

**MINUTES OF THE MEETING OF  
THE INDIANA STATE ETHICS COMMISSION  
September 9, 2021**

**I. Call to Order**

A regular meeting of the State Ethics Commission (“Commission”) was called to order at 10:00 a.m. The meeting was held virtually using Microsoft Teams. Commission members present were Katherine Noel, chair; Sue Anne Gilroy; Kenneth Todd; and Rafael Sanchez. Staff present included Tiffany Mulligan, Chief Legal Counsel, Office of Inspector General; Jennifer Cooper, State Ethics Director; Luba Gore, Staff Attorney, Office of Inspector General; Mark Mader, Staff Attorney, Office of Inspector General; and Nathan Baker, Legal Assistant, Office of Inspector General.

Others present were: Tammera Glickman, Deputy General Counsel, Indiana Department of Administration; Ed Feigenbaum, Indiana Legislative Insight; Jessica Keyes, Ethics Officer, Family and Social Services Administration; Mattheus Mitchel, Compliance and Ethics Specialist, Department of Revenue; Christine McDonald, Internal Affairs Officer, Department of Child Services; Amber Nicole Ying, Director/Special Counsel, Compliance and Ethics and Ethics Officer, Department of Revenue; Keith Beesley, Attorney, State Personnel Department; John Walls, Ethics Officer and Chief Counsel of Advisory, Attorney General; James French, Attorney and Interim Ethics Officer, Indiana Department of Environmental Management; Ted Cotterill, General Counsel, Management Performance Hub; Alexander Van Gorp, Attorney, Indiana State Department of Health; Rachel Russell, Ethics Officer, Department of Child Services; Kathy Mills, Ethics Officer, Indiana Department of Environmental Management; Jennifer Thuma, Administrative Law Judge and Ethics Officer, Indiana Board of Tax Review; Master Trooper David Caswell, Instructor, Indiana State Police; Major Nila Miller-Cronk, Ethics Officer, Indiana State Police; and Major Anthony Casto, Indiana State Police.

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

Commissioner Sanchez moved to adopt the Agenda and Commissioner Todd seconded the motion which passed (4-0).

Commissioner Gilroy moved to approve the Minutes of the August 12, 2021, Commission Meeting and Commissioner Sanchez seconded the motion which passed (3-0). Commissioner Todd abstained due to his absence from the August Commission Meeting.

**III. Request for Formal Advisory Opinion**

2021-FAO-009

Master Trooper David Caswell, ISP Instructor

Major Nila Miller-Cronk, Ethics Officer

## Indiana State Police

Major Nila Miller-Cronk serves as Commander with the Office of Professional Standards and Ethics Officer for the Indiana State Police (ISP). She is requesting a Formal Advisory Opinion on behalf of Master Trooper David Caswell. Master Trooper Caswell serves as an Unarmed Response to Active Shooter Event (URASE) trained ISP instructor, in addition to performing other duties.

Master Trooper Caswell was trained in URASE in 2015. Master Trooper Caswell has off-duty employment through his company, DC Consulting LLC (LLC), that ISP has approved. The Indiana Toll Road Concession Company LLC (ITRCC) has asked the LLC to put together a Workplace Violence presentation to train their remote employees (mowing crews, toll takers and roadside workers) in dealing with an active shooter/violence situation.

ITRCC has requested to purchase Master Trooper Caswell's presentation and are asking that the presentation be approximately twenty to thirty minutes in length. Master Trooper Caswell has met with ITRCC to discuss what information they would like included in the presentation. He also has met with a marketing company to discuss cost for the preparation of the presentation. During these talks, ITRCC's Chief Operating Officer informed Master Trooper Caswell that ITRCC leases the Toll Road from the State of Indiana, and ITRCC does not receive any funding from the State. ITRCC is a subsidiary of IFM Global Fund.

Major Miller-Cronk requested an Informal Advisory Opinion (IAO) from the Office of Inspector General (OIG) on behalf of Master Trooper Caswell in July of 2021. In this request, she asked whether it would be permissible for Master Trooper Caswell to produce and sell the requested training to ITRCC through his LLC. The IAO advised that the opportunity would likely not create any conflicts of interests for Master Trooper Caswell but that Major Miller-Cronk could seek a Formal Advisory Opinion from the Commission if she wanted a final determination that this outside employment activity would not create a conflict of interests for Master Trooper Caswell.

After reviewing the IAO and having discussions with ISP legal personnel and executive staff, Major Miller-Cronk informed Master Trooper Caswell that ISP was denying his request to engage in the off-duty employment opportunity of providing the training to ITRCC. ISP's response to Master Trooper Caswell stated that "[t]his request from the [ITRCC] would be something you are paid by ISP to do as part of your assigned duties." The response also stated that if Master Trooper Caswell was interested in developing a Workplace Violence presentation for his off-duty employment, such work would only be permitted for out-of-state clients, not Indiana clients.

