

**MINUTES OF THE MEETING OF  
THE INDIANA STATE ETHICS COMMISSION  
May 11, 2017**

**I. Call to Order**

A regular meeting of the State Ethics Commission (“Commission”) was called to order at 10:00 a.m. Members present included James N. Clevenger, Chairperson; Bob Jamison; Daryl Yost; and Peter Nugent (arrived late). Staff present included Lori Torres, Inspector General; Jennifer Cooper, Ethics Director; Stephanie Mullaney, Compliance Officer/Staff Attorney; Tiffany Mulligan, Chief Legal Counsel; Matthew Savage, Staff Attorney; Cynthia Scruggs, Director of Administration; and Celeste Croft, Legal Assistant , Office of Inspector General.

Others present were Miah Michaelsen, Deputy Director, Indiana Arts Commission; Tiffany Bailey, former Family Case Manager Supervisor, Department of Child Services; Erica Kueber, former Family Case Manager Supervisor, Department of Child Services; Erica Sullivan, Ethics Officer/Attorney, Department of Child Services; Erien Birdsong, Program Director, Family & Social Services Administration; Latosha Higgins, Ethics Officer/Attorney, Family & Social Services Administration; Tony Hardman, General Counsel, Department of Labor; Laura McKee, Ethics Officer/Women Veterans Coordinator, Department of Veteran’s Affairs; Adrienne Brune, Attorney, State Department of Health; Deana Smith, Attorney, State Department of Health; Rachel Russell, Legal Affairs, State Department of Health; Hilari Sautbine, Attorney , State Department of Health; Joan Blackwell, Chief of Staff, Attorney General’s Office; Kathleen Mills, Ethics Officer/Attorney, Department of Environmental Management; Rick Ruble, Commissioner, Department of Labor; and Mark Tidd, Ethics Officer/Prequalification & Permits Director, Department of Transportation.

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

Commissioner Yost moved to adopt the Agenda and Commissioner Jamison seconded the motion which passed (3-0). Commissioner Jamison moved to approve the Minutes of the April 13, 2017 Commission Meeting and Commissioner Yost seconded the motion which passed (3-0).

**III. Request for Formal Advisory Opinion**

**17-I-7 Miah Michaelsen, Deputy Director/Ethics Officer  
Indiana Arts Commission**

Miah Michaelsen serves as the Deputy Director and Ethics Officer for the Indiana Arts Commission (IAC). The IAC is an agency of state government funded by the Indiana General Assembly and the National Endowment for the Arts, a federal agency. On behalf of the people of Indiana, the IAC advocates engagement with the arts to enrich the quality of individual and community life. The IAC encourages the presence of the arts in

communities of all sizes while promoting artistic quality and expression. The IAC advocates arts development opportunities across the State and stewards the effective use of public and private resources for the arts. It stimulates public interest in, and participation with, Indiana's diverse arts resources and cultural heritage. The IAC works to enhance public awareness of the arts, lifelong learning opportunities, and arts education programs. Governed by a 15-member board of gubernatorial appointees, the IAC serves all citizens and regions of the State.

The IAC awards more than 500 grants annually to arts, culture and community-based providers, and IAC-funded activities take place in 91 of 92 counties in the State. These grants are adjudicated and funding recommendations are made by citizen panels and appointed citizen Commissioners. Grants are adjudicated based on criteria, which include community engagement, organizational excellence, project management and artistic quality, and each grantee is bound by a contract that identifies the specific funded activities and requires specific reporting including public crediting of the state and federal funds awarded by the IAC. Final reporting by grantees and monitoring of funded activities provide the compliance protocol for the agency to ensure judicious use of public funds. Not only has this protocol been utilized by this agency for nearly the entirety of its 50 year history, but also by its federal funding partner, the National Endowment for the Arts, as well as other state arts agencies around the country.

Activity attendance for the purposes of monitoring publicly-funded activities is an important component of the IAC's work and is done by both staff and Commissioners. Although the agency cannot attend every activity due to time constraints, efforts are made to attend as many as possible throughout the State.

While some funded activities are free, most require a paid admission charge or fee to attend. The IAC respectfully requests a formal advisory opinion on 42 IAC 1-5-1 as it relates to the IAC's current policy (adopted in 2006) related to activity tickets for IAC staff and appointed Commissioners for grant monitoring purposes. The policy reads as follows:

No IAC Commissioner, staff member or advisory panel member, by reason of his or her relationship to the IAC, may obtain, or seek to obtain complimentary tickets or waiver of admission fees from any cultural organization in the state of Indiana (currently receiving or not receiving IAC funding), except for use in official site visits. Grantees may be asked to make available to the Commission one (1) complimentary ticket to IAC-funded programs and events for the purpose of on-site monitoring. (Indiana Arts Commission Policy Manual, adopted 2006)

The IAC interprets the intent of the gift rule as written as a prohibition of individual state employees or other citizens in an official public capacity from accepting "entertainment" (such as tickets) from persons who have or who seek business relationships with state government as part of a larger list of other examples of disallowed "gifts". The IAC contends that an event ticket utilized so that a grantee's compliance with a grant award can be monitored is not a gift to an individual staff member or Commissioner, but instead

a means by which the IAC is allowed access to the activity to fulfill its monitoring requirements related to the expenditure of public funds.

