

**MINUTES OF THE MEETING OF  
THE INDIANA STATE ETHICS COMMISSION  
February 10, 2022**

**I. Call to Order**

A regular meeting of the State Ethics Commission (“Commission”) was called to order at 10:02 a.m. The meeting was held virtually using Microsoft Teams. Commission members present were Katherine Noel, Chair; Corinne Finnerty; Sue Anne Gilroy; Kenneth Todd; and Rafael Sanchez. Office of Inspector General staff present included Tiffany Mulligan, Chief of Staff and Chief Legal Counsel and Interim State Ethics Director; Mark Mader, Staff Attorney; Doreen Clark, Staff Attorney; Mark Mitchell, Director of Investigations; Mike Lepper, Special Agent; Cindy Scruggs, Director of Administration; and Nathan Baker, Legal Assistant.

Others present were Ed Feigenbaum, Indiana Legislative Insight; Jessica Keyes, Ethics Officer, Family and Social Services Administration; Mattheus Mitchel, Compliance and Ethics Specialist, Department of Revenue (DOR); Amber Nicole Ying, Director/Special Counsel, Compliance and Ethics and Ethics Officer, DOR; Alexander Van Gorp, Attorney, Indiana Department of Health (DOH); Kristi Shute, Deputy General Counsel and Ethics Officer, Indiana Department of Homeland Security; Beth Green, General Counsel/Ethics Officer, Department of Workforce Development; Ted Cotterill, General Counsel, Management Performance Hub (MPH); Jennifer Cooper, Ethics Officer, MPH; Rachel Russell, Ethics Officer, Department of Child Services (DCS); Chris Serak, Ethics Officer/Director of Prequalification & Construction Compliance, Indiana Department of Transportation (INDOT); Keith Beesley, General Counsel and Ethics Officer, State Personnel Department (SPD); Tamera Glickman, Deputy General Counsel, Indiana Department of Administration (IDOA); David Hensel, Attorney representing Joseph McGuinness; Ed King, Investigations Manager, INDOT; Jordan Seger, Deputy Director, Indiana State Department of Agriculture (ISDA); Christine MacDonald, Internal Affairs Officer, DCS; Erin M. McQueen, Director/ALJ/Ethics Officer, State Employee Appeals Commission (SEAC); Michele Holtkamp, Deputy Communications Director, Governor’s Office; Tari Gary, ISDA; Dale Lee Pennycuff, Counsel, Indiana Horse Racing Commission (IHRC); Ginger Rothrock, Director, HG Ventures; Jason Reeves, Director of Audit and Investigations/Internal Affairs, INDOT; Whitney Fritz, Staff Attorney, DCS; Shane Hatchett, Chief of Staff, IDOH; Heather Kennedy, Chief Legal Counsel, INDOT; Joseph McGuinness, Commissioner, INDOT; Jose Murillo, Contractor Administration, INDOT; Kayla Dwyer, Journalist, IndyStar; John Walls, Chief Counsel and Ethics Officer, Indiana Attorney General’s Office; Ruthanne Gordan, Senior Planning Manager, FOX59/CBS4; Jessica Allen, Chair, Alcohol and Tobacco Commission (ATC); Jane Jankowski, Director of Operations, Governor’s Office; Kelly MacKinnon, IDOH; Elizabeth Burden, General Counsel, Office of Administrative Law Proceedings (OALP).

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

Commissioner Gilroy moved to adopt the Agenda, and Commissioner Todd seconded the motion, which passed (5-0).

Commissioner Sanchez moved to approve the Minutes of the November 18, 2021, Commission Meeting, and Commissioner Gilroy seconded the motion, which passed (5-0).

### **III. Consideration of Waiver of Post-Employment Restrictions for Tari Gary**

Jordan Seger, Deputy Director of the Indiana State Department of Agriculture, presented the proposed Waiver of Post-Employment Restrictions in this matter to the Commission for their approval.

Commissioner Sanchez moved to approve the Waiver, and Commissioner Gilroy seconded the motion, which passed (5-0).

### **IV. Request for Formal Advisory Opinion**

2022-FAO-001

Joseph McGuinness, Commissioner  
Christopher Serak, Ethics Officer  
Indiana Department of Transportation

Christopher Serak is the Ethics Officer for the Indiana Department of Transportation (INDOT). Mr. Serak is requesting an advisory opinion on behalf of Joseph McGuinness, INDOT's Commissioner. Mr. Serak's request includes a letter from Commissioner McGuinness with additional information supporting the request.

Governor Holcomb appointed Mr. McGuinness as INDOT's Commissioner in January of 2017. As INDOT's Commissioner, Commissioner McGuinness oversees the administration of INDOT and its implementation of state transportation policies. His role with INDOT primarily consists of establishing and implementing agency policy and interacting with the public and local units of government, including overseeing transportation and infrastructure operations for the State of Indiana, identifying and securing long-term road and bridge funding opportunities and preparing Indiana's infrastructure for the future of transportation.

Commissioner McGuinness has entered into employment negotiations to serve as the Chief Executive Officer of a startup company called Avenew, LLC (Avenew). Avenew is a newly formed Delaware limited-liability entity with no contracts or revenue; therefore, Avenew has no dealings of any kind with INDOT. Although Avenew is not yet operational, it will eventually seek to partner with local communities, universities and private-sector entities throughout Indiana to manage and maintain local roads, buildings and related infrastructure. Commissioner McGuinness will utilize his experience as the mayor of Franklin to help build Avenew's programming. As Avenew's CEO, Commissioner McGuinness' primary responsibilities will include developing a team of employees, raising capital and promoting Avenew's services to local governments, universities and private-sector companies throughout Indiana. Avenew's operations will not include contracting with or lobbying INDOT.