Master Trooper Caswell responded to the ISP denial of his request with additional information. Master Trooper Caswell provided that ITRCC was not seeking the URASE training that he could provide as a State Trooper. He provided that ITRCC had already received that training. They were looking to purchase a training program designed specifically for ITRCC with specific training modules geared towards their organization, including their policies and procedures, that they can then provide to their current and new employees. He further provided that he cannot alter the URASE presentation to fit the needs and customization that ITRCC needs. He added that he does not intend to use the URASE training he received through ISP for his outside employment venture. Rather, the program he wishes to provide to ITRCC is based on his research of other

workplace/violence prevention response training, other than the ISP URASE training, including: Run, Hide, Fight; Los Angeles Police Run, Hide, Fight training; OSHA Violence in the Workplace resources; and numerous other online articles and trainings.

Major Miller-Cronk is now requesting a Formal Advisory Opinion on behalf of Master Trooper Caswell regarding whether he can accept the opportunity to produce a customized training program for ITRCC through his LLC. In addition to the workplace violence training program, ITRCC has more recently approached Master Trooper Caswell, through his LLC, to produce an Impairment in the Workplace training. Major Miller-Cronk informed the Commission that the new information Master Trooper Caswell provided clarified that he would not be performing the same training he provides for ISP to ITRCC; therefore, ISP did not have the same objection they had to the original request.

The analysis stated the following:

*A. Outside employment*

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

A written advisory opinion issued by the Commission stating that an individual's outside employment does not violate subsection (a)(1) or (a)(2) is conclusive proof that the individual's outside employment does not violate subsection (a)(1) or (a)(2).

The Commission generally defers to an agency's Ethics Officer regarding outside employment opportunities because it views them as being in the best position to determine whether a conflict of interests might exist between an employee's state duties and an outside employment opportunity.

Regarding subsection (a)(1), nothing in the information Major Miller-Cronk provided indicates that Master Trooper Caswell's potential production and sale of the training programs for ITRCC through his LLC is inherently incompatible with his ISP position or would require his recusal from his official state duties to the extent that his ability to perform them would be materially impaired. The duties of each position are similar, but they do not overlap. Further, Master Trooper Caswell will be providing the training services through his LLC during his off-duty time.

As for subsection (a)(2), the Commission confirmed that this arrangement would not require Master Trooper Caswell to disclose confidential information learned in the course of state employment; therefore, such employment will not violate this subsection.

The Commission also confirmed that Master Trooper Caswell is aware that he is prohibited from using his official ISP position to secure unwarranted privileges or exemptions that subsection (a)(3) prohibits.

Accordingly, the Commission finds that Master Trooper Caswell's outside employment opportunity in producing and selling the customized training programs for ITRCC while also working for ISP would not create a conflict of interests under IC 4-2-6-5.5.

#### *B. Conflict of interests-decisions and votes*

IC 4-2-6-9 (a)(1) prohibits Master Trooper Caswell from participating in any decision or vote, or matter relating to that decision or vote, if he has a financial interest in the outcome of the matter. Similarly, IC 4-2-6-9(a)(3) prohibits Master Trooper Caswell from participating in any decision or vote, or matter relating to that decision or vote, if a business organization in which he is serving as an officer, a director, a member, a trustee, a partner, or an employee has a financial interest in the matter.

The Code defines "financial interest" in IC 4-2-6-1(a)(11) to include "an interest . . . in a purchase, sale, lease, contract, option, or other transaction between an agency and any person; or . . . involving property or services. . ."

A potential conflict of interests would arise for Master Trooper Caswell if he participates in any matter related to a decision/vote in which his LLC has a financial interest. This restriction goes beyond the actual decision/vote and prohibits his participation in any matter related to the decision/vote.

Based on the information provided, the Commission finds that Master Trooper Caswell is not in a position at ISP in which he would participate in decisions or votes, or matters related to such decisions or votes, in which his LLC would have a financial interest in the outcome.

If, however, Master Trooper Caswell's circumstances change and a potential conflict of interests is identified in the future, he must follow the disclosure requirements in IC 4-2-6-9(b), including notifying his agency's ethics officer and appointing authority in writing and either (1) seek a formal advisory opinion from the Commission; or (2) file a written disclosure form with the OIG.

#### *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 any state agency. The Code defines "financial interest" to include an interest arising from employment. The Commission has interpreted this rule to apply when a state employee derives compensation from a contract between a state agency and a third party. This prohibition however does not apply to an employee that does not participate in or have official

responsibility for any of the activities of the contracting agency, provided certain statutory criteria are met.

Master Trooper Caswell's outside business has received requests to provide customized training presentations that ITRCC would purchase from the LLC. According to the information provided by Major Miller-Cronk, ITRCC does not receive any funding from ISP or the State. Accordingly, the Commission finds that Master Trooper Caswell's compensation for production of these training presentations would not be derived from a state contract or state fund, and this rule would not apply.

*D. Confidential information*

Master Trooper Caswell is prohibited under 42 IAC 1-5-10 and 42 IAC 1-5-11 from benefitting from, permitting any other person to benefit from or divulging information of a confidential nature except as permitted or required by law. Similarly, IC 4-2-6-6 prohibits Master Trooper Caswell from accepting any compensation from any employment, transaction or investment that is entered into or made as a result of material information of a confidential nature. The term "person" is defined in IC 4-2-6-1(a)(13) to encompass both an individual and a corporation. In addition, the definition of "information of a confidential nature" is set forth in IC 4-2-6-1(a)(12).