Unlike other state agencies where compliance monitoring can occur without a ticket (inspecting the work of a highway contractor, for example), the monitoring of an activity that requires a fee for the public to attend provides a unique challenge for the IAC. It is the longstanding view of the IAC that the inclusion of "entertainment" in the gift rule is meant to capture those types of activities that might be considered "gifts" for those individuals that do not work for an agency such as the IAC that funds many of these "entertainment" activities as its core service to citizens throughout the State. In this case, a strict interpretation of "entertainment" in the gifts rule as it relates to event admission or tickets is particularly detrimental to the IAC.

The IAC requested an opinion from the Commission regarding whether IAC staff and special state appointees are allowed, under the Code of Ethics, to continue monitoring publically funded activities through the ticket procedures outlined in its Policy Manual.

The ethics rule pertaining to gifts, 42 IAC 1-5-1, prohibits a state employee or special state appointee from knowingly soliciting, accepting, or receiving any: 1) gift; 2) favor; 3) service; 4) entertainment; 5) food; 6) drink; 7) travel expenses; or 8) registration fees from a person who has a business relationship with the employee's or appointee's agency or is seeking to influence an action by the employee or appointee in his or her official capacity. The gift rule enumerates eight exceptions to this broad prohibition and also allows an agency's appointing authority to waive application of the rule, subject to certain requirements. The definition of "business relationship" in IC 4-2-6-1(a)(5) includes the dealings a person has with an agency seeking, obtaining, establishing, maintaining, or implementing a pecuniary interest in a contract (including a grant agreement) with an agency.

Ms. Michaelsen explained that the IAC provides approximately 500 grants around the State. These grants are provided to organizations and individuals in order to fund arts and cultural activities. Attending arts and cultural events put on by IAC grantees is an important way for the IAC to monitor grant compliance. While some funded activities are free, most require a paid admission charge or fee to attend. The IAC adopted a policy in 2006 that makes it clear that IAC employees and commissioners may not seek or accept complimentary tickets from any cultural organization in the State except for use in official site visits. Ms. Michaelsen advised that the IAC occasionally asks grantees to make available to the IAC one complimentary ticket to IAC-funded programs and events for the purpose of on-site monitoring.

The advisory opinion stated the following analysis:

The Commission finds that the acceptance of these tickets by the IAC is permissible under the rule as long as the tickets are provided to the IAC as an agency for grant compliance purposes and not directly to individual employees or special state appointees for non-official state business purposes such as entertainment that other members of the public are required to pay for. This finding aligns with the IAC's policy on acceptance of such tickets

that has been in place since 2006. The Commission determined that this policy is appropriate but made several recommendations to ensure that individual employees or special state appointees are not personally accepting the tickets for entertainment purposes.

First, the Commission recommended that the IAC develop a form that employees and special state appointees can use to document their attendance at an event for monitoring purposes and provide information to the IAC regarding their observations related to the compliance, or noncompliance, with the grant requirements.

The Commission also recommended that IAC amend the policy to include a standard procedure for accepting and distributing complimentary tickets. Specifically, all complimentary tickets should be sent to and distributed by the IAC staff in a standardized way so that tickets are not being sent directly to any individual employees or special state appointees. The IAC should make efforts to notify grantees that tickets to their events should be sent to the IAC main office and not to individual staff members or commissioners. The IAC should distribute the tickets received to an assigned staff member or commissioner who will be able to attend the event and monitor whether the public funds are being used in accordance with the grant agreement.

The Commission recommended policy updates and found that the IAC may continue to accept complimentary tickets from entities who have a business relationship with the IAC by virtue of grant agreements as long as the tickets will be used by a state employee or special state appointee to gain access to an IAC funded event for grant monitoring purposes.

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

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

##### **17-I-8 Tiffanie Bailey, former Family Case Manager Supervisor Erica Sullivan, Ethics Officer/Attorney Department of Child Services**

Tiffanie Bailey is a former state employee of the Indiana Department of Child Services (DCS). Ms. Bailey left her position as Family Case Manager (FCM) Supervisor on March 28, 2017. Ms. Bailey is seeking employment with a DCS provider (the Provider). As an FCM Supervisor, Ms. Bailey was not involved in approving contracts for any providers and was not a voting member at the Regional Services Council Meetings where service needs in the community were identified and potential providers were discussed. Ms. Bailey provides that her only interactions with the Provider was through the approval of referrals sent to her by other FCMs.

As part of the provider referral process, an FCM chooses what services a family involved with DCS needs. The FCM then drafts a referral outlining their recommendations regarding what provider should be working with the family and what services are needed. The FCM then sends

this referral to their supervisor for review and approval. As an FCM Supervisor, Ms. Bailey reviewed these referrals to ensure that the document did not contain any grammatical errors, that the FCM provided the contact information for the family, and that the FCM included enough information in the referral so the selected provider would know exactly what services to provide to the family. If the referral met these standards, Ms. Bailey would approve the referral. If these standards were not met, she did not approve it. According to Ms. Bailey, her approval or denial was not based on any other factors.

