair Labor Standards Act, see [FAB 2019-2](#).

This fact sheet provides general information concerning the application of the [FLSA](#) to employees who receive tips.

Characteristics

Tipped employees are those who customarily and regularly receive more than \$30 per month in tips. Tips are the property of the employee. The employer is prohibited from using an employee's tips for any reason other than as a credit against its minimum wage obligation to the employee ("tip credit") or in furtherance of a valid tip pool. Only tips actually received by the employee may be counted in determining whether the employee is a tipped employee and in applying the tip credit.

Tip Credit: Section 3(m) of the FLSA permits an employer to take a tip credit toward its minimum wage obligation for tipped employees equal to the difference between the required cash wage (which must be at least \$2.13) and the federal minimum wage. Thus, the maximum tip credit that an employer can currently claim under the FLSA section 3(m) is \$5.12 per hour (the minimum wage of \$7.25 minus the minimum required cash wage of \$2.13). Under certain circumstances, an employer may be able to claim an additional overtime tip credit against its overtime obligations.

Tip Pool: The requirement that an employee must retain all tips does not preclude a valid tip pooling or sharing arrangement among employees who customarily and regularly receive tips, such as waiters, waitresses, bellhops, counter personnel (who serve customers), bussers, and service bartenders. A valid tip pool may not include employees who do not customarily and regularly received tips, such as dishwashers, cooks, chefs, and janitors.

Requirements

The employer must provide the following information to a tipped employee before the employer may use the FLSA 3(m) tip credit:

- 1) the amount of cash wage the employer is paying a tipped employee, which must be at least \$2.13 per hour;
- 2) the additional amount claimed by the employer as a tip credit, which cannot exceed \$5.12 (the difference between the minimum required cash wage of \$2.13 and the current minimum wage of \$7.25);
- 3) that the tip credit claimed by the employer cannot exceed the amount of tips actually received by the tipped employee;
- 4) that all tips received by the tipped employee are to be retained by the employee except for a valid tip pooling arrangement limited to employees who customarily and regularly receive tips; and

5) that the tip credit will not apply to any tipped employee unless the employee has been informed of these tip credit provisions.

The employer may provide oral or written notice to its tipped employees informing them of items 1-5 above. An employer who fails to provide the required information cannot use the section 3(m) tip credit and therefore must pay the tipped employee at least \$7.25 per hour in wages and allow the tipped employee to keep all tips received.

Employers electing to use the tip credit provision must be able to show that tipped employees receive at least the minimum wage when direct (or cash) wages and the tip credit amount are combined. If an employee's tips combined with the employer's direct (or cash) wages of at least \$2.13 per hour do not equal the [minimum hourly wage](#) of \$7.25 per hour, the employer must make up the difference.

Retention of Tips: A tip is the sole property of the tipped employee regardless of whether the employer takes a tip credit.¹ The FLSA prohibits any arrangement between the employer and the tipped employee whereby any part of the tip received becomes the property of the employer. For example, even where a tipped employee receives at least \$7.25 per hour in wages directly from the employer, the employee may not be required to turn over his or her tips to the employer.

Tip Pooling: As noted above, the requirement that an employee must retain all tips does not preclude a valid tip pooling or sharing arrangement among employees who customarily and regularly receive tips. The FLSA does not impose a maximum contribution amount or percentage on valid mandatory tip pools. The employer, however, must notify tipped employees of any required tip pool contribution amount, may only take a tip credit for the amount of tips each tipped employee ultimately receives, and may not retain any of the employees' tips for any other purpose.

Dual Jobs: When an employee is employed by one employer in both a tipped and a non-tipped occupation, such as an employee employed both as a maintenance person and a waitperson, the tip credit is available only for the hours spent by the employee in the tipped occupation. The FLSA permits an employer to take the tip credit for some time that the tipped employee spends in duties related to the tipped occupation, even though such duties are not by themselves directed toward producing tips. For example, a waitperson who spends some time cleaning and setting tables, making coffee, and occasionally washing dishes or glasses is considered to be engaged in a tipped occupation even though these duties are not tip producing. However, where a tipped employee spends a substantial amount of time (in excess of 20 percent in the workweek) performing related duties, no tip credit may be taken for the time spent in such duties.

Service Charges: A compulsory charge for service, for example, 15 percent of the bill, is not a tip. Such charges are part of the employer's gross receipts. Sums distributed to employees from service charges cannot be counted as tips received, but may be used to satisfy the employer's [minimum wage](#) and overtime obligations under the FLSA. If an employee receives tips in addition to the compulsory service charge, those tips may be considered in determining whether the employee is a tipped employee and in the application of the tip credit.