To the extent Master Trooper Caswell is exposed to or has access to such confidential information in his position with ISP, he would be prohibited not only from divulging that information but from ever using it to benefit any person, including his outside business or its clients, in any manner.

*E. Use of state property and Ghost employment*

IC 4-2-6-17 prohibits Master Trooper Caswell from using state property for any purpose other than for official state business unless the use is expressly permitted by a general written agency, departmental or institutional policy or regulation. Likewise, 42 IAC 1-5-13 prohibits Master Trooper Caswell from engaging in, or directing others to engage in, work other than the performance of official duties during working hours, except as permitted by general written agency, departmental or institutional policy or regulation.

To the extent that Master Trooper Caswell observes these provisions in his outside training work, such outside employment activity would not violate these ethics laws.

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

**IV. Consideration of Final Report**

In the Matter of Paul Sipples  
Case Number 2020-06-0183  
Indiana Office of Inspector General

State Ethics Director Jen Cooper presented the Final Report draft to the Commission for their approval, reminding them that they had approved the settlement agreement in this case at their August meeting and that the Final Report would be the final disposition in this case.

Commissioner Sanchez moved to approve the Agreed Settlement and Commissioner Gilroy seconded the motion which passed (4-0).

**V. Consideration of Final Report**

In the Matter of Megan Arszman-Weisbrodt

Case Number 2020-10-0310

Indiana Office of Inspector General

State Ethics Director Jen Cooper presented the Final Report draft to the Commission for their approval, reminding them that they had approved the settlement agreement in this case at their August meeting and that the Final Report would be the final disposition in this case.

Commissioner Gilroy moved to approve the Agreed Settlement and Commissioner Sanchez seconded the motion which passed (4-0).

**VI. Consideration of Final Report**

In the Matter of Elston Boldery

Case Number 2018-01-0019

Indiana Office of Inspector General

State Ethics Director Jen Cooper presented the Final Report draft to the Commission for their approval, reminding them that they had approved the settlement agreement in this case at their August meeting and that the Final Report would be the final disposition in this case.

Commissioner Sanchez moved to approve the Agreed Settlement and Commissioner Gilroy seconded the motion which passed (4-0).

**VII. Director's Report**

State Ethics Director, Jen Cooper, indicated that OIG staff has issued 19 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.

She continued that a new Ethics Training for Fall 2021 is being worked on which will hopefully be completed and rolled out in October.

Finally, Director Cooper reported that the 2021 Legal and Ethics Conference has been officially scheduled for November 16, 2021 with hopes that it will be held in-person this year. Staff is working on securing speakers for the event with three hours of CLE available.

### **VIII. Adjournment**

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

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

SECRETARY OF STATE  
STATE OF INDIANA  
200 W. WASHINGTON STREET, INDIANAPOLIS, IN 46204  
[WWW.SOS.IN.GOV](http://WWW.SOS.IN.GOV)

September 3, 2021

**IC 4-2-6-11**

**Post-employment waiver**

As the Appointing Authority of the Office of the Indiana Secretary of State I am filing this waiver of the application of the Code of Ethics' post-employment restriction as it applies to **Lindsey Mayes** in her possible post-employment with Sondhi Solutions, LLC.

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 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.

See **Attachment A** for details and the agency's consultation with Office of Inspector General staff upon which the decision to grant this post-employment waiver is based.

- 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:

Ms. Mayes is not an agency fiscal officer and does not have agency contracting authority. With respect to the Agency's limited engagements with the potential future employer and intermittent Agency Vendor (Sondhi Solutions, LLC), Ms. Mayes decision-making authority was not substantial and her authority and involvement in two prior, completed contracts was not substantial. Her authority and involvement in a potential future engagement for which the vendor has submitted a proposal was not substantial. Nonetheless, in her capacity as IT director she had administrative awareness and involvement with the vendor's engagements with the Agency as well as a degree of discretionary decision-making authority (though unutilized). Out of an abundance of caution and to avoid the appearance of impropriety, she requested a waiver of the one-year post-employment cooling off period.



The Agency authorized Ms. Mayes to investigate outside employment opportunities commensurate with her experience, qualifications and aspirations. Ms. Mayes gave timely notice to her supervisor and the agency ethics officer when she began discussing employment with the prospective employer. Upon receiving notice of her post-employment discussions, the Agency screened Ms. Mayes from involvement, decision-making, or exercise of authority involving the prospective employer.

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

The potential position with Sondhi Solutions, LLC is Corporate Director of Operations, a senior executive position. The "broad-band" responsibilities of this position extend beyond the company's engagement with individual clients, specific industries served, specific service offerings, specific geography etc. The position represents a significant career advancement from her current employment as Secretary of State's office IT department and project management director. The position does not require or contemplate involvement with any Secretary of State's office *particular matters*, utilization of any confidential information, legislative or executive branch lobbying or regulatory or licensing activity.

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:

The Agency has no reason to believe that pursuit of, or offer of, employment factored into any of Ms. Mayes discretionary authority, decisions or actions with respect to Sondhi Solutions, LLC, or utilization of confidential information. The prospective engagement does not contemplate or require any involvement with previous or potential *particular matters*. Future Business engagements with the Secretary of State's office is not an objective of the prospective employment.