Avenew is majority-owned by HG Ventures, which in turn is majority owned by The Heritage Group (Heritage). Heritage is an Indianapolis-based company that manages a portfolio of more than thirty different companies, specializing in heavy construction and materials,

environmental services and specialty chemicals. HG Ventures will provide Avenew with initial start-up capital and be a majority owner of Avenew. Other stakeholders, including Commissioner McGuinness, will be minority owners. Heritage, through at least two of its other subsidiary companies, has entered into one or more contracts with INDOT during Commissioner McGuinness' tenure with INDOT.

Although Commissioner McGuinness has contracting authority for INDOT, he has consistently delegated that authority to other INDOT personnel. Consequently, during his tenure as INDOT's Commissioner, he has never negotiated, managed, administered, executed or reviewed any contracts with third-party contractors on behalf of INDOT. Furthermore, Avenew has no contracts with INDOT. Also, Commissioner McGuinness has made no licensing or regulatory decisions as INDOT's Commissioner. Commissioner McGuinness writes that he agrees to refrain from representing or assisting Avenew in any particular matter in which he personally and substantially participated. He also represents that he has not disclosed any confidential information in his employment negotiations with Avenew and that he understands that IC 4-2-6-6 applies indefinitely and prohibits him from ever receiving compensation as a result of confidential information.

Commissioner McGuinness explains that Avenew has no past, current or prospective matters before INDOT in which Avenew or Commissioner McGuinness has a financial interest. Out of an abundance of caution, Commissioner McGuinness disclosed his employment negotiations with Mr. Serak, who executed and signed a formal screen. The screen became effective on January 14, 2022. It prevents Commissioner McGuinness from participating in any decision or vote, or matter related to a decision or vote, in which any Heritage company has a financial interest. The screen also prohibits Commissioner McGuinness from participating in any present or future contract or other matter involving a Heritage company and from assisting any future employers, including Avenew, with any matter he personally and substantially participated in while employed by INDOT. Mr. Serak has filed the screen with INDOT and has indicated that he will file the disclosure statement and screen if the Commission determines that Commissioner McGuinness must file a disclosure statement under IC 4-2-6-9.

INDOT is seeking the Commission's opinion regarding the application of any of the rules in the Code of Ethics to Commissioner McGuinness' post-employment opportunity with Avenew.

The analysis stated the following:

Mr. Serak's request for a formal advisory opinion on behalf of Commissioner McGuinness invokes consideration of the provisions of the Code pertaining to Confidential Information, Conflicts of Interests and Post-employment. The application of each provision to Commissioner McGuinness is analyzed below.

#### *A. Confidential Information*

IC 4-2-6-6 prohibits Commissioner McGuinness 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. Commissioner McGuinness represents that he has disclosed no confidential information in his employment negotiations with Avenew and that he understands the rule applies indefinitely and prohibits him from ever receiving compensation as a result of confidential information. So long as any compensation Commissioner McGuinness receives does not result from confidential information, his potential employment with Avenew would not violate IC 4-2-6-6.

*B. Conflict of Interests*

IC 4-2-6-9(a)(1) prohibits Commissioner McGuinness from participating in any decision or vote, or matter related to that decision or vote, if he has a financial interest in the outcome of the matter. Similarly, IC 4-2-6-9(a)(4) prohibits Commissioner McGuinness from participating in any decision or vote, or matter related to that decision or vote, in which a person or organization with whom he is negotiating 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, employment negotiations have already begun. Accordingly, Commissioner McGuinness would be prohibited from participating in any decision or vote, or matter related to a decision or vote, in which he, by virtue of his employment negotiations with Avenew, or his prospective employer would have a financial interest in the outcome of the matter.

IC 4-2-6-9(b) requires that a state employee who identifies a potential conflict of interests notify his agency’s appointing authority and ethics officer and either (1) seek a formal advisory opinion from the Commission; or (2) file a written disclosure form with the Commission.

Based on the information provided, the Commission finds that Commissioner McGuinness has a potential conflict of interests due to his role as the INDOT Commissioner and Heritage’s subsidiary companies’ contracts with INDOT. As a result, the Commission finds that Commissioner McGuinness must file a disclosure statement with the Commission. The disclosure statement must include a notification to Commissioner McGuinness’ appointing authority and include a description of the screen that INDOT has implemented to ensure that Commissioner McGuinness does not participate in any votes, decisions or other matters in which any Heritage company has a financial interest during the remainder of his state employment. As part of the conflict of interests disclosure statement and screen, the Commission advised INDOT to include a specific provision screening Commissioner McGuinness from certain post-employment activities involving INDOT.

Commissioner McGuinness also must ensure he continues to refrain from participating in any decisions or votes, or matters relating to any such decisions or votes, in which he or any Heritage company has a financial interest in the outcome of the matter for the remainder of his state employment.

### *C. Post-Employment*

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

First, Commissioner McGuinness 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, Commissioner McGuinness would not be engaging in any lobbying activities in his prospective employment with Avenew. To the extent that Commissioner McGuinness does not engage in executive branch lobbying for one year after leaving state employment, his intended employment with Avenew would not violate this provision of the post-employment rule.

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

Commissioner McGuinness represents that he has never personally engaged in the negotiation or administration of any contracts between INDOT and outside contractors. Furthermore, Avenew has no contracts with INDOT. Accordingly, Commissioner McGuinness would not be subject to the cooling off period’s contracting provision because he was not involved in the negotiation or administration of a contract between Avenew and INDOT.

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

Commissioner McGuinness provides that he has not made any regulatory or licensing decisions in his position with INDOT that directly applied to Avenew, Heritage or any of Heritage’s subsidiaries. Accordingly, this provision of the cooling off restriction would not prohibit Commissioner McGuinness from accepting a position with Avenew.