¹ WHD will not enforce the Department's regulations on the retention of employees' tips with respect to any employee who is paid a cash wage of not less than the full Fair Labor Standards Act (FLSA) minimum wage (\$7.25) and for whom their employer does not take an FLSA section 3(m) tip credit.

Credit Cards: Where tips are charged on a credit card and the employer must pay the credit card company a percentage on each sale, the employer may pay the employee the tip, less that percentage. For example, where a credit card company charges an employer 3 percent on all sales charged to its credit service, the employer may pay the tipped employee 97 percent of the tips without violating the FLSA. However, this charge on the tip may not reduce the employee's wage below the required [minimum wage](#). The amount due the employee must be paid no later than the regular pay day and may not be held while the employer is awaiting reimbursement from the credit card company.

Youth Minimum Wage: The 1996 Amendments to the FLSA allow employers to pay a youth minimum wage of not less than \$4.25 per hour to employees who are under 20 years of age during the first 90 consecutive calendar days after initial employment by their employer. The law contains certain protections for employees that prohibit employers from displacing any employee in order to hire someone at the youth minimum wage.

Typical Problems

Minimum Wage Problems:

- Where an employee does not receive sufficient tips to make up the difference between the direct (or cash) wage payment (which must be at least \$2.13 per hour) and the [minimum wage](#), the employer must make up the difference.
- Where an employee receives tips only and is paid no cash wage, the full [minimum wage](#) is owed.
- Where deductions for walk-outs, breakage, or cash register shortages reduce the employee's wages below the minimum wage, such deductions are illegal. When an employer claims an FLSA 3(m) tip credit, the tipped employee is considered to have been paid only the minimum wage for all non-overtime hours worked in a tipped occupation and the employer may not take deductions for walkouts, cash register shortages, breakage, cost of uniforms, etc., because any such deduction would reduce the tipped employee's wages below the minimum wage.
- Where a tipped employee is required to contribute to a tip pool that includes employees who do not customarily and regularly receive tips, the employee is owed the full \$7.25 minimum wage and reimbursement of the amount of tips that were improperly utilized by the employer.

Overtime Problems:

- Where the employer takes the tip credit, overtime is calculated on the full minimum wage, **not** the lower direct (or cash) wage payment. The employer may not take a larger FLSA 3(m) tip credit for an overtime hour than for a straight time hour. Under certain circumstances, an employer may be able to claim an additional overtime tip credit against its overtime obligations.
- Where [overtime](#) is not paid based on the regular rate including all service charges, commissions, bonuses, and other remuneration.

Where to Obtain Additional Information

For additional information, visit our Wage and Hour Division Website:

<http://www.wagehour.dol.gov> and/or call our toll-free information and helpline, available 8 a.m. to 5 p.m. in your time zone, 1-866-4USWAGE (1-866-487-9243).

This publication is for general information and is not to be considered in the same light as official statements of position contained in the regulations.

U.S. Department of Labor
Frances Perkins Building
200 Constitution Avenue, NW
Washington, DC 20210

1-866-4-USWAGE
TTY: 1-866-487-9243
[Contact Us](#)

Proposed Indiana State Park Inns Authority Personnel Policy **Concerning Tips**

Section: General Practices

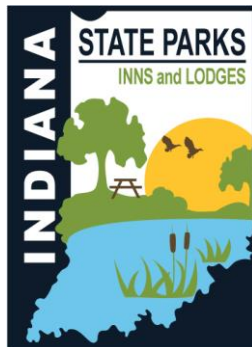
Pay Periods

Employees of Indiana State Park Inns work a standard work week consisting of 40 hours. Employees will be paid on a bi-weekly basis. Employees will have their pay checks deposited into a bank account or onto a pay card, if the employee does not have a bank account for direct deposit.

Tip Reporting

If you earn more than \$20.00 per month in tips, you are required by the Internal Revenue Service to report your entire income for tax purposes. You must report all your tips and keep a daily record of your tip income in form 4070 the Employee's Daily Record of Tips Publication. Your failure to report your cash tips may result in you being investigated by the IRS and possible imposition of taxes, interest and penalties. Tips must be entered daily into the electronic time clock. Charged tips will be distributed on your paycheck.

Tipped positions are positions that regularly and customarily receive tips each month in excess of \$20.00 per month and are service/wait staff and housekeeping. Any other employees outside these positions are not allowed to accept tips from guests. If a guest offers you a tip for assisting them, politely state that "it was my pleasure to assist you and we are unable to accept tips".