Ms. Bailey requested advice from the Commission to determine if her involvement in the provider referral process would trigger post-employment restrictions that would prohibit her from accepting employment with the Provider. Erica Sullivan, Chief Counsel for Legal and Internal Affairs and Ethics Officer for DCS, attended the Commission's meeting with Ms. Bailey and provided additional information on the Provider's contract with DCS.

The advisory opinion stated the following analysis:

*A. Confidential Information*

IC 4-2-6-6 prohibits Ms. Bailey 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. Ms. Bailey confirmed that she would not be required to utilize any confidential information in her prospective employment with the Provider. So long as any compensation Ms. Bailey receives does not result from confidential information, her potential employment with the Provider would not violate IC 4-2-6-6.

*B. Post-Employment*

IC 4-2-6-11 consists of two separate limitations: a "cooling off" period and a "particular matter" restriction. The first prohibition, commonly referred to as the cooling off or revolving door period, prevents Ms. Bailey from accepting employment from an employer for 365 days from the date that she left state employment under various circumstances. Employer is defined in IC 4-2-6-1(a)(10) as any person from whom a state employee receives compensation. Therefore this restriction includes a client or customer of a self-employed individual.

First, Ms. Bailey 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 (IDOA).

Ms. Bailey provided that she does not anticipate engaging in any lobbying activities in her prospective employment with the Provider. To the extent that Ms. Bailey does not engage in executive branch lobbying for one year after leaving state employment, her intended

employment with the Provider would not violate this provision of the post-employment rule.

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

Ms. Bailey indicates that she was not a voting member at the Regional Services Council meetings and she did not approve any contracts awarded to the Provider. Accordingly, the Commission finds that Ms. Bailey was not involved in the negotiation of the Provider's contract with the State.

The Commission further finds that Ms. Bailey's role in the approval of referrals to the Provider does not amount to making a discretionary decision that affected the administration of the Provider's contract with DCS.

Ms. Bailey approved DCS referrals to the Provider after reviewing these referrals for grammar and completeness. Ms. Sullivan advised that these approvals may have some impact on the Provider's contract as the FCMs would not be able to send DCS children and families to the Provider for services without Ms. Bailey's approval of the referrals. However, Ms. Sullivan also advised that all DCS provider contracts are negotiated and administered through the DCS Central Office and not at the local level. According to Ms. Sullivan, decisions regarding the administration of the Provider's contracts are made by Deputy Directors at the DCS Central Office. There is some input at the local level and Family Case Manager Supervisors, Local Office Directors, and Regional Managers may provide local feedback on a provider's contract, but the ultimate decision-making on all contracts is done through the Central Office. Accordingly, the Commission finds that Ms. Bailey is not prohibited under this provision from accepting employment with the Provider immediately.

Third, Ms. Bailey is prohibited from accepting employment for 365 days from the last day of her state employment from an employer for whom she made a regulatory or licensing decision that directly applied to the employer or its parent or subsidiary. Nothing in the information provided indicates that Ms. Bailey ever made any regulatory or licensing decisions that directly applied to the Provider at any time during her state employment.

The Commission finds that this provision does not apply to Ms. Bailey because she has not made any regulatory or licensing decisions that applied to the Provider as a DCS employee. Consequently, she is not prohibited under this provision from accepting employment with the Provider immediately.

Fourth, Ms. Bailey is prohibited from accepting employment from an employer if the circumstances surrounding the hire suggest the employer's purpose is to influence her in

her official capacity as a state employee. The information presented to the Commission does not suggest that the Provider has extended an offer of employment to Ms. Bailey in an attempt to influence her in her capacity as a state employee, because Ms. Bailey has already left state employment. Accordingly, the Commission finds that this restriction would not apply to her intended employment opportunity with the Provider.

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

Ms. Bailey indicated that the Provider would ensure that she is not assigned to or involved in cases involving families that she referred to the Provider or worked with while at DCS. Accordingly she does not anticipate working on any particular matters that she participated in as a state employee, but understands that she could work on new matters involving DCS clients.

The Commission finds that Ms. Bailey must ensure compliance with the particular matter restriction and refrain from assisting or representing the Provider, or any other person, on any of the particular matters listed above that she may have personally and substantially worked on during her state employment regardless of whether it involves the Provider.

The Commission found that Ms. Bailey's post-employment opportunity with the Provider would not violate the post-employment restrictions found in IC 4-2-6-11.

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

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

**17-I-9 Erica Kueber, former Family Case Manager Supervisor  
Erica Sullivan, Ethics Officer/Attorney  
Department of Child Services**

Erica Kueber is a former state employee of the Indiana Department of Child Services (DCS). Ms. Kueber left her position as Family Case Manager (FCM) Supervisor on April 28, 2017.

Ms. Kueber is seeking employment with a DCS provider (the Provider). As an FCM Supervisor, Ms. Kueber was not involved in approving contracts for any providers and was not a voting member at the Regional Services Council Meetings where service needs in the community were identified and potential providers were discussed. Ms. Kueber provides that her only interactions with the Provider was through the approval of referrals sent to her by other FCMs.