Fourth, Commissioner McGuinness is prohibited from accepting employment from an employer if the circumstances surrounding the hire suggest the employer’s purpose is to influence him in his official capacity as a state employee. The information presented to the Commission does not suggest that Avenew has extended an offer of employment to

Commissioner McGuinness in an attempt to influence him in his capacity as a state employee. Accordingly, the Commission finds that this restriction would not apply to his intended employment opportunity with Avenew.

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

In this instance, Commissioner McGuinness would be prohibited from representing or assisting Avenew, as well as any other person, in a particular matter in which he personally and substantially participated as a state employee.

Commissioner McGuinness agrees that he must refrain from representing or assisting Avenew on any particular matter in which he personally and substantially participated. So long as he refrains from representing or assisting Avenew or any other person on any particular matter in which he personally and substantially participated, the particular matter restriction would not prohibit Commissioner McGuinness from working for Avenew.

Subject to the foregoing analysis, the Commission finds that Commissioner McGuinness' post-employment opportunity with Avenew, LLC would not violate the post-employment restrictions found in IC 4-2-6-11. Furthermore, the Commission finds that so long as Commissioner McGuinness files a conflict of interests disclosure statement with the Commission, his post-employment opportunity would not be in violation of IC 4-2-6-9.

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

V. **Request for Formal Advisory Opinion**  
2022-FAO-002

WITHDRAWN

VI. **Request for Formal Advisory Opinion**  
2022-FAO-003  
Dr. Kristina Box, State Health Commissioner  
Alexander Van Gorp, Ethics Officer  
Shane Hackett, Chief of Staff  
Indiana Department of Health

Alexander Van Gorp is the Ethics Officer for the Indiana Department of Health (IDOH). Mr. Van Gorp is requesting an advisory opinion on behalf of Dr. Kristina Box, the State Health Commissioner.

Mr. Van Gorp asks whether it would be a conflict of interests for Dr. Box or any other state employee in their official capacity to hold a voting position as a member of the Executive Board (Board) of the Indiana Health Information Exchange (IHIE). IHIE is an Indiana non-profit organization that facilitates the sharing of patient medical records between medical providers. IHIE created a seat on its Board for the State Health Commissioner to advise and contribute to the Board. Although IHIE initially created this seat for the State Health Commissioner as a non-voting position, IHIE wishes to modify its Board to provide voting power to the IDOH representative, open the eligibility of the seat to any IDOH employee and create a new seat for an employee of the Indiana Family and Social Services Administration (FSSA).

Mr. Van Gorp explains that IHIE has active contracts with IDOH, FSSA, the Indiana Department of Homeland Security and the Indiana Department of Correction. IHIE also expects to have contracts with state agencies in the future. The exchange of patients' medical records between providers is governed by the Indiana Network for Patient Care (INPC). Eligible members may become INPC members by signing a Joinder Agreement with IHIE and the Regenstrief Institute. Most INPC members are both Data Providers and Data Recipients. Data Providers store data in the INPC, and Data Recipients have access to INPC data under INPC Terms and Conditions and Reasonable Rules. There are some INPC non-members who are otherwise permitted to use, access, exchange or disclose INPC data only as specifically permitted by approved rules. INPC data, when permitted, is exchanged through products made available by IHIE under Subscription/Service Agreements or through other means identified in Third Party Data Use Agreements. IHIE is a business associate to any Data Providers who are covered entities under HIPAA. IHIE must comply with state and federal data privacy laws in addition to the INPC Terms and Conditions.

IHIE is a 509(a)(9) non-profit supporting organization, which is a subcategory of 501(c)(3). IHIE currently receives funding through its Subscription Agreements, Service Agreements and other data sharing arrangements and grants. IHIE's Board is a governing Board with the power to manage, control and conduct the affairs of IHIE as required for 509(a)(9) Type 1 supporting organizations. The majority of the Board's directors must be appointed or elected by IHIE supported organizations, and those directors must operate and control IHIE. The IHIE Board is pursuing restructuring activities that will result in a change to the supported organizations and the number of Community directors and National Subject Matter Expert directors on the Board.

IDOH is currently a supported organization, but the State Health Commissioner, who serves as a director, is an ex-officio and non-voting member of the Board. IHIE hopes to add FSSA as a supported organization. To ensure IHIE is operated and controlled by its supported organizations, IDOH and FSSA will need to appoint directors to the Board, and the directors will need to be given voting rights. Any director is permitted to recuse himself or herself from Board activities and voting if there is a conflict of interests regarding a particular matter.

Mr. Van Gorp writes that IDOH does not believe that Dr. Box or any other state employees' position as a voting member of the Board would be incompatible with their duties at IDOH. Rather, IDOH believes that a position on the Board will help fulfill the mission of IDOH and benefit public policy. Further, the employees sitting on the Board will be able to maintain and build upon their professional skills, such that they may better be able to perform the essential functions of their positions as state employees. Mr. Van Gorp also confirmed that an IDOH employee participating on the Board will not receive compensation from IHIE, including reimbursement for any expenses.

Mr. Van Gorp seeks a formal advisory opinion on behalf of Dr. Box on this matter to ensure full compliance with the Code and to avoid any appearance of impropriety that may arise.

The analysis stated the following:

Mr. Van Gorp's request for a formal advisory opinion invokes consideration of the provisions of the Code pertaining to conflicts of interests, gifts and confidential information. The application of each provision to Dr. Box or other IDOH representatives on the Board is analyzed below.