For All Tipped Employees

This is to certify that I have been informed of tax laws regarding tip reporting. I understand I am to report all tips I receive to my employer, *Indiana State Park Inns*, who will then withhold all required taxes. I further understand that it is my responsibility to enter cash tips daily when clocking out, into the time clock system. Charged tips will also be entered into the time clock system or entered onto payroll sheets by payroll or night audit.

In addition to the above I understand the following:

- I understand that I will be making \$_____ as a tipped employee;
- The federal and state wage laws require that I report all tips;
- My employer will take a tipped credit against tips I receive which cannot exceed the difference between the minimum wage and the cash wage paid. (This amount will usually be \$5.12 per hour, (\$7.25 - \$2.13) depending on my cash wage);
- the amount of tips to be credited as wages toward the minimum wage will be reported to me;
- That all tips must be retained by the employee (except for a valid tip pooling arrangement – if there is a tip pool I will be told what the contribution amount is up front);
- Employee's that make more than \$20.00 in tips per month must declare those tips; and
- That the tip credit shall not apply to any employee who has not been informed of the requirements stated above.

Employee's Signature

Date

Paul Peaper
2537 N. Alabama Street
Indianapolis, IN 46204

VIA ELECTRONIC MAIL

Indiana Ethics Commission
315 West Ohio Street, Room 104
Indianapolis, IN 46202

May 30, 2022

Dear Ethics Commission,

Please accept this letter as my request for a formal advisory opinion from the Indiana Ethics Commission during their June 9, 2022 meeting. This formal advisory opinion is being sought after having received an informal advisory opinion on May 23, 2022. A copy of that opinion has been attached for your reference.

Beginning January 2017 through February 2021, I served as a Senior Operations Director in the Office of the Governor. In this role, my primary responsibility was to serve as the liaison between various agencies in the Governor's Office. My portfolio primarily included public health agencies in the executive branch including the Indiana Department of Health, the Family and Social Services Administration, the Department of Child Services, and the Department of Insurance.

In this capacity, I worked closely with the agencies and their leaders to effectively communicate the Governor's agenda. I also served as the Governor's liaison to business and community organizations and other public and private entities on public health matters.

During the course of my employment, I did not have contracting authority or responsibility nor did I make regulatory or licensing decisions regarding any matters.

I recently received an offer of employment to serve as the next president of the Indiana Health Care Association (IHCA). The association is Indiana's largest trade association and advocate representing proprietary, not-for-profit and hospital-based skilled nursing, assisted living and independent living communities. IHCA's more than 480 member facilities care for more than 35,000 of Indiana's geriatric and disabled citizens, the majority of whom are low-income Medicaid recipients.

As the position has been explained to me, part of the president's role would require lobbying of both the executive and legislative branch. These efforts would include lobbying on proposed legislation, as well as administrative and/or agency actions.

Although my twelve-month cooling off period has expired, I write to request a formal advisory opinion to ensure my potential employment and associated lobbying would not violate any of the particular matter restrictions.

By way of background, Governor Holcomb included Long Term Healthcare Reform as a part of his 2021 Agenda with the goal of moving to a system the focuses on outcomes and quality for Medicaid eligible elderly citizens. I participated in discussions with members of the Governor's Office and administration in the development of this agenda proposal. To effectuate this proposal, he directed FSSA to begin work with impacted stakeholders, including the IHCA and its members, to develop future policy and/or legislative proposals.

This first of these public stakeholder meetings occurred on February 15, 2021 and my employment with the state ended on February 28, 2021.

One element of the long-term services reform has been a proposal to move the long-term care coordination and reimbursement into a managed care model. To prepare for this, the stakeholder group was tasked with developing a potential request for information to inform a potential subsequent request for proposal for companies to serve as the managed care entity. Both the RFI and subsequent RFP were developed after my departure from state employment.

Furthermore, recent proposed and codified legislation from the 2021 and 2022 legislative sessions have impacted the development and timeline of the RFP. These legislative actions occurred after my departure from state government.

As the state continues its transition to managed care model, the ICHA will continue its lobbying and advocacy efforts with the executive and legislative branches. These lobbying efforts will likely focus on both the current regulatory and reimbursement framework as well as the future managed care model. This work will primarily fall to the president of the ICHA. Additional executive branch lobbying efforts may include interaction with the Indiana Department of Health which is primarily responsible for long term care facility and employee licensure. My previous employment with the state did not involve such licensure matters.

Based on the foregoing, I do not believe my prior state government involvement would implicate one of the twelve enumerated "particular matters," however, out of an abundance of caution, I seek this formal advisory opinion from the Commission.