As part of the provider referral process, an FCM chooses what services a family involved with DCS needs. The FCM then drafts a referral outlining their recommendations regarding what provider should be working with the family and what services are needed. The FCM then sends this referral to their supervisor for review and approval. As an FCM Supervisor, Ms. Kueber reviewed these referrals to ensure that the document did not contain any grammatical errors, that the FCM provided the contact information for the family, and that the FCM included enough information in the referral so the selected provider would know exactly what services to provide to the family. If the referral met these standards, Ms. Kueber would approve the referral. If these standards were not met, she did not approve it. According to Ms. Kueber, her approval or denial was not based on any other factors.

Ms. Kueber requested advice from the Commission to determine if her involvement in the provider referral process would trigger post-employment restrictions that would prohibit her from accepting employment with the Provider. Erica Sullivan, Chief Counsel for Legal and Internal Affairs and Ethics Officer for DCS, attended the Commission's meeting with Ms. Kueber and provided additional information on the Provider's contract with DCS.

The advisory opinion stated the following analysis:

*A. Confidential Information*

IC 4-2-6-6 prohibits Ms. Kueber 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. Ms. Kueber confirmed that she would not be required to utilize any confidential information in her prospective employment with the Provider. So long as any compensation Ms. Kueber receives does not result from confidential information, her potential employment with the Provider would not violate IC 4-2-6-6.

*B. Post-Employment*

IC 4-2-6-11 consists of two separate limitations: a "cooling off" period and a "particular matter" restriction. The first prohibition, commonly referred to as the cooling off or revolving door period, prevents Ms. Kueber from accepting employment from an employer for 365 days from the date that she left state employment under various circumstances. Employer is defined in IC 4-2-6-1(a)(10) as any person from whom a state employee receives compensation. Therefore this restriction includes a client or customer of a self-employed individual.



First, Ms. Kueber 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 (IDOA).

Ms. Kueber provided that she does not anticipate engaging in any lobbying activities in her prospective employment with the Provider. To the extent that Ms. Kueber does not engage in executive branch lobbying for one year after leaving state employment, her intended employment with the Provider would not violate this provision of the post-employment rule.

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

Ms. Kueber indicates that she was not a voting member at the Regional Services Council meetings and she did not approve any contracts awarded to the Provider. Accordingly, the Commission finds that Ms. Kueber was not involved in the negotiation of the Provider's contract with the State.

The Commission further finds that Ms. Kueber's role in the approval of referrals to the Provider does not amount to making a discretionary decision that affected the administration of the Provider's contract with DCS.

Ms. Kueber approved DCS referrals to the Provider after reviewing these referrals for grammar and completeness. Ms. Sullivan advised that these approvals may have some impact on the Provider's contract as the FCMs would not be able to send DCS children and families to the Provider for services without Ms. Kueber's approval of the referrals. However, Ms. Sullivan also advised that all DCS provider contracts are negotiated and administered through the DCS Central Office and not at the local level. According to Ms. Sullivan, decisions regarding the administration of the Provider's contracts are made by Deputy Directors at the DCS Central Office. There is some input at the local level and Family Case Manager Supervisors, Local Office Directors, and Regional Managers may provide local feedback on a provider's contract, but the ultimate decision-making on all contracts is done through the Central Office. Accordingly, the Commission finds that Ms. Kueber is not prohibited under this provision from accepting employment with the Provider immediately.

Third, Ms. Kueber is prohibited from accepting employment for 365 days from the last day of her state employment from an employer for whom she made a regulatory or licensing decision that directly applied to the employer or its parent or subsidiary. Nothing in the

information provided indicates that Ms. Kueber ever made any regulatory or licensing decisions that directly applied to the Provider at any time during her state employment.

The Commission finds that this provision does not apply to Ms. Kueber because she has not made any regulatory or licensing decisions that applied to the Provider as a DCS employee. Consequently, she is not prohibited under this provision from accepting employment with the Provider immediately.

Fourth, Ms. Kueber is prohibited from accepting employment from an employer if the circumstances surrounding the hire suggest the employer's purpose is to influence her in her official capacity as a state employee. The information presented to the Commission does not suggest that the Provider has extended an offer of employment to Ms. Kueber in an attempt to influence her in her capacity as a state employee, because Ms. Kueber has already left state employment. Accordingly, the Commission finds that this restriction would not apply to her intended employment opportunity with the Provider.

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

Ms. Kueber indicated that the Provider would ensure that she is not assigned to or involved in cases involving families that she referred to the Provider or worked with while at DCS. Accordingly she does not anticipate working on any particular matters that she participated in as a state employee, but understands that she could work on new matters involving DCS clients.

The Commission finds that Ms. Kueber must ensure compliance with the particular matter restriction and refrain from assisting or representing the Provider, or any other person, on any of the particular matters listed above that she may have personally and substantially worked on during her state employment regardless of whether it involves the Provider.

The Commission found that Ms. Kueber's post-employment opportunity with the Provider would not violate the post-employment restrictions found in IC 4-2-6-11.