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:

The Secretary of State's office believes that access to career development and advancement opportunities, particularly to women and minorities, serves the public interest. In instances where there is little or no identifiable detriment to the state, the office believes that *not* waiving application of post-employment restrictions would serve as a *disincentive* to individuals in high-demand fields such as IT and cybersecurity, to engage in government employment. Also, the agency believes that the public interest is not served if employees in high-demand sectors feel the need to disengage from government employment early to avoid unwavering application of post-employment restrictions.

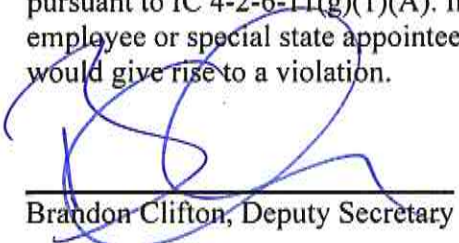
5. Please explain the extent of economic hardship to the employee if the request for a waiver is denied:

Due to size and scope limitations, opportunities for significant career advancement within state agencies can be extremely limited. Opportunities for advancement to senior executive management positions outside of state government can be rare as well. Ms. Mayes may suffer significant and life-affecting economic hardship if her aspirations and demonstrated capability for continued career advancement are blocked or delayed due to route and unwavering application of the state post-employment restrictions.

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.

  
\_\_\_\_\_  
Brandon Clifton, Deputy Secretary of State

9/3/21  
\_\_\_\_\_  
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).

  
\_\_\_\_\_  
Jerold A. Bonnet, Ethics Officer,  
Office of the Indiana Secretary of State

9/3/2021  
\_\_\_\_\_  
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](mailto:info@ig.in.gov)

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

## **Bonnet, Jerry (SOS)**

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**Subject:** FW: Secure Ethics Informal Advisory Opinion; Bonnet (Mayes); SOS; Post-Employment

**From:** Gore, Lyubov <LGore1@ig.IN.gov>  
**Sent:** Thursday, September 2, 2021 4:21 PM  
**To:** Bonnet, Jerry (SOS) <jbonnet@sos.IN.gov>  
**Subject:** Secure Ethics Informal Advisory Opinion; Bonnet (Mayes); SOS; Post-Employment

Jerry,

Thank you for contacting our office to request ethics advice in your capacity as General Counsel and Ethics Officer for the Indiana Secretary of State (SOS). We understand that you are seeking advice on behalf of Lindsey Mayes, the SOS IT Director, regarding any post-employment restrictions that would apply to her if she leaves state employment.

Lindsey began her employment with SOS in January of 2019. You provide that, from the commencement of Lindsey's employment, SOS was aware that Lindsey's desired career path included advancement to executive management. Consistent with her performance and career objectives, in 2020, Lindsey earned the additional titles of Project Management Office Director and Deputy Chief of Staff. Lindsey has participated in the development and administration of IT service contracts, but she does not have contracting authority for SOS and is not an SOS fiscal officer.

In recent months, a new Secretary of State assumed leadership of SOS, and the Deputy Secretary of State/Chief of Staff announced that he would depart SOS no later than November of 2021. In July of 2021, Lindsey made inquiries to SOS about the possibility of her appointment to the Deputy Secretary of State/Chief of Staff position. Lindsey was informally advised that it was not likely she would receive the promotion and that, given her interest in advancement to a more senior executive position, she was welcome to pursue employment opportunities outside SOS.

You write that, due to persistent staffing shortages in the IT industry, IT professionals, such as Lindsey are frequently subject to the attention of employment recruiters. In late July, Lindsey was informed of open senior IT positions at Sondhi Solutions, LLC (Sondhi), an Indianapolis based, regional, diversified IT services company. Sondhi is an IT vendor with SOS. In August, Lindsey attended a meeting with Sondhi to discuss employment opportunities. Lindsey learned that Sondhi was looking to fill a senior executive position (Director of Operations) for which she appeared to be qualified. Because Sondhi has contracted with SOS, Lindsey informed Sondhi that she would not be in a position to consider an employment offer before consulting with SOS about the applicability of post-employment restrictions. Lindsey subsequently made inquiries with the SOS' Chief of Staff and with you about pursuing employment with Sondhi.

Sondhi's relationship with SOS has previously consisted of a six-month IT consulting project that concluded in June 2019; a one-time purchase of AV equipment by SOS' Communications Department in 2021; and a cybersecurity assessment project currently being negotiated by the Deputy Secretary of State/Chief of Staff. It appears likely that Sondhi will be selected as the vendor for the cybersecurity assessment project. Lindsey provided information about operations under her authority and participated in the development and administration of the three contracts, but she did not engage in financial negotiations, make recommendations or



exercise contracting authority. You provide that SOS has no regulatory or licensing involvement with Sondhi and that Lindsey will not serve as a lobbyist for Sondhi.

You have met with Lindsey regarding this post-employment opportunity and made her aware that she may not use privileged or confidential SOS information in pursuit of, or in the course of, her post-employment. You also made Lindsey aware that, depending on the particulars of her involvement with SOS' engagements with Sondhi, she could be subject to a one-year "cooling off" period before beginning employment with or receiving compensation from Sondhi. You also notified Lindsey that, to the extent that she personally and substantially participated in "particular matters" involving Sondhi, she may not ever represent or assist Sondhi with those matters.