I thank the Commission in advance for its time and counsel and stand ready to answer any questions the Commission may have to aide in the development of its final advisory opinion.

Sincerely,



Paul Peaper

Attachment: May 23, 2022 Informal Advisory Opinion



Paul P <ppeaper@gmail.com>

Ethics Informal Advisory Opinion; Peaper; Governor's Office; post-employment

Mulligan, Tiffany M <TMulligan@ig.in.gov>
To: "ppeaper@gmail.com" <ppeaper@gmail.com>

Mon, May 23, 2022 at 4:02 PM

Paul,

Thank you for contacting our office for ethics advice. We understand that you formerly served as the Senior Operations Director for the Office of the Governor. You served in this role from January 2017 through February 2021.

In your role as Senior Operations Director, your primary responsibility was to serve as the liaison between various agencies of the Governor's Office. Your portfolio primarily included public health agencies in the executive branch, including the Indiana Department of Health, the Family and Social Services Administration (FSSA), the Department of Child Services and the Department of Insurance.

In this capacity, you worked closely with the agencies and their leaders to effectively communicate the Governor's agenda. You also served as the Governor's liaison to business and community organizations and to other public and private entities on public health matters. During the course of your employment, you did not have contracting authority or responsibility nor did you make any regulatory or licensing decisions regarding any matters.

You write that you recently received an offer of employment to serve as the next president of the Indiana Health Care Association (IHCA). IHCA is Indiana's largest trade association and advocate representing proprietary, not-for-profit and hospital-based skilled nursing, assisted living and independent living communities. IHCA's more than 480 member facilities care for more than 35,000 of Indiana's geriatric and disabled citizens, the majority of whom are low-income Medicaid recipients.

As you understand it, part of the president's role would require lobbying of both the executive and legislative branch. These efforts would include lobbying on proposed legislation, as well as administrative and/or agency actions.

Although your twelve-month cooling off period has expired, you are requesting an informal advisory opinion to ensure your potential employment and associated lobbying would not violate the particular matter restriction.

You explain that Governor Holcomb included Long Term Healthcare Reform as a part of his 2021 Agenda with the goal of moving to a system that focuses on outcomes and quality for Medicaid eligible elderly citizens. You participated in discussions with members of the Governor's Office and his administration in the development of this agenda proposal. To effectuate this proposal, the Governor directed FSSA to begin work with impacted stakeholders, including the IHCA and its members, to develop future policy and/or legislative proposals. The first of these public stakeholder meetings occurred on February 15, 2021, and your employment ended on February 28, 2021.

One element of the long-term services reform has been a proposal to move the long term care coordination and reimbursement into a managed care model. To prepare for this, the stakeholder group was tasked with developing a potential request for information (RFI) to inform a potential subsequent request for proposal (RFP) for companies to serve as the managed care entity. Both the RFI and subsequent RFP were developed after you left state employment.

Furthermore, recent proposals and codified legislation from the 2021 and 2022 legislative session have impacted the development and timeline of the RFP. These legislative actions occurred after your departure from state government.

As the State continues to transition to the managed care model, the IHCA will continue its lobbying and advocacy efforts with the executive and legislative branches. This work will primarily fall to the president of the IHCA.

Based on the foregoing, you do not believe your prior state government involvement would implicate one of the twelve enumerated particular matters; however, out of an abundance of caution, you are seeking an informal advisory opinion from our office.

Your inquiry primarily invokes consideration Code of Ethics' (Code) post-employment rule, IC 4-2-6-11. We have included the relevant definitions and rules at the end of this opinion.

1. IC 4-2-6-11- Post Employment

As you know, the Code's post-employment rule applies to state employees who leave state employment. The post-employment rule (IC 4-2-6-11) consists of two separate limitations: a "cooling off" period and a particular matter restriction.

A. The “Cooling Off” Period

-

The first prohibition, commonly referred to as the cooling off or revolving door period, prevents you from accepting employment: (1) as a lobbyist, (2) from an employer with whom you were engaged in the negotiation or administration of a contract on behalf of any state agency and were in a position to make a discretionary decision affecting the outcome of the negotiation or nature of the administration or (3) from an employer for whom you made a regulatory or licensing decision that directly applied to the employer or its parent or subsidiary, **until the lapse of 365 days from when you leave state employment.** In addition, you are prohibited from accepting employment from an employer if the circumstances surrounding the hire suggest the employer’s purpose is to influence you in your official capacity as a state employee.

You write that you left state employment in February of 2021; therefore, the cooling off period has expired, and it will not prohibit you from serving as the next IHCA president.