*A. Conflict of interests - decisions and votes*

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

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

Mr. Van Gorp provides that IDOH has contracts with IHIE; therefore, IDOH has a financial interest in matters that come before IDOH. As the agency head and appointing authority for IDOH, Dr. Box is in a position to participate in decisions or votes, or matters related to those decisions or votes, in which IHIE would have a financial interest in the outcome, such as matters related to IHIE's contract with IDOH. Accordingly, in addition to seeking this formal advisory opinion, Dr. Box would need to notify her agency's appointing authority and Mr. Van Gorp, as IDOH's Ethics Officer, in writing. Likewise, if another IDOH employee serves on the Board and is in a position to participate in decisions or votes in which IHIE would have a financial interest, that employee will need to notify his or her appointing authority and



Ethics Officer in writing and either seek a formal advisory opinion or file a written disclosure statement with the Commission.

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

*B. Outside Employment/Professional Activity*

An outside employment or professional activity opportunity creates a conflict of interests under IC 4-2-6-5.5 if it results in the employee: 1) receiving compensation of substantial value if the responsibilities of the employment are inherently incompatible with the responsibilities of public office or require the employee's recusal from matters so central or critical to the performance of her official duties that her ability to perform them would be materially impaired; 2) disclosing confidential information that was gained in the course of state employment; or 3) using or attempting to use her official position to secure unwarranted privileges or exemptions of substantial value that are not properly available to similarly situated individuals outside state government.

The Commission generally defers to an agency's ethics officer regarding outside employment or professional activity opportunities since these individuals are in a better position to determine whether a conflict of interests might exist between an employee's state duties and an outside employment or professional activity opportunity.

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

*C. Conflict of interests – contracts*

Pursuant to IC 4-2-6-10.5, a state employee may not knowingly have a financial interest in a contract made by an agency. This prohibition, however, does not apply to an employee that does not participate in or have contracting responsibility for any of the activities of the contracting agency, provided certain statutory criteria are met.

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

#### *D. Gifts*

Dr. Box or the participating IDOH employee also should be aware of 42 IAC 1-5-1, which is the gift rule. The gift rule states, in part, that a state employee shall not knowingly solicit, accept or receive any gift, favor, service, entertainment, food, drink, travel expenses or registration fees from: (1) a person who has a business relationship with the employee's agency; or (2) a person who is seeking to influence an action by the employee in his or her official capacity.

"Business relationship" is defined in IC 4-2-6-1(a)(5) to include the dealings of a person with an agency seeking, obtaining, establishing, maintaining or implementing (i) a pecuniary interest in a contract or purchase with an agency; (ii) a license or permit requiring the exercise of an agency's judgment or discretion; or (iii) a lobbyist.

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

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

#### *E. Confidential information*

Dr. Box or the participating IDOH employee is prohibited under 42 IAC 1-5-10 and 42 IAC 1-5-11 from benefitting from, permitting any other person to benefit from, or divulging information of a confidential nature except as permitted or required by law. To the extent that the participating IDOH employees will possess information of a confidential nature by virtue of their position with IDOH that could be used to benefit the Board, IHIE or any other person or entity, the participating IDOH employees must ensure that they comply with these rules.

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

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

## **VII. Consideration of 2022 Public Meeting Dates**

Tiffany Mulligan, OIG's Chief of Staff and Chief Legal Counsel and Interim Ethics Director, provided proposed dates to the Commission for the 2022 State Ethics Commission Public Meeting Dates. The dates have previously been set on the second Thursday of each month automatically.

After discussion from the Commission, Commissioner Gilroy moved for approval of the remaining 2022 meeting dates with no proposed changes. Commissioner Sanchez seconded the motion, which passed (5-0).

The approved dates are as follows:

- January 13 (Previously cancelled due to lack of Commission business)
- February 10
- March 10
- April 14
- May 12
- June 9
- July 14
- August 11
- September 8
- October 13
- November 10
- December 8

Commissioner Todd took the opportunity during this point of the meeting to indicate he has not accepted reappointment to the State Ethics Commission and has sent his resignation letter to the Governor's office. Commissioner Todd's final SEC meeting will be the March 10, 2022 meeting.

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

Tiffany Mulligan, OIG's Chief of Staff and Chief Legal Counsel, started the report by indicating that Jen Cooper has left OIG as State Ethics Director as of the end of December 2021, and that she will be Interim Ethics Director until a new Ethics Director is hired. She indicated it is hoped the position is filled soon. Ms. Mulligan also reported that new OIG Staff Attorney, Doreen Clark, started in late December 2021. Ms. Clark was previously with DWD and FSSA, and OIG is very happy to have her on board.

Ms. Mulligan reported that OIG staff has issued 56 informal advisory opinions since the previous last meeting. The majority of these requests dealt with questions concerning conflicts of interests, use of state property, ghost employment, outside employment, post-employment and gifts.

The deadline for the 2021 Financial Disclosure Statement filing period was February 2, 2022. As of this meeting date, less than five filers remained, and the hope is the matter will be completed by the March SEC meeting.

Ms. Mulligan also indicated that the Ethics Training is still being worked on and should be completed soon. Chair Noel and Commissioners Gilroy and Sanchez offered their thanks to OIG for their continued diligence since the previous meeting.

## **IX. Adjournment**

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

The public meeting adjourned at 11:19 a.m.



Eric Holcomb, Governor  
State of Indiana

*Office of General Counsel*  
402 W. WASHINGTON STREET, ROOM W451, MS27  
INDIANAPOLIS, IN 46204-2744

February 28, 2022

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

RE: Request for Formal Advisory Opinion for Dr. Frank Messina

Dear Chairperson Noel and members of the Ethics Commission:

The Indiana Family and Social Services Administration (“FSSA”), on behalf of Dr. Frank Messina, requests a Formal Advisory Opinion from the State Ethics Commission regarding application of the State Code of Ethics as to an outside employment opportunity. Dr. Messina is in a very similar situation as Dr. Rusyniak and Dr. Finnell, who have appeared before the Ethics Commission previously regarding outside employment matters, which were found to not create a conflict of interests after careful consideration of the underlying facts (see 2018-FAO-017 and 2020-FAO-007).