You provide that SOS has encouraged Lindsey to pursue private-sector employment opportunities; that SOS has no reason to believe or suspect that Lindsey has, or would ever, utilize confidential information in pursuit of employment, or in the course of employment with Sondhi; that SOS has no reason to believe or suspect that Lindsey exerted influence over contract development or administration with Sondhi in pursuit of an employment opportunity with Sondhi; that SOS will require that Sondhi's two concluded SOS engagements and one potential future engagement would be identified as "particular matters" forever barring Lindsey from representing or assisting Sondhi with those matters; and that SOS believes a waiver for Lindsey of the one-year cooling off period restriction with respect to pursuing and possibly accepting employment with Sondhi is appropriate.

You inquire whether, under the Code of Ethics (Code), Lindsey would be permitted to leave state employment with SOS and immediately begin working for Sondhi. 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.

### **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 Lindsey from accepting employment: (1) as a lobbyist, (2) from an employer with whom 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 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 she leaves state employment. In addition, Lindsey is prohibited from accepting employment from an employer if the circumstances surrounding the hire suggest the employer's purpose is to influence Lindsey in her official capacity as a state employee.

Regarding subsection (1), Lindsey will not be able to work as an executive branch lobbyist for one year after leaving state employment. Based on the information you provided regarding Lindsey's prospective employment with Sondhi, it does not appear that Lindsey will serve as a lobbyist or perform any actions as a lobbyist in Indiana. We recommend that Lindsey review IDOA's [Executive Branch Lobbying Manual](#) to learn about the types of interactions with members of the executive branch that are considered executive branch lobbying. **So long as Lindsey's intended post-employment opportunity would not require executive branch lobbying, then this portion of the cooling off period would not apply to Lindsey's post-employment opportunity.**



Based on the information you provided, it appears that Lindsey has been engaged in the administration of contracts with Sondhi while she has been employed with SOS. Specifically, you write that there have been two past contracts between SOS and Sondhi and a cybersecurity assessment project currently being negotiated between Sondhi and SOS. Lindsey provided information about operations under her authority and participated in the development and administration of the three contracts, but she did not engage in financial negotiations, make recommendations or exercise contracting authority. It is unclear whether Lindsey had discretionary decision-making authority over the contracts, even if she did not exercise such authority.

The State Ethics Commission (Commission) has interpreted “in a position to make a discretionary decision” broadly. Based on the description you provided regarding Lindsey’s involvement with these contracts, it is likely that the Commission would find that Lindsey could have exercised discretionary decision making authority over the contracts in her role as Deputy Chief of Staff with SOS. We recommend that Lindsey request a formal advisory opinion from the Commission for a final determination as to whether she would be subject to the one-year cooling off period. More information on the formal advisory opinion process can be found here: <https://www.in.gov/ig/request-advice/formal-advisory-opinions/>.

Alternatively, you provide that SOS would be willing to seek a post-employment waiver for Lindsey. A post-employment waiver would allow Lindsey to accept a position with Sondhi immediately after leaving state employment. Post-employment waivers must be provided by the appointing authority of the agency and then be approved by the Commission at one of their public meetings prior to the employee starting work for the new employer. The requirements for a post-employment waiver are included in IC 4-2-6-11(g). More information on post-employment waivers can be found here: <https://www.in.gov/ig/file/post-employment-waiver/>

With respect to subsection (3), it does not appear that Lindsey has been involved in any regulatory or licensing decisions that directly applied to Sondhi in her position with SOS. Thus, subsection (3) would not apply to Lindsey’s prospective employment with Sondhi.

We note that SOS was engaged in contract negotiations with Sondhi at the time that Lindsey was offered the employment opportunity. Because Sondhi had previously contracted with SOS, Lindsey informed Sondhi that she would not be in a position to consider an employment offer before consulting with SOS about the applicability of the post-employment restrictions. As long as Lindsey’s prospective employment with Sondhi was not offered to her to influence her in her official capacity as a state officer, then this prospective opportunity would not be in violation of the last part of the rule; however, Lindsey should be aware of the appearance of impropriety that this situation may create. SOS should consider implementing a screen to ensure that Lindsey has no further contact with Sondhi in her official role with SOS during the duration of employment negotiations (see Section 2 of this opinion for additional analysis regarding a potential conflict of interests under IC 4-2-6-9).

**Therefore, based on the information you provided, the prospective position with Sondhi may trigger the one-year cooling off period, and Lindsey could not begin her employment immediately after leaving her state position unless she obtains a post-employment waiver.**

#### B. The particular matter restriction

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

You write that Lindsey provided information about operations under her authority and participated in the development and administration of three contracts with Sondhi. You also provide that SOS will require that Sondhi's two concluded SOS engagements and one potential future engagement would be identified as "particular matters" forever barring Lindsey from representing or assisting Sondhi with those matters. We agree that these matters should be considered particular matters for purposes of the post-employment rule. **The particular matter restriction would prohibit Lindsey from working on these matters and any other contracts or other particular matters for Sondhi or other future employer if she personally and substantially participated in those particular matters as a state employee for SOS.** This restriction extends for the entire life of the matter at issue.