B. The particular matter restriction

-

The second prohibition, commonly referred to as the “particular matter” restriction, prevents you from working on the twelve types of matters listed in IC 4-2-6-11(a) if you personally and substantially participated in the matter as a state employee. These matters are 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 statute specifically excludes “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” from the definition of particular matter. 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.***

-

Under this restriction, you would be prohibited from representing or assisting IHCA or any other person in any particular matter in which you personally and substantially participated as a state employee.

-

You explain that you participated in discussions with members of the Governor’s Office and his administration in the development of the Governor’s Long Term Healthcare Reform proposal. The RFI and subsequent RFP were developed after your departure from state government. Based on the information you provided, the portion of the Long Term Healthcare Reform proposal in which you participated was the proposal of a legislative matter or a policy or practice of general application. If this is the case, you would be able to represent or assist IHCA in the transition to the managed care model.

Please note that the particular matter restriction would prohibit you from working on any particular matter for IHCA or anyone else if you personally or substantially participated in the matter while with the State for *the entire life of the matter at issue*. Should IHCA ask that you represent it on a specific matter; such as a contract, determination or public works project; you would be unable to represent or assist IHCA for the lifetime of that matter. You are, however, permitted to assist IHCA with matters in which you were not personally or substantially involved while with the State or with any *new matters*.

If you have any questions regarding your work after reviewing the twelve matters listed above, you may follow up with our office at any time.

Also, we note that you have the option to seek a formal advisory opinion from the State Ethics Commission (Commission) if you would like a public and final determination on whether you can work on a specific issue for IHCA. You can find instructions for submitting a request for a formal advisory opinion from the Commission on our website: <http://www.in.gov/ig/2334.htm>.

The next Commission meeting is June 9, 2022, and you must submit your request for a formal advisory opinion no later than May 30, 2022, to have your request considered at the next meeting. If you would like to seek a formal advisory opinion from the Commission, we encourage you to contact the Governor's Office's ethics officer, Joe Heerens. Please feel free to contact our office as well if you have any questions regarding the process for obtaining the Commission's formal advisory opinion.

2. IC 4-2-6-6, 42 IAC 1-5-10 and 42 IAC 1-5-11- Confidential Information

-

Finally, you should keep in mind the ethics rule pertaining to confidential information found at IC 4-2-6-6. IC 4-2-6-6 prohibits you 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 you receive from IHCA does not result from information of a confidential nature that you learned in your position with the State, any post-employment would not violate IC 4-2-6-6.

42 IAC 1-5-10 and 11 also prohibits you from divulging or benefitting from, or permitting any other person to benefit from, confidential information learned as a result of your positions with the State. To the extent that you possessed or possess information of a confidential nature by virtue of your position at the Governor's Office that could be used to benefit any person, you would need to ensure you comply with these rules.

Thank you again for submitting your question to our office. Please note that this response does not constitute an official advisory opinion. Only the Commission may issue an official advisory opinion. This informal advisory opinion allows us to give you quick, written advice. The Commission will consider that an employee or former employee acted in good faith if it is determined that the individual committed a violation after receiving advice and the alleged violation was directly related to the advice rendered. Also, remember that the advice given is based on the facts as we understand them. If this e-mail misstates facts in a material way, or omits important information, please bring those inaccuracies to our attention.

Sincerely,

Tiffany Mulligan
Office of the Inspector General

IC 4-2-6-1

Definitions

IC 4-2-6-1 Definitions

Sec. 1. (a) As used in this chapter, and unless the context clearly denotes otherwise:

...

(4) "Assist" means to:

- (A) help;
- (B) aid;
- (C) advise; or
- (D) furnish information to;

a person. The term includes an offer to do any of the actions in clauses (A) through (D).

...

(7) "Compensation" means 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.

...

(12) "Information of a confidential nature" means information:

- (A) obtained by reason of the position or office held; and
- (B) which:

(i) a public agency is prohibited from disclosing under IC 5-14-3-4(a);

(ii) a public agency has the discretion not to disclose under IC 5-14-3-4(b) and that the agency has not disclosed; or

(iii) is not in a public record, but if it were, would be confidential.

(13) "Person" means any individual, proprietorship, partnership, unincorporated association, trust, business trust, group, limited liability company, or corporation, whether or not operated for profit, or a governmental agency or political subdivision.

...

(17) "Represent" means to do any of the following on behalf of a person:

(A) Attend an agency proceeding.

(B) Write a letter.

(C) Communicate with an employee of an agency. . . .

IC 4-2-7-1 Definitions

Sec. 1. The following definitions apply throughout this chapter:

...