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

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

**17-I-10 Erien Birdsong, Program Director E7  
Latosha Higgins, Ethics Officer/Attorney  
Family & Social Services Administration**

Erien Birdsong serves as a Contract Compliance Manager for the Office of Medicaid Policy and Planning (OMPP) within the Indiana Family and Social Services Administration (FSSA). Latosha Higgins serves as the Deputy General Counsel and Ethics Officer for FSSA.

The OMPP oversees the contracts for four Managed Care Entities (the MCEs): Managed Health Services (MHS), MD Wise, Anthem, and CareSource. Each of these MCEs have their own contracts with the State to provide managed care services. In addition, each MCE is assigned a separate Contract Compliance Manager.

Ms. Birdsong serves as the Contract Compliance Manager for MHS. Ms. Birdsong's responsibilities in this position include looking over data specific to MHS. Ms. Birdsong is responsible for assessing liquidated damages when necessary for MHS, facilitating on-site visits for MHS, and serving as the liaison for compliance issues regarding MHS. She is not involved in this process for the other MCEs.

Ms. Birdsong is interested in leaving state employment and accepting a position as Regulatory Compliance Manager for CareSource. Ms. Birdsong does not complete any compliance work for CareSource and its contract with the State. Her work as Contract Compliance Manager is limited to MHS and their contract with the State.

Ms. Birdsong participated in the RFP proposal for all four of the MCEs listed above, including CareSource, in early 2016. Ms. Higgins provided that the RFP was a large-scale project and Ms. Birdsong was a member of a team consisting of 25 to 30 people working on this RFP. She participated in scoring limited sections of the RFP, and her score was only part of the overall process and was not binding to the total scoring of each MCE. Specifically, she provided technical evaluations for seven sections of the RFP scoring for the Healthy Indiana Plan portion of the project. Her participation included sharing her thoughts regarding how each MCE would function within the Healthy Indiana Plan specifics that were assigned to her. Besides the Healthy Indiana Plan portion, there were two other portions for scoring, the Common and Hoosier Healthwise portions. In addition to these three components, the RFP scoring also involved a financial portion, other business counsels, and the OMPP executive team. Ms. Birdsong provided and Ms. Higgins confirmed that Ms. Birdsong's input had a very small impact on the contract awards for the MCEs and Ms. Birdsong was not part of the team that made the final decision to award a contract to CareSource.

Ms. Birdsong requested advice to determine if any post-employment restrictions would apply to her employment opportunity with CareSource.

The advisory opinion stated the following analysis:

*A. Confidential Information*

IC 4-2-6-6 prohibits Ms. Birdsong 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. Ms. Birdsong confirmed that she would not be required to utilize any confidential information in her prospective employment with CareSource. So long as any compensation Ms. Birdsong receives does not result from confidential information, her potential employment with CareSource would not appear to violate IC 4-2-6-6.

*B. Conflict of Interests*

IC 4-2-6-9(a)(1) prohibits Ms. Birdsong from participating in any decision or vote, or matter related to that decision or vote, if she has a financial interest in the outcome of the matter. Similarly, IC 4-2-6-9(a)(4) prohibits her from participating in any decision or vote, or matter related to that decision or vote, in which a person or organization with whom she 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, Ms. Birdsong would be prohibited from participating in any decision or vote, or matter related to a decision or vote, in which she, by virtue of her employment negotiations with CareSource or CareSource itself would have a financial interest in the outcome of the matter.

Ms. Birdsong has indicated that she does not currently participate in any compliance-related activities with CareSource. She is only responsible for working with MHS. Therefore, her current position does not require her to participate in decisions or votes, or matters related to such decisions or votes, in matters in which CareSource has a financial interest.

Ms. Birdsong must ensure she does not participate in any decisions or votes, or matters relating to any such decisions or votes, in which she or CareSource has a financial interest in the outcome of the matter for the remainder of her state employment. Further, if she identifies a potential conflict of interests, she must follow the steps prescribed in IC 4-2-6-9(b) to avoid violating this rule.

*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 Ms. Birdsong from accepting employment from an employer for 365 days from the date that she leaves state employment under various circumstances.

First, Ms. Birdsong 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.

Ms. Birdsong provided that she does not anticipate engaging in any lobbying activities in her prospective employment with CareSource. To the extent that Ms. Birdsong does not engage in executive branch lobbying for one year after leaving state employment, her intended employment with CareSource would not violate this provision of the post-employment rule.

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

Ms. Birdsong did not participate in the administration of CareSource’s individual contract with FSSA that resulted from the MCE RFP. Ms. Birdsong’s contract compliance work was limited to the MHS contract only. Ms. Birdsong did participate in the RFP process for all four of the MCEs as part of a team that scored technical sections of the Healthy Indiana Plan portion of the RFP for all four of the MCE contracts. The RFP process is part of contract negotiations that eventually led to CareSource’s contract with FSSA.

The Commission finds that Ms. Birdsong’s limited participation in the scoring of this RFP is not enough to constitute a discretionary decision affecting the outcome of the negotiation of a contract. Accordingly, the Commission finds that Ms. Birdsong would not be subject to the cooling off restriction for her role in this RFP process and she may accept employment with CareSource immediately upon leaving state employment.