Please note Lindsey will be able to represent or assist Sondhi with contracts and other matters in which she was not personally and substantially involved while employed with SOS and with any *new* matters. Further, if SOS or Lindsey is interested in pursuing a waiver, the Commission may also waive the particular matter restriction, as well as the cooling off period.

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

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

Because Lindsey is still a state employee, she 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 has determined that employment negotiations begin when there is a back-and-forth exchange. Based on the information you provided regarding Lindsey's interaction with Sondhi, it appears that employment negotiations have begun for purposes of this rule. Lindsey is, therefore, prohibited from participating in any matters related to a decision or vote in which Sondhi would have a financial interest, including the current contract negotiations.

Based on the information you provided regarding Lindsey's involvement with the contract negotiations with Sondhi, Lindsey has an identified potential conflict of interests. Please note that mere recusal from the matter is not enough. The rule also requires that Lindsey notify SOS's appointing authority and you 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, Lindsey 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 Lindsey receives from Sondhi does not result from information of a confidential nature that she learned in her position with SOS, any such post-employment would not violate IC 4-2-6-6. You provide that SOS has no reason to believe or suspect that Lindsey has, or would ever, utilize confidential information in pursuit of employment, or in the course of employment with Sondhi. Thus, this rule should not present a problem for Lindey.

Thank you again for submitting your inquiry. Please let us know if you 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.

Sincerely,

Lyubov Gore  
Staff Attorney  
Office of Inspector General

*Please take a few moments to provide feedback on your experience:*  
<https://www.surveymonkey.com/r/OIGInformals>. *Thank you!*

## **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.

...

(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.

...

(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 4-2-6-6**

##### **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
  - 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,

**Lyubov Gore**

Staff Attorney

Office of Inspector General

315 West Ohio Street, Room 104

Indianapolis, IN 46202

Phone: (317) 234-3993

[LGore1@ig.in.gov](mailto:LGore1@ig.in.gov)

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To: IG Info <[info@ig.IN.gov](mailto:info@ig.IN.gov)>; Cooper, Jennifer <[JCooper@ig.IN.gov](mailto:JCooper@ig.IN.gov)>; Cook, David (IG) <[DaCook@ig.IN.gov](mailto:DaCook@ig.IN.gov)>; Baker, Nathaniel P <[NBaker@ig.IN.gov](mailto:NBaker@ig.IN.gov)>

Subject: Advice

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## Formstack Submission For: **Informal Advisory Opinions**

Submitted at 09/01/21 1:11 PM

Name:	Jerry Bonnet
Email:	<a href="mailto:jbonnet@sos.in.gov">jbonnet@sos.in.gov</a>
Phone:	(317) 232-6534
State Agency:	Indiana Secretary of State
Description of Your State Occupation:	General Counsel and Agency Ethics Officer, requesting a confidential informal advisory opinion concerning post-employment restrictions on behalf of Lindsey Mays, an employee of the agency.

What is your ethics question?:

Lindsey Mays began employment with the Secretary of State in January 2019 as IT Director. From commencement of her employment it was mutually known that her desired career path included advancement to executive management. Consistent with her performance and career objectives, in 2020 Ms. Mays earned additional titles of Project Management Office Director, and Deputy Chief of Staff. Ms. Mays has participated in the development and administration of IT service contracts but does not have contracting authority and is not an agency fiscal officer.

In recent months a new Secretary of State assumed leadership of the Agency and the Deputy Secretary of State/Chief of Staff announced that he would depart the agency no later than November 2021. In July 2021 Ms. Mays made inquires to the Agency about the possibility of her appointment to the Deputy Secretary of State/Chief of Staff position. Ms. Mays was informally advised by the Agency that it was not likely she would receive the promotion to Deputy Secretary of State/Chief of Staff and that given her interest in advancement to a more senior executive position, she was welcome to pursue employment opportunities outside the agency.



Due to persistent staffing shortages in the IT industry, IT professionals, such as Ms. Mays are frequently subject to the attention of employment recruiters. In late July Ms. Mays was informed of open senior IT positions at Sondhi Solutions, LLC, ([www.sondhisollutions.com](http://www.sondhisollutions.com)) an Indianapolis based, regional, diversified IT services company, and occasional IT vendor to the Agency. In August Ms. Mays attended a meeting with Sondhi Solutions to discuss employment opportunities. She learned that the company was looking to fill a senior executive position (Director of Operations) for which she appeared to be qualified. Because the company has been an agency vendor, Ms. Mays informed them that she would not be in position to consider an employment offer before consulting with the Agency about the applicability of post-employment restrictions. Ms. Mays subsequently made inquiries with the Agency Chief of Staff and me (Jerold Bonnet, Ethics Officer) about pursuing employment with the company – resulting in this request for a confidential ethics advisory.