(5) "Lobbyist" means an individual who seeks to influence decision making of an agency and who is registered as an executive branch lobbyist under rules adopted by the Indiana department of administration.

IC 4-2-6-11 One year restriction on certain employment or representation; advisory opinion; exceptions; waivers; disclosure statements; restrictions on inspector general seeking state office

Sec. 11. (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.

(g) An employee's or a special state appointee's state officer or appointing authority may waive application of subsection (b) or (c) in individual cases when consistent with the public interest. A waiver must satisfy all of the following:

- (1) The waiver must be signed by an employee's or a special state appointee's:
 - (A) state officer or appointing authority authorizing the waiver; and
 - (B) agency ethics officer attesting to form.
- (2) The waiver must include the following information:
 - (A) Whether the employee's prior job duties involved substantial decision making authority over policies, rules, or contracts.
 - (B) The nature of the duties to be performed by the employee for the prospective employer.
 - (C) Whether the prospective employment is likely to involve substantial contact with the employee's former agency and the extent to which any such contact is likely to involve matters where the agency has the discretion to make decisions based on the work product

of the employee.

(D) Whether the prospective employment may be beneficial to the state or the public, specifically stating how the intended employment is consistent with the public interest.

(E) The extent of economic hardship to the employee if the request for a waiver is denied.

(3) The waiver must be filed with and presented to the commission by the state officer or appointing authority authorizing the waiver.

(4) The waiver must be limited to an employee or a special state appointee who obtains the waiver before engaging in the conduct that would give rise to a violation of subsection (b) or (c).

The commission may conduct an administrative review of a waiver and approve a waiver only if the commission is satisfied that the information provided under subdivision (2) is specifically and satisfactorily articulated. The inspector general may adopt rules under IC 4-22-2 to establish criteria for post employment waivers.

(h) Subsection (b) applies, subject to waiver under subsection (g), to a former state officer, employee, or special state appointee who:

(1) made decisions as an administrative law judge; or

(2) presided over information gathering or order drafting proceedings; that directly applied to the employer or to a parent or subsidiary of the employer in a material manner.

(i) A former state officer, employee, or special state appointee who forms a sole proprietorship or a professional practice and engages in a business relationship with an entity that would otherwise violate this section must file a disclosure statement with the commission not later than one hundred eighty (180) days after separation from state service. The disclosure must:

(1) be signed by the former state officer, employee, or special state appointee;

(2) certify that the former state officer, employee, or special state appointee is not an employee of the entity; and

(3) state in detail the treatment of taxes, insurance, and any other benefits between the entity and the former state officer, employee, or state appointee.

(j) The inspector general may not seek a state elected office before the elapse of at least three hundred sixty-five (365) days after leaving the inspector general position.

IC 4-2-6-6 Present or former state officers, employees, and special state appointees; compensation resulting from confidential information

Sec. 6. No state officer or employee, former state officer or employee, special state appointee, or former special state appointee shall accept any compensation from any employment, transaction, or investment which was entered into or made as a result of material information of a confidential nature.

42 IAC 1-5-10 Benefiting from confidential information

Authority: IC 4-2-7-3; IC 4-2-7-5

Affected: IC 4-2-7

Sec. 10. A state officer, employee, or special state appointee shall not benefit from, or permit any other person to benefit from, information of a confidential nature except as permitted or required by law.

42 IAC 1-5-11 Divulging confidential information

Authority: IC 4-2-7-3; IC 4-2-7-5

Affected: IC 4-2-7

Sec. 11. A state officer, employee, or special state appointee shall not divulge information of a confidential nature except as permitted by law.

Tiffany Mulligan

Chief of Staff and Chief Legal Counsel

Office of Inspector General

[315 West Ohio Street, Room 104](#)

[Indianapolis, IN 46202](#)

tmulligan@ig.in.gov

Phone: (317) 232-0708

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From: noreply@formstack.com <noreply@formstack.com>
Sent: Saturday, May 21, 2022 5:51 PM
To: IG Info <info@ig.IN.gov>; Mulligan, Tiffany M <TMulligan@ig.IN.gov>; Cook, David (IG) <DaCook@ig.IN.gov>; Baker, Nathaniel P <NBaker@ig.IN.gov>; Gorman, Sean M <SGorman@ig.IN.gov>
Subject: Advice

**** This is an EXTERNAL email. Exercise caution. DO NOT open attachments or click links from unknown senders or unexpected email. ****



Formstack Submission For: Informal Advisory Opinions
Submitted at 05/21/22 5:51 PM

Name: Paul Peaper

Email: ppeaper@gmail.com

Phone: (317) 490-4079

State Agency: Formerly employed by the Office of the Governor

Former Senior Operations Director

**Description
of Your
State
Occupation:**

Beginning January 2017 through February 2021, I served as a Senior Operations Director in the Office of the Governor. In this role, my primary responsibility was to serve as the liaison between various agencies in the Governor's Office. My portfolio primarily included public health agencies in the executive branch including the Indiana Department of Health, the Family and Social Services Administration, the Department of Child Services, and the Department of Insurance.