Third, Ms. Birdsong is prohibited from accepting employment for 365 days from the last day of her state employment from an employer for whom she made a regulatory or licensing decision that directly applied to the employer or its parent or subsidiary. Nothing in the information provided indicates that Ms. Birdsong ever made any regulatory or licensing decisions that directly applied to CareSource at any time during her state employment.

The Commission finds that this provision does not apply to Ms. Birdsong because she has not made any regulatory or licensing decisions that applied to CareSource as a state

employee. Consequently, she is not prohibited under this provision from accepting employment with CareSource immediately upon leaving state employment.

Fourth, Ms. Birdsong is prohibited from accepting employment from an employer if the circumstances surrounding the hire suggest the employer's purpose is to influence her in her official capacity as a state employee. The information presented to the Commission does not suggest that CareSource has extended an offer of employment to Ms. Birdsong in an attempt to influence her in her capacity as a state employee. Accordingly, the Commission finds that this restriction would not apply to her intended employment opportunity with CareSource.

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

Ms. Higgins stated that Ms. Birdsong was a member of a team of 25-30 people involved in scoring portions of the RFP that led to the MCE contracts. CareSource was awarded one of these contracts. Ms. Birdsong provides that her participation in the scoring process was limited to the technical sections of one portion of the RFP. Ms. Higgins provided that the RFP was a large-scale project and Ms. Birdsong had a very limited role in the overall process. Ms. Higgins advised that Ms. Birdsong was not involved in any final decisions regarding any of the MCE contracts, including CareSource's contract.

The Commission finds that Ms. Birdsong's participation in CareSource's contract, through her participation in portions of the MCE RFP, was not personal or substantial. Accordingly, the particular matter restriction would not apply to the CareSource contract and Ms. Birdsong would be able to assist CareSource with this contract, including serving as a liaison between CareSource and the State regarding services under the contract.

The Commission found that Ms. Birdsong's post-employment opportunity with CareSource would not violate the post-employment restrictions found in IC 4-2-6-11.

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

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

Ms. Cooper stated that since the April 13, 2017 meeting, the Office of Inspector General provided thirty-six informal advisory opinions, the majority of which were on the subjects of post-employment restrictions, conflicts of interest, outside employment, the use of state property, and ghost employment.

Ms. Cooper further stated that the Office of Inspector General was in the process of drafting legislative proposals for the June 22, 2017 Executive Session, and that anyone with input or suggestions should contact the Office of Inspector General, and ask to speak with Inspector General Torres or herself.

### **VIII. Adjournment**

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

The public meeting adjourned at 10:58 a.m.

MAY 25 2017

IC 4-2-6-11

Post-employment waiver

FILED

As the Appointing Authority of the Indiana Department of Correction, I am filing this waiver of the application of the Code of Ethics' post-employment restriction as it applies to Susan Lockwood in his/her post-employment with Oakland City University.

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

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

IC 4-2-6-11(b)(1): 365 day required "cooling off" period before serving as a lobbyist.

**IC 4-2-6-11(b)(2): 365 day required "cooling off" period before receiving compensation from an employer for whom the state employee or special state appointee was engaged in the negotiation or administration of a contract and was in a position to make a discretionary decision affecting the outcome of such negotiation or administration.**

IC 4-2-6-11(b)(3): 365 day required "cooling off" period before receiving compensation from an employer for which the former state employee or special state appointee made a directly applicable regulatory or licensing decision.

IC 4-2-6-11(c): Particular matter restriction prohibiting the former state employee or special state appointee from representing or assisting a person in a particular matter involving the state if the former state officer, employee, or special state appointee personally and substantially participated in the matter as a state worker. *(Please provide a brief description of the specific particular matter(s) to which this waiver applies below):*

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

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



**IDOC has a contract with Oakland City University to provide education services in thirteen of its adult correctional facilities and one of its juvenile correctional facilities. Dr. Lockwood is the Director of Juvenile Education, providing oversight to the education programs in the juvenile correctional facilities, so she works closely with Oakland City University.**

**She has substantial decision-making authority over policies within the education programs, but she does not have substantial decision-making authority over the contract. She was part of the six-member evaluation team that subsequently awarded the contract to Oakland City University. However, the team voted unanimously to award the contract to Oakland City University, so her vote did not make a significant difference in the outcome of the award.**

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

**Dr. Lockwood would be the Vice President of Oakland City University, providing primary oversight to the operations of the University.**

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:

**Dr. Lockwood's employment with Oakland City University is not likely to involve substantial contact with IDOC. The OCU contract with IDOC is a small part of the over-all mission of the university. Her work will not include direct administration or oversight of the IDOC contract.**

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:

**Dr. Lockwood's intended employment with Oakland City University is consistent with the public interest based on her involvement in decision making that will impact those individuals attending the postsecondary institution. Her strong relationships with the Indiana Department of Workforce Development and the Indiana Department of Education will be valuable to the University and the State as both work to prepare Hoosier citizens for careers and jobs.**

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

**There will not be an economic hardship to Dr. Lockwood if the request for the waiver is denied. Dr. Lockwood's salary at IDOC is higher than the salary she would make with Oakland City University.**

C. Signatures

1. Appointing authority/state officer of agency

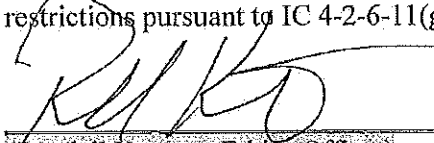
By signing below I authorize the waiver of the above-specified post-employment restrictions pursuant to IC 4-2-6-11(g)(1)(A). In addition, I acknowledge that this waiver is limited to an employee or special state appointee who obtains the waiver before engaging in the conduct that would give rise to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

  
\_\_\_\_\_  
(Robert E. Carter, Jr., Commissioner)

5/24/2017  
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).