Sondhi Solutions history with the Agency consists of the following: a) a six-month (\$44,520.) IT consulting project concluded in June 2019; b) a one-time purchase of AV equipment (\$13,040.) by the Agency Communications Department in 2021; and c) a cybersecurity assessment project currently being negotiated by the Deputy Secretary of State/Chief of Staff. It appears likely that Sondhi Solutions will be selected as the vendor for the cybersecurity assessment project. Ms. Mays provided information about operations under her authority and participated in the development and administration of the three contracts (all prior to discussing employment with the vendor) but did not engage in financial negotiations, making recommendations or exercising contracting authority. The Agency has no regulatory or licensing involvement with the vendor and service as a lobbyist is not at issue.

On August 31st I conducted a review of post-employment restrictions with Ms. Mays. Ms. Mays is aware that under no circumstances could she ever use privileged or confidential information in pursuit of, or in the course of, post-employment. Ms. Mays is aware that depending on particulars of her involvement with the Agency's engagements with the vendor that she could be subject to a one-year "cooling off" period before employment or receiving compensation from that vendor. Also, to the extent that she personally and substantially participated in "particular matters" involving the vendor, she may not ever, represent or assist the vendor with those matters.

The Agency's initial assessment is as follows:

- a) For lack of suitable career advancement positions, the Agency authorized Ms. Mays to pursue outside employment opportunities.
- b) The Agency has no reason to believe or suspect that Ms. Mays has, or would ever, utilize confidential information in pursuit of employment, or in the course of employment with the vendor.
- c) The Agency has no reason to believe or suspect that Ms. Mays exerted influence over contract development or administration with the vendor in pursuit of an employment opportunity with the vendor.
- d) With respect to an employment opportunity with the vendor, out of an abundance of caution, the Agency would require Ms. Mays and the vendor's

agreement that vendor's two concluded Agency engagements and one potential future engagement are "particular matters" forever barring the employee from representing or assisting the vendor with those matters.

e) Subject to Ms. Mays agreement concerning permanent restriction on use of confidential information and involvement with the particular matters identified, the Agency believes a waiver of the one-year cooling off period restriction with respect to pursuing and possibly accepting employment with the vendor is appropriate.

Guidance from the Inspector General's on this matter is appreciated.

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Formstack, 11671 Lantern Road, Suite 300, Fishers, IN 46038

SECRETARY OF STATE  
STATE OF INDIANA  
200 W. WASHINGTON STREET, INDIANAPOLIS, IN 46204

October 12, 2021

Indiana Ethics Commission  
315 W. Ohio St. Room 104  
Indianapolis, IN 46202

Re: 10/14/21 Consideration of post-employment restriction waive for Lindsey Mays

Ladies and Gentlemen,

Brandon Clifton will not be available to appear on behalf of the Office of the Indiana Secretary of state in the above referenced matter.

By this letter, in my capacity as Deputy Secretary of State, I authorize Jerold A. Bonnet, our General Counsel to appear and represent the office at the State Ethics Commission's October 14<sup>th</sup> meeting.

Truly yours,



Rachel Hoffmeyer, Deputy Secretary of State  
Indiana Secretary of State Holli Sullivan  
Email: [rahoffmeyer@sos.in.gov](mailto:rahoffmeyer@sos.in.gov)  
Office: [317.234.9682](tel:317.234.9682)

CC: Office of the Inspector General





Eric Holcomb, Governor  
State of Indiana

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

October 4, 2021

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 Updated Formal Advisory Opinion for Dr. Maria Finnell

Dear Chairperson Noel and members of the Ethics Commission:

The Indiana Family and Social Services Administration (“FSSA”), on behalf of Dr. Maria Finnell, requests an Updated Formal Advisory Opinion from the State Ethics Commission regarding application of the State Code of Ethics to an outside employment opportunity. Dr. Finnell has appeared before the Ethics Commission previously regarding this same outside employment, which was found to not create a conflict of interests after careful consideration of the underlying facts (see 2020-FAO-007). Recently, Dr. Finnell was promoted to Chief Medical Officer, effective August 23, 2021, and out of an abundance of caution, due to her new role within the agency, Dr. Finnell is requesting an updated opinion regarding continued outside employment with Riley Hospital for Children through a contract with Indiana University Health Physicians (“IU Health Physicians”).

Dr. Finnell was formerly employed as the Director of Clinical Operations and Associate Medical Director for the Office of Medicaid Policy and Planning from August 15, 2019, to August 22, 2021. As of August 23, 2021, Dr. Finnell is the Chief Medical Officer for FSSA, replacing Dr. Dan Rusyniak. Dr. Finnell has worked at Riley Hospital for Children, in the Division of Neonatology in the Department of Pediatrics since August 1, 2019. During her tenure as Director of Clinical Operations and Associate Medical Director for the Office of Medicaid Policy and Planning, Dr. Finnell sought a formal advisory opinion and continued her work with IU Health Physicians. Dr. Finnell wishes to continue this outside employment with IU Health Physicians after the shift to Chief Medical Officer of FSSA.

On or about July 9, 2020, the Ethics Commission issued a formal opinion regarding Dr. Finnell’s request to engage in outside employment with IU Health Physicians at Riley Hospital for Children. After thorough review and testimony from Dr. Finnell and the FSSA ethics officer, the



Ethics Commission did not find a violation of the Ethics Code in Dr. Finnell's work with IU Health Physicians at Riley Hospital for Children.