In this capacity, I worked closely with the agencies and their leaders to effectively communicate the Governor's agenda. I also served as the Governor's liaison to business and community organizations and other public and private entities on public health matters.

During the course of my employment, I did not have contracting authority or responsibility nor did I make regulatory or licensing decisions regarding any matters.

I recently received an offer of employment to serve as the next president of the Indiana Health Care Association (IHCA). The association is Indiana's largest trade association and advocate representing proprietary, not-for-profit and hospital-based skilled nursing, assisted living and independent living communities. IHCA's more than 480 member facilities care for more than 35,000 of Indiana's geriatric and disabled citizens, the majority of whom are low-income Medicaid recipients.

As the position has been explained to me, part of the president's role would require lobbying of both the executive and legislative branch. These efforts would include lobbying on proposed legislation, as well as administrative and/or agency actions.

Although my twelve-month cooling off period has expired, I write to request an informal opinion to ensure my potential employment and associated lobbying would not violate the particular matter restriction.

By way of background, Governor Holcomb included Long Term Healthcare Reform as a part of his 2021 Agenda with the goal of moving to a system that focuses on outcomes and quality for Medicaid eligible elderly citizens. I participated in discussions with members of the Governor's Office and his administration in the development of this agenda proposal. To effectuate this proposal, he directed FSSA to begin work with impacted stakeholders, including the IHCA and its

**What is
your ethics
question?:**

members, to develop future policy and/or legislative proposals.

This first of these public stakeholder meetings occurred on February 15, 2021 and my employment with the state ended on February 28, 2021.

One element of the long-term services reform has been a proposal to move the long term care coordination and reimbursement into a managed care model. To prepare for this, the stakeholder group was tasked with developing a potential request for information to inform a potential subsequent request for proposal for companies to serve as the managed care entity. Both the RFI and subsequent RFP were developed after my departure from state employment.

Furthermore, recent proposed and codified legislation from the 2021 and 2022 legislative sessions have impacted the development and timeline of the RFP. These legislative actions occurred after my departure from state government.

As the state continues its transition to managed care model, the ICHA will continue its lobbying and advocacy efforts with the executive and legislative branches. This work will primarily fall to the president of the ICHA.

Based on the foregoing, I do not believe my prior state government involvement would implicate one of the twelve enumerated particular matters, however, out of an abundance of caution, I seek the counsel of the Inspector General's Office.

I understand the above is a unique fact pattern and I am happy to meet to provide any additional details and/or clarification necessary to aide in the development of an informal opinion. Thank you in advanced for your counsel.

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STATE OF INDIANA)

INDIANA STATE ETHICS COMMISSION

)SS:

COUNTY OF MARION)

CASE: 2021-12-0347

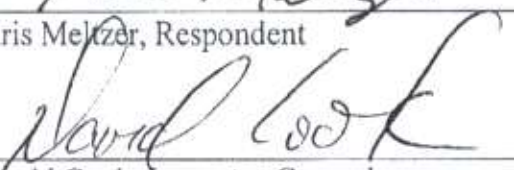
IN RE THE MATTER OF KRIS MELTZER

AGREED SETTLEMENT

1. Respondent admits to the facts as alleged in the Amended Ethics Complaint filed by the Office of Inspector General on May 20, 2022, and to violations of 42 IAC 1-5-4, the political activity rule, and Ind. Code § 4-2-6-17, the use of state property rule. (See Amended Ethics Complaint filed on May 20, 2022, attached hereto as Exhibit A.)
2. Respondent agrees to pay a fine in the amount of one hundred dollars (\$100.00). The State Ethics Commission (Commission) will not impose any further penalties under Ind. Code § 4-2-6-12. Respondent shall make payment to the "Indiana State Ethics Commission" within sixty (60) days from the date that the Commission accepts this agreement.
3. The parties acknowledge that this agreement reflects the entire agreement between the parties, that an approval of these terms by the Commission shall result in the final disposition of this proceeding, and that Respondent is waiving an alternative statutory right to a public hearing in Ind. Code § 4-2-6-2 to contest the complaint.