  
\_\_\_\_\_  
(Randall Koester, Ethics Officer)

May 24, 2017  
DATE

D. Approval by State Ethics Commission

<b>FOR OFFICE USE ONLY</b>	
Approved by State Ethics Commission	
James Clevenger, 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.*

**Croft, Celeste**

---

**From:** Auxier, Margaux  
**Sent:** Thursday, May 25, 2017 10:26 AM  
**To:** IG Info  
**Cc:** Koester, Randy; Carter, Robert (Rob)  
**Subject:** Post Employment Waiver IC 4-2-6-11  
**Attachments:** 201705250928.pdf

Please see attachment for a post-employment waiver for Susan Lockwood.

Thank you!

Margaux Auxier  
Administrative Assistant - Commissioner's Office  
Indiana Department of Correction  
302 W Washington St. Room E334  
Indianapolis, IN 46204  
317-233-5541





STATE OF INDIANA  
Department of Correction

Indiana Government Center—South

302 W. Washington Street • Indianapolis, Indiana 46204-2738

Phone: (317) 232-5711 • Fax: (317) 232-6798 • Website: [www.in.gov/idoc/](http://www.in.gov/idoc/)

Eric J. Holcomb  
Governor

Robert E. Carter Jr.  
Commissioner

June 14, 2017

Mr. James Clevenger, Chairman  
Indiana State Ethics Commission  
315 West Ohio Street, Room 104  
Indianapolis, IN 46202

Subject: Waiver of Post-employment for Dr. Susan Lockwood

Dear Chair Clevenger:

As Commissioner of the Indiana Department of Correction, I am writing to express my support and approval of the waiver of post-employment restrictions for Dr. Susan Lockwood's proposed employment as Vice President of Administration and Finance with Oakland City University (OCU).

I regret that I am unable to appear in person to present the waiver. Unfortunately, I have a schedule conflict which takes me to Washington, DC on the date of the Ethics Commission's meeting. When I became aware of this scheduling conflict last week, I asked my Chief Legal Counsel, Robert Bugher, to join Dr. Lockwood and attend the Commission meeting on my behalf. I understand that I.C. 4-2-6-11(g) requires the state officer or appointing authority authorizing the waiver to present it to the Commission, and I greatly appreciate your granting my request for this alternative arrangement in advance of the June 22, 2017 meeting.

I support and approve this waiver for several reasons: (1) The selection of OCU as the Department's education provider was not a unilateral decision by Dr. Lockwood, but a decision made by representatives of three other agencies; (2) Dr. Lockwood's responsibilities as Vice President of Oakland City would not directly involve her in the services provided under the contract, except to the extent she may have to resolve a human resource issue, or address an internal budget matter; and (3) her overarching responsibility with OCU would remain consistent with her responsibility as a Director of Juvenile Education for the Department of Correction; to provide quality education to the youth and adults of Indiana.

Thank you for your consideration of this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert E. Carter Jr.", is written over a horizontal line.

Rob Carter



## IC 4-2-6-11

### Post-employment waiver

As the Appointing Authority of the Indiana Department of Natural Resources, I am filing this waiver of the application of the Code of Ethics' post-employment restriction as it applies to Monique Riggs in his/her post-employment with Indiana Rural Water Association.

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

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

- IC 4-2-6-11(b)(1): 365 day required "cooling off" period before serving as a lobbyist.
- IC 4-2-6-11(b)(2): 365 day required "cooling off" period before receiving compensation from an employer for whom the state employee or special state appointee was engaged in the negotiation or administration of a contract and was in a position to make a discretionary decision affecting the outcome of such negotiation or administration.
- IC 4-2-6-11(b)(3): 365 day required "cooling off" period before receiving compensation from an employer for which the former state employee or special state appointee made a directly applicable regulatory or licensing decision.
- IC 4-2-6-11(c): Particular matter restriction prohibiting the former state employee or special state appointee from representing or assisting a person in a particular matter involving the state if the former state officer, employee, or special state appointee personally and substantially participated in the matter as a state worker.  
*(Please provide a brief description of the specific particular matter(s) to which this waiver applies below):*

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

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

Ms. Riggs is currently employed as an Environmental Scientist III. Her job duties do not include decision-making authority over policies, rules, or contracts. Job duties include compliance with statutes, decisions of the Natural Resources Commission via rule and water supply contracts, as well as those of her supervisor and assistant director at the Division of Water. Primary duties are to administer Indiana's licensing and continuing education program for water well drillers and pump installers under IC 25-39 & 312 IAC 13. Secondary is the water supply program under 14-25-2 & 312 IAC 6.3 and assisting with collection of field data for water resource evaluations and water rights concerns and conflicts under IC 14-25-4.