Dr. Messina started on February 7, 2022, as the Director of Clinical Operations for the Office of Medicaid Policy and Planning (“OMPP”). Dr. Messina took over this position when Dr. Finnell took the position as Chief Medical Officer for FSSA, replacing Dr. Rusyniak. Prior to accepting this position with the state, Dr. Messina has worked in the Emergency Department of Eskenazi. Dr. Messina wishes to continue this outside employment with Eskenazi as outside employment to his role as Director of Clinical Operations.

Also prior to accepting the position with the state, Dr. Messina also was on faculty with the Indiana University School of Medicine. Dr. Messina is on unpaid leave from the Indiana University School of Medicine, but he retains his faculty appointment, and he would like to maintain that appointment moving forward in his role as Director of Clinical Operations.

Dr. Messina is directly employed by IU Health Physicians, which contracts with Eskenazi to staff the Emergency Department. Dr. Messina is paid hourly by IU Health Physicians and does not bill patients or insurance directly. Dr. Messina is considered a supplemental employee and will continue to be paid on an hourly basis by IU Health Physicians for his work at Eskenazi



Health, rather than billing patients or insurance. As Dr. Messina would be providing patient care in the Emergency Department, this could potentially include Medicaid patients similar to any other physician providing medical services for IU Health Physicians. His compensation would not be tied to the charges and collections that he generates or the payer mix of the patients he cares for; however, his fees may be paid from general Medicaid funds.

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

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

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

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

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

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

Eskenazi Health and IU Health Physicians are Indiana Medicaid enrolled Providers. Each have Indiana Health Coverage Program provider agreements with FSSA and receive Medicaid reimbursement. Eskenazi Health has five (5) active contracts with FSSA, and the Division of Mental Health and Addiction (“DMHA”) specifically. DMHA also certifies Eskenazi Health Health’s community mental health center. IU Health Physicians is affiliated with Indiana University Health (“IU Health”) and FSSA’s divisions have three (3) active contracts with IU Health. None of the IU Health contracts are with OMPP<sup>1</sup>. The contracts with Eskenazi Health and IU Health Physicians are at the division level, and none are with OMPP, and the FSSA divisions have ownership of the contracts. Dr. Messina will not sign or negotiate these contracts as Director of Clinical Operations for OMPP.

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

Dr. Messina also understands the duty to maintain confidential information learned through his employment with the state and that he is prevented from divulging confidential information or allowing anyone, including but not limited to, Eskenazi Health and IU Health Physicians from benefiting from same.

Based on the information above, I would request a determination by the Ethics Commission regarding Dr. Messina’s outside employment opportunities as he begins his new role with FSSA as Director of Clinical Operations for OMPP. Thank you for your consideration.

Sincerely,



Jessica Keyes  
FSSA Ethics Officer

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<sup>1</sup> There are multiple contracts between FSSA and Indiana University, one (1) of which is with OMPP regarding residencies.



Eric Holcomb, Governor  
State of Indiana

*Office of General Counsel*  
402 W. WASHINGTON STREET, ROOM W451, MS27  
INDIANAPOLIS, IN 46204-2744

February 28, 2022

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

RE: Request for Formal Advisory Opinion for Connor Norwood

Dear Chairperson Noel and members of the Ethics Commission:

The Indiana Family and Social Services Administration (“FSSA”), on behalf of Connor Norwood, requests a Formal Advisory Opinion from the State Ethics Commission regarding a post-employment opportunity. Mr. Norwood is requesting a formal advisory opinion regarding a business relationship with a current state vendor in his new role.

Mr. Norwood is currently the Chief Data Officer (CDO) for FSSA. In his role, Mr. Norwood’s primary responsibilities include:

- Supporting the enterprise data warehouses for Supplemental Nutrition Assistance Program (SNAP)/Temporary Assistance for Needy Families (TANF) and Medicaid data and analytics
- Design, develop, and implement an agency-wide data governance strategy to support a data-driven culture
- Conduct research studies and program evaluation to answer agency and state priorities around health policy and health services delivery
- Collaborate with the Office of the Governor and other state agencies to harness the power of data to achieve state policy goals
- Foster intra-division relationships and direct integration of data/analytics programs across the agency

In the next couple of months, Mr. Norwood intends to leave state employment, and will open his own solo practice, a consulting firm limited liability company, to provide consultation regarding data and analytics and assisting customers in data management and their data practices. Mr.





Norwood will initially be the only employee in his new consulting company, and he has been working on creating a business implementation plan as he wraps up his state employment.

As part of his business implementation plan, Mr. Norwood has been in communication with a potential client, EImagine, which provides technology consulting. Mr. Norwood's discussions with EImagine have centered around data management and their data practice, and how that might fit in with Mr. Norwood's consulting business. In these discussions, information regarding EImagine's infrastructure and their systems/benefits in place that could also be beneficial to Mr. Norwood in starting his own business were also discussed. These include HR services, and similar systems/services that EImagine has established that could be of assistance to Mr. Norwood as he starts his company.

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

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

Mr. Norwood's new practice/company will do work related to data management and practice. His discussions with EImagine have been to explore work he could contract with them to do on the data side of their practice, and there have been discussions of resources that could be shared or referrals made regarding business infrastructure.

With his new company, Mr. Norwood would not be engaging in any lobbying. Additionally, he was not involved in contract negotiation or administration involving EImagine, and he did not make regulatory or licensure decisions relating to EImagine in his role with the state. Finally, Mr. Norwood has not worked on any particular matters as a state employee that he would be working on for EImagine in his new business.