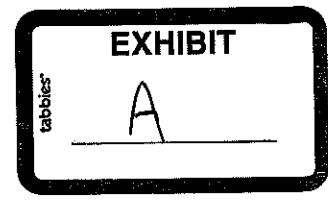
Dated this 23 of May, 2022


Kris Meltzer, Respondent


David Cook, Inspector General

APPROVED this 9th day of June, 2022, by the State Ethics Commission in a public meeting by a vote of ____ to ____.

Katherine J. Noel
State Ethics Commission Chair



STATE OF INDIANA)
) SS:
COUNTY OF MARION)

INDIANA STATE ETHICS COMMISSION

CASE NO: 2021-12-0347

IN RE THE MATTER OF KRIS MELTZER,

Respondent.

INDIANA
STATE ETHICS COMMISSION

MAY 20 2022

FILED

AMENDED ETHICS COMPLAINT

Comes now David Cook, Inspector General of the State of Indiana, by counsel, Doreen Clark, and alleges and says that Kris Meltzer, Respondent, has violated the Indiana Code of Ethics, as follows:

1. The Indiana Department of Child Services (DCS) is an executive branch agency pursuant to Ind. Code § 4-2-7-1(1).
2. Respondent, Kris Meltzer, is an employee, as defined by Ind. Code § 4-2-7-1(3), of DCS at all times referenced herein and thus subject to the jurisdiction of the Office Inspector General (OIG) and the Indiana State Ethics Commission.
3. Jennifer Meltzer (Jennifer) is the daughter-in-law of Kris Meltzer.
4. Jennifer Meltzer announced her candidacy for District 73 State Representative in October of 2021.
5. On December 3, 2021, Respondent received an email from Jennifer containing information regarding her intent to run for State Representative. The email stated that the fundraiser for her campaign would be held on Thursday, December 9, 2021, from 5:00 p.m. to 7:00 p.m.
6. On December 8, 2021, at 1:15 p.m., Respondent used his state computer and email to send the contents of the December 3rd email to all members of the Shelby County Bar

Association. The email contained additional comments about Jeff Linder, a former State Representative for the area.

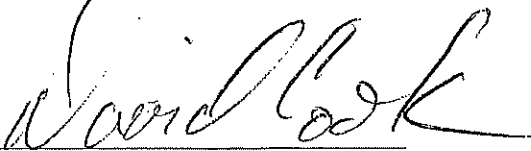
7. Meltzer sent the December 8th email using his state email address and signature block. Several attorneys also responded to Meltzer's email.
8. OIG Special Agent Kruse interviewed Respondent in Shelbyville on January 14, 2021. During the interview, Special Agent Kruse presented the email to the Respondent who admitted to sending the email. OIG Special Agent Kruse was able to confirm that Respondent sent the email using his state computer.
9. Respondent violated 42 IAC 1-5-4, the political activity rule, which reads in relevant part: "A state employee...shall not engage in political activity including solicitation of political contributions from (1) another employee or special state appointee; or (2) any other person when on duty or acting in an official capacity."
10. Respondent violated 42 IAC 1-5-4 by utilizing a computer owned by the State of Indiana and his state email address to solicit campaign funds from members of the Shelbyville County Bar Association.
11. Respondent violated Ind. Code §4-2-6-17, the use of state property rule, which reads in relevant part: "a state... employee must 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 approved by the commission..."
12. Respondent violated Ind. Code §4-2-6-17 by utilizing a computer owned by the State of Indiana and his state email address to solicit campaign funds from members of the Shelby County Bar Association.

13. DCS has a Limited Personal Use of State Property/Resources, which specifically prohibits use of state property for political activity. Respondent did not comply to the terms outlined by the DCS Limited Personal Use of State Property/Resources.


Wherefore, the Inspector General prays that the Indiana State Ethics Commission set this matter for hearing, find Respondent in violation of Code of Ethics as stated herein, and impose an appropriate sanction.

Respectfully submitted,

DATED: 5/20/22



David Cook, Inspector General



Doreen Clark, Attorney #36653-29
Counsel for the Inspector General

Office of the Inspector General
315 W. Ohio Street, Room 104
Indianapolis, IN 46202
Telephone: (317) 232-3850
Email: DoClark@ig.in.gov

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing "Ethics Complaint" has been served upon Respondent by U.S. Mail at the address listed below, on this 20th day of May, 2022.

Jeffrey S. Bate
Bate & Bate
505 S. Harrison Street
Shelbyville, IN 46176



Doreen Clark, Staff Attorney #36653-29