As Chief Medical Officer for FSSA, Dr. Finnell's duties include providing leadership to the medical directors in each FSSA division, and providing expertise and leadership to the agency, including policy advising and program planning. Dr. Finnell's role as Chief Medical Officer does not include any contract administration or rulemaking. In her previous role as Director of Clinical Operations and Associate Medical Director, Dr. Finnell was responsible for overseeing the OMPP Medical Director, the Pharmacy Team, and the Coverage and Benefits Team. Additionally, Dr. Finnell assisted the Program Integrity Team, the team responsible for reviewing suspected cases of fraud and abuse and making recommendations as to same, when the Medical Director for OMPP was unavailable.

Dr. Finnell has been working a few clinics per month in the Department of Pediatrics, Division of Neonatology at Riley Hospital for Children, including a four (4) hour clinic shift on Thursday mornings. Dr. Finnell appreciates the benefit of continuing to have interaction with clinical providers and patients, she and believes that these continued shifts increase her skillset and credibility in her role as Chief Medical Officer with FSSA. Seeing patients in a local setting allows Dr. Finnell the ability to predict issues and hear feedback regarding FSSA services.

In her new position as Chief Medical Officer, Dr. Finnell's outside employment duties and structure will not substantively change. She will continue to work with the Department of Pediatrics for a few clinics per month at Riley Hospital for Children. Due to her recent promotion, Dr. Finnell seeks an updated formal opinion regarding whether her change in role with FSSA would impact her outside employment opportunities.

Dr. Finnell will continue to pay for her own licensing fees. She has not and will not serve in a managerial or leadership role with Riley Hospital for Children or IU Health Physicians, her direct employer. Dr. Finnell is paid hourly by IU Health Physicians and her pay is based only on her contracted hourly rate, and not based on the amount/number of patients she sees, treatments, or services provided.

Riley Hospital for Children and IU Health Physicians are Indiana Medicaid enrolled Providers. Each have Indiana Health Coverage Program provider agreements with FSSA and receive Medicaid reimbursement. There are no known active contracts between FSSA and Riley Hospital for Children directly; however, Riley Hospital for Children is associated with Indiana University Health ("IU Health"). IU Health Physicians is also affiliated with IU Health and FSSA's divisions have approximately four (4) active contracts with IU Health and associated entities. The contracts with IU Health are at the division level, and the FSSA divisions have ownership of the contracts. Dr. Finnell will not sign or negotiate these contracts as Chief Medical Officer. To avoid a potential conflict under IC 35-44.1-1-4, neither Riley Hospital for Children nor IU Health Physicians will use funds from contracts with FSSA to pay Dr. Finnell; however, her fees may be paid from general Medicaid funds.

Pursuant to IC 12-8-1.5-10.5, the office of the secretary [of FSSA] is designated as the single state agency for administration of the state Medicaid program under IC 12-15 and the office of

the secretary shall develop and coordinate Medicaid policy for the state. Therefore, Dr. Finnell may make decisions and recommendations involving Medicaid providers; however, her decisions would apply broadly to Medicaid providers in general, and not Medicaid providers at Riley Hospital for Children or IU Health Physicians specifically. For example, if reimbursement rates were revised for Medicaid providers, they would apply to all relevant Medicaid providers. Additionally, while Riley Hospital for Children or IU Health Physicians may have infrequent issues to address specifically with FSSA, there is little direct contact between these institutions and FSSA generally.

Should there be a situation whereby a decision would need to be made by Dr. Finnell in her role as Chief Medical Officer related specifically and solely to Riley Hospital for Children or IU Health Physicians, Dr. Finnell understands and acknowledges that pursuant to IC 4-2-6-9, she will be screened from participating in any decision or vote, or matter relating to that decision or vote. Should such an issue arise, the Deputy Secretary/Chief of Staff, Michael Gargano, would address any screened matter.

Dr. Finnell also understands the duty to maintain confidential information learned through her employment with the state and that she is prevented from divulging confidential information or allowing anyone, including but not limited to, Riley Hospital for Children and IU Health Physicians from benefiting from same.

Dr. Finnell further understands that she cannot use state time for outside employment, and Dr. Finnell has no concerns about her continued ability to meet all state work hours. During her Thursday morning clinic, Dr. Finnell has flexibility to step out if an emergency arises, and does charting at other times, outside of regular working hours. Dr. Finnell has not had any issues meeting her regular work hour requirements previously working these clinics.

The previous Chief Medical Officer, Dr. Rusyniak, now the Secretary of FSSA, also sought a formal advisory opinion from the Ethics Commission for a similar situation where he worked shifts at Eskenazi Hospital while acting as FSSA's Chief Medical Officer, and the Ethics Commission found in that instance, that there was not a conflict of interest after careful consideration of many factors (2018-FAO-017). Dr. Finnell's situation is analogous in many ways to Dr. Rusyniak's work at Eskenazi.

Based on the information above, I would request a determination by the Ethics Commission regarding Dr. Finnell's outside employment opportunities with her changing role to Chief Medical Officer. Thank you for your consideration.

Sincerely,



Jessica Keyes  
FSSA Ethics Officer