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

Based on the information above, I would request a determination by the Ethics Commission regarding Mr. Norwood's post-employment opportunity with EImagine. Mr. Norwood sought an informal advisory opinion from the Office of the Inspector General as an initial step in this process, and same is attached hereto as Exhibit A. Thank you for your consideration.

Sincerely,

A handwritten signature in cursive script that reads "Jessica Keyes".

Jessica Keyes  
FSSA Ethics Officer

**From:** Mader, Mark E <MMader@ig.IN.gov>

**Sent:** Monday, January 31, 2022 5:42 PM

**To:** Keyes, Jessica K <Jessica.Keyes@fssa.IN.gov>

**Subject:** Secure Informal Advisory Opinion; Keyes (Norwood); FSSA; Post Employment

Jessica,

Thank you for contacting our office to request ethics advice for Connor Norwood (Norwood), Chief Data Officer for the Indiana Family and Social Services Administration (FSSA), and for providing additional information. You serve as the Ethics Officer for FSSA. You write that Norwood is in the planning phase of developing his own consulting firm, an LLC, in which he will be the only employee. Norwood intends to resign from state employment in the next two to three months, and he has been creating his business implementation plan. You indicate Norwood has been communicating with EImagine, a current business contractor with FSSA that provides technology consulting.

FSSA has contracted with EImagine to support the Care Management for Social Services system (CaMSS). This system is part of the larger integrated care and case management system initiative to modernize and consolidate various care management applications throughout FSSA. EImagine provides maintenance and operations support for CaMSS and system enhancement services to expand the CaMSS system should other divisions desire to implement the same. EImagine will work to plan, design, develop and implement solution enhancements with CaMSS. FSSA amended the contract to include cloud migration as well.

The role of EImagine is specific to maintenance and operation of the CaMSS system. There is some possibility for on-site work. Pursuant to the contract terms, while open to expansion, the initial contract terms include FSSA's Division of Aging, Division of Mental Health and Addiction, and the possibility to expand specifically to the Bureau of Developmental Disability Services. EImagine operates a help desk related to its contractor work.

You indicate, as Chief Data Officer for FSSA, Norwood's primary responsibilities are as follows:

- Support the enterprise data warehouses for SNAP/TANF and Medicaid data and analytics.
- Design, develop and implement an agency wide data governance strategy to support a data-driven culture.
- Conduct research studies and program evaluation to answer agency and state priorities around health policy and health services delivery.
- Collaborate with the Office of the Governor and other state agencies to harness the power of data to achieve state policy goals.
- Foster intra-division relationships and direct integration of data/analytics programs across the agency.

You indicate that EImagine's current contract with FSSA does not have a data practice component. EImagine does not provide any advance analytics and data science work in any of its current or past work.



You write that Norwood has *never* interacted with EImagine. You note that Norwood did not and does not have any oversight regarding contract negotiation or administration, does not make decisions or vote on matters related directly to EImagine as Chief Data Officer for FSSA, has not worked on any particular matters involving the contract between FSSA and EImagine, and has not made any regulatory or licensing determinations relating to EImagine. You indicate Norwood plans to contract with EImagine as its subcontractor to address data management through his consulting business.

You inquire whether, under the Code of Ethics (Code), there are any disclosure requirements or ethics concerns that should be submitted to the State Ethics Commission (Commission) regarding any future agreement between Norwood and EImagine as Norwood begins his new business. Your inquiry primarily invokes consideration of IC 4-2-6-11, the post-employment rule; IC 4-2-6-9, the conflicts of interests related to decisions and votes rule; and IC 4-2-6-6, the confidentiality rule. We have included the relevant definitions and rules at the end of this opinion.

As an initial matter, we note that IC 4-2-6-1(a)(10) defines “employer” as “any person from whom a state officer or employee or officer’s or employee’s spouse received compensation.” Thus, the Commission may find that EImagine is Norwood’s employer for purposes of the Code, even though Norwood would be setting up his own LLC to contract with EImagine.

#### 1. IC 4-2-6-11 - Post-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 state employees from accepting employment: (1) as a lobbyist, (2) from an employer with whom he or she was engaged in the negotiation or administration of a contract on behalf of any state agency and was 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 he or she 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 he or she leaves state employment. In addition, a state employee prohibited from accepting employment from an employer if the circumstances surrounding the hire suggest the employer’s purpose is to influence the employee in his or her official capacity as a state employee.

Regarding subsection (1), Norwood will not be able to work as an executive branch lobbyist for one year after leaving state employment. We encourage Norwood to review IDOA’s Executive Branch Lobbying Manual to learn about the types of interactions with members of the executive branch, including FSSA, that are considered executive branch lobbying. **So long as Norwood’s intended post-employment opportunity with EImagine would not require executive branch lobbying, then this portion of the cooling off period would not apply to his post-employment opportunity.**

With regard to subsection (2), FSSA has a current contract with EImagine; however, you provide that Norwood has *never* interacted with EImagine. He was not involved in the negotiation or administration of FSSA's contract with EImagine, and he has never had any decision-making authority over that contract. **Accordingly, subsection (2) of the "cooling off" period should not prohibit Norwood or his LLC from performing work for EImagine once he leaves state employment.**

Subsection (3) also would not prohibit Norwood or his LLC from immediately working for EImagine because Norwood has not made a regulatory or licensing decision in his role at FSSA that directly applied to his LLC or to EImagine or either company's parent or subsidiary. So long as Norwood's prospective employment with EImagine is not offered to influence him in his official capacity as a state employee, then this prospective opportunity would not be in violation of the last part of the rule.

**Therefore, based on the information you provided, the prospective work Norwood and his LLC may perform for EImagine would not trigger the one-year cooling off period, and Norwood could begin his employment immediately after leaving his state position.**

**B. The particular matter restriction**

The second prohibition, commonly referred to as the "particular matter" restriction, prevents a state employee from working on the twelve types of matters listed in IC 4-2-6-11(a) if he or she 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, 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, Norwood is prohibited from representing or assisting EImagine or any other person in any particular matter in which he *personally and substantially* participated as a state employee.**

Based on the information you provided regarding Norwood's current position, it appears likely he may have been involved in business transactions and determinations while employed with FSSA. Norwood is prohibited from representing and assisting EImagine or any other person or entity on any business transactions, determinations or other particular matters in which he personally and substantially participated for the *entire life of the matter at issue*. Please note that Norwood can represent or assist EImagine or other entities with matters in which he was not personally and substantially involved while employed with FSSA and with any *new* matters. If you or Norwood have any questions regarding this opinion after reviewing the twelve matters listed above, you may follow up with our office at any time.

Should Norwood wish to represent or assist EImagine or any other entity on any particular matters in which he personally and substantially participated as a state employee, he may wish to

review formal advisory opinion 2018-FAO-007. The Commission found that the post-employment rule's "cooling-off" provision barred the employee from accepting employment with the same vendors she had supervised during her state employment; however, since the employee was establishing a professional practice (an LLC), the Commission held she could engage in business with those same vendors so long as she filed the disclosure form with the Commission within 180 days after leaving state employment. Although the Commission's opinion was issued with respect to the cooling-off provision rather than the particular matter restriction, the Commission is likely to find that the same provision applies to Norwood's LLC as long as he files the necessary disclosure form.

Alternatively, Norwood also has the option of seeking a formal advisory opinion or obtaining a post-employment waiver from the Commission if he wishes to represent or assist a person with a particular matter in which he was involved while with FSSA. If you or Norwood have questions regarding this process, please feel free to contact us for additional information.

## 2. IC 4-2-6-9 - Conflicts of Interests Related to Decisions and Votes

Because Norwood is still a state employee, he must also keep in mind the rule prohibiting conflicts of interests related to decisions and votes (IC 4-2-6-9). This rule prohibits a state employee from participating in any decision or vote, or matter related to any such decision or vote, if he or she has knowledge that various persons may have a "financial interest" in the outcome of the matter, including: (1) the state employee him/herself; (2) an immediate family member; (3) a business organization in which the state employee is serving as an officer, director, member, trustee, partner or employee, or (4) an organization with whom the state employee is negotiating or has an arrangement concerning prospective employment. Please note that this prohibition extends beyond merely the decision or vote on the matter to encompass any participation in that decision or vote.

The Commission may find that Norwood is negotiating prospective employment with EImagine, even though he is setting up an LLC to contract with EImagine. The Commission has determined that employment negotiations begin when there is a back and forth exchange. You provide that Norwood and EImagine have discussed his LLC subcontracting with EImagine to address its data management needs; thus, the Commission would likely find that employment negotiations have begun, and **Norwood is prohibited from participating in any matters related to a decision or vote for FSSA in which EImagine would have a financial interest.**

Based on the information you provided, it does not appear that Norwood currently participates in any decisions or votes in which EImagine or his LLC would have a financial interest; therefore, he has not yet identified a potential conflict of interests. If that should change in the future, please note that mere recusal from that matter is not enough. The rule also requires that he notify FSSA's appointing authority and ethics officer in writing and either (1) seek a formal advisory opinion from the Commission or (2) file a written disclosure **form** with our office in accordance with IC 4-2-6-9's notification requirements.

## 3. IC 4-2-6-6 - Confidential Information

Finally, Norwood should keep in mind the ethics rule pertaining to confidential information found at IC 4-2-6-6. IC 4-2-6-6 prohibits a state employee 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 Norwood or his LLC receives from EImagine does not result from information of a confidential nature that he learned in his position with FSSA, any such post-employment would not violate IC 4-2-6-6.

Thank you again for submitting your inquiry. Please let us know if you or Norwood have any questions regarding this opinion. 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 an informal advisory opinion, 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.

Respectfully,

Mark Mader  
Staff Attorney  
Office of the Inspector General

#### **IC 4-2-6-1**

##### **Definitions**

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

...

(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.

...

(11) "Financial interest" means an interest:

(A) in a purchase, sale, lease, contract, option, or other transaction between an agency and any person; or

(B) involving property or services. The term includes an interest arising from employment or

prospective employment for which negotiations have begun. The term does not include an interest of a state officer or employee in the common stock of a corporation unless the combined holdings in the corporation of the state officer or the employee, that individual's spouse, and that individual's unemancipated children are more than one percent (1%) of the outstanding shares of the common stock of the corporation. The term does not include an interest that is not greater than the interest of the general public or any state officer or any state employee.

...

- (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.

#### **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 4-2-6-6**

##### **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.

#### **IC 4-2-6-9**

##### **Conflict of economic interests; commission advisory opinions; disclosure statement; written determinations**

Sec. 9. (a) A state officer, an employee, or a special state appointee may not participate in any decision or vote, or matter relating to that decision or vote, if the state officer, employee, or special state appointee has knowledge that any of the following has a financial interest in the outcome of the matter:

- (1) The state officer, employee, or special state appointee.
- (2) A member of the immediate family of the state officer, employee, or special state appointee.
- (3) A business organization in which the state officer, employee, or special state appointee is serving as an officer, a director, a member, a trustee, a partner, or an employee.
- (4) Any person or organization with whom the state officer, employee, or special state appointee is negotiating or has an arrangement concerning prospective employment.

(b) A state officer, an employee, or a special state appointee who identifies a potential conflict of interest shall notify the person's appointing authority and ethics officer in writing and do either of the following:



(1) Seek an advisory opinion from the commission by filing a written description detailing the nature and circumstances of the particular matter and making full disclosure of any related financial interest in the matter. The commission shall:

(A) with the approval of the appointing authority, assign the particular matter to another person and implement all necessary procedures to screen the state officer, employee, or special state appointee seeking an advisory opinion from involvement in the matter; or

(B) make a written determination that the interest is not so substantial that the commission considers it likely to affect the integrity of the services that the state expects from the state officer, employee, or special state appointee.

(2) File a written disclosure statement with the commission that:

(A) details the conflict of interest;

(B) describes and affirms the implementation of a screen established by the ethics officer;

(C) is signed by both:

(i) the state officer, employee, or special state appointee who identifies the potential conflict of interest; and

(ii) the agency ethics officer;

(D) includes a copy of the disclosure provided to the appointing authority; and

(E) is filed not later than seven (7) days after the conduct that gives rise to the conflict.

A written disclosure filed under this subdivision shall be posted on the inspector general's Internet web site.

(c) A written determination under subsection (b)(1)(B) constitutes conclusive proof that it is not a violation for the state officer, employee, or special state appointee who sought an advisory opinion under this section to participate in the particular matter. A written determination under subsection (b)(1)(B) shall be filed with the appointing authority.

#### **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.

Thank you,

**Mark Mader**  
Staff Attorney  
Office of Inspector General  
315 West Ohio Street, Room 104  
Indianapolis, IN 46202  
Phone: (317) 234-3767  
[MMader@ig.in.gov](mailto:MMader@ig.in.gov)

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Eric Holcomb, Governor  
State of Indiana

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February 28, 2022

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

RE: Request for Formal Advisory Opinion for FSSA board membership

Dear Chairperson Noel and members of the Ethics Commission:

The Indiana Family and Social Services Administration (“FSSA”) requests a Formal Advisory Opinion from the State Ethics Commission regarding application of the State Code of Ethics as to a voting board membership position with the Indiana Health Information Exchange.

**Issue and Background:** Indiana Health Information Exchange (IHIE) is seeking to add a member from FSSA to their board, through updating of their bylaws, and the FSSA position would be a voting board member. IHIE has requested a FSSA voting member be added due to the needs of FSSA for certain information/data and FSSA having a unique voice/perspective on issues relating to exchange of health information, which can change what data is used/collected and how it is integrated to improve access to same. IHIE is a 501(c)(3) supporting organization. There is no known compensation available for this role on the IHIE board.

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

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



Additionally, the Indiana State Health Commissioner, Dr. Box, with IDOH, currently serves as a non-voting member of the IHIE board. At the February 2022 State Ethics Commission meeting, the issue of amending the IDOH IHIE board position, for Dr. Box or another IDOH employee, from non-voting to voting was approved with appropriate screening and application of the ethics code requirements. This request from FSSA is similar, with a breakdown of the background issues below.

**Current Relationship:** FSSA does not currently have representation on the IHIE board, and the FSSA board member would be added as a voting member. This is different from the IDOH position, which was previously non-voting, but will become voting. This would be FSSA's first position on the board for IHIE.

FSSA has at least three (3) active contracts with IHIE at present<sup>1</sup>. The first requires IHIE to provide a customized clinical data repository and reporting for FSSA's MOMII<sup>2</sup> program, including admission, discharge, and transfers (ADT) reporting regarding the usage of healthcare resources and reduced healthcare costs, clinical value reporting regarding clinical data from the data repository in consumable format, and care manager access to analyze data for a specific segment of the Medicaid population.

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

Finally, the third contract requires IHIE to work with FSSA and IDOH to refine the difference between quantitative pregnancy tests and qualitative results and other services related to the OB Navigator Program<sup>3</sup>.

FSSA would like to pursue a voting position on the IHIE board, to allow for a voice for data exchange and improving information for members and future members of FSSA services. Due to the current, and likely ongoing, contracts between FSSA and IHIE relating to information exchange and data sharing/refining, there is a potential that a FSSA employee, who serves as a voting member on the IHIE board could have a conflict of interest due to financial interest as a board member of a business organization. To avoid this, any FSSA employee who negotiates, administers, or oversees/implements any contracts with IHIE or with decision making/voting authority could be removed from consideration from the FSSA IHIE board membership and the selected state employee screened from issues relating to those contracts FSSA holds with IHIE.

As to confidential information, the Indiana Code of Ethics prevents state employees from benefiting from or divulging confidential information. Any FSSA IHIE board member will be reminded of this ethics requirement and avoid divulging any confidential information learned through state employment.

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<sup>1</sup> Related agreements include the data use agreement and joinder agreement related to the second contract.

<sup>2</sup> Maternal Opioid Misuse Indiana Initiative

<sup>3</sup> A program that connects pregnant women to family support providers in their own community. A family support provider offers free, personalized guidance and support to the woman during her pregnancy and for at least the first 12 months after her baby's birth.

FSSA is prepared to file a screen for the FSSA employee who would serve as the IHIE board member, if approved by the State Ethics Commission, to screen them from participation in decisions, votes, or matters relating to decisions or votes in which IHIE would have a financial interest.

A formal advisory opinion is being requested as to the matter of adding an FSSA board member to the IHIE board to ensure compliance with the Ethics Code, and to avoid any appearance of impropriety, as there are presently contracts between IHIE and FSSA. Thank you for your consideration.

Sincerely,

A handwritten signature in cursive script that reads "Jessica Keyes".

Jessica Keyes  
FSSA Ethics Officer