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

The position with the Indiana Rural Water Association is for Program Manager. The role would focus on facilitating and organizing trainings, workshops and conferences that provide required continuing education for water and wastewater operators (of public water supply and wastewater facilities) to maintain their certifications. The certification programs for water operators and wastewater operators are administered by the Indiana Department of Environmental Management. The Program Manager would not personally conduct the actual training of the operators. The organization also provides training and education for the governing boards of member water utilities. A very small portion of the trainings this organization provides gets reviewed for water well drillers and pump installers.

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 role of Program Manager at the Indiana Rural Water Association will not have substantial contact with the Indiana Department of Natural Resources, nor involve any former work product by Monique Riggs. Substantial contact would take place with the Indiana Department of Environmental Management which has regulatory authority over water and wastewater operators and the associated continuing education with those certifications. There may be minimal contact with the Indiana Department of Natural Resources for review of any continuing education events that may be applicable to the well drillers and pump installers. This type of contact would be in the best interest of the license holders currently regulated by the Indiana Department of Natural Resources, as providing additional opportunities for training to maintain licensure.

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:

Employment with the Indiana Rural Water Association would continue to benefit the citizens of Indiana by providing well-educated water utility operators and wastewater operators. The role of these individuals is extremely important to provide safe drinking water and to process wastewater for our Indiana communities. The members of the Indiana Rural Water Association are typically smaller utilities that need additional

assistance in keeping their operators up to date. In many cases, there is a lack financial resources to allow for these smaller utilities to send operators to educational events. Many prefer the local nature of the Indiana Rural Water Association as well. This helps keep water & sewer rates reasonable for Indiana citizens as well.

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

It would be financially devastating to have to wait 365 days to work after leaving State employment to take this job. Ms. Riggs and her family would face extreme hardship and potentially lose her home. Her father, who suffers significant memory and health issues, depends on Ms. Riggs as well.

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.



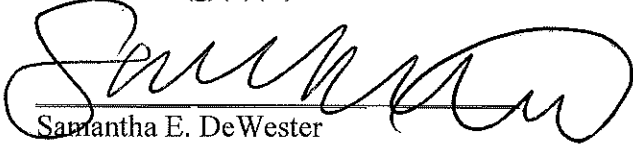
Cameron F. Clark

6-12-17

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).



Samantha E. DeWester

6-12-17

DATE

D. Approval by State Ethics Commission

**FOR OFFICE USE ONLY**

Approved by State Ethics Commission

James Clevenger, 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*

## DeWester, Samantha E

---

**From:** Riggs, Monique  
**Sent:** Monday, June 12, 2017 11:13 AM  
**To:** DeWester, Samantha E  
**Subject:** FW: Ethics Informal Advisory Opinion; Riggs; DNR; Post Employment

Hi Samantha,

I wanted to forward the response I received from Mr. Savage. The message below is what the informal advisory opinion (that you have a copy of) was attached to, just in case it provided any assistance to you.

Thanks again,  
Monique

Monique Riggs  
Water Rights & Use, Division of Water  
Indiana Dept of Natural Resources  
402 W Washington St Rm:W264  
Indianapolis, IN 46204-2641  
Ph: 317-234-1085  
Fx: 317-233-4579  
mriggs@dnr.in.gov



Please consider the environment before printing this email.  
For Information on Continuing Education for Indiana Water Well Drillers and Pump Installers  
please visit <http://www.in.gov/dnr/water/6110.htm>

**From:** Savage, Matthew (Matt)  
**Sent:** Thursday, June 08, 2017 12:26 PM  
**To:** Riggs, Monique <mriggs@dnr.in.gov>  
**Subject:** RE: Ethics Informal Advisory Opinion; Riggs; DNR; Post Employment

Monique,

Thanks for following up with your questions. You have two different options: a post-employment waiver or a formal advisory opinion.

The waiver must come from your agency's appointing authority, and an example of a post-employment waiver is available here: <http://www.in.gov/ig/2828.htm>. I suggest that you start by contacting DNR's Ethics Officer, Samantha Dewester. She should be familiar with how DNR handles waivers and can likely assist with your request. The waiver would need to be submitted to the Office of Inspector General by Monday, June 12 to be heard at the Thursday, June 22 State Ethics Commission meeting. There is also a Commission meeting on July 13, and the submission deadline for that meeting is July 3.

A formal advisory opinion would allow you to receive a determination from the State Ethics Commission about how the ethics rules apply to your potential post-employment. The same deadlines apply, and you can find instructions here: <http://www.in.gov/ig/2334.htm>. You may submit any documentation, including the informal advisory opinion, that you believe would be helpful. Please note, however, that your request for the formal advisory opinion and any supporting materials you provide will be posted as part of the meeting materials on the OIG website. If you would like your informal advisory opinion to remain confidential, do not include it in

your request. I also suggest that you speak with DNR's Ethics Officer about the formal advisory opinion. The Commission appreciates it when the Ethics Officer is involved in this process and attends the meeting with the requestor.

Hopefully that clarifies things. If not, feel free to follow up with additional questions.

Thanks,

Matt Savage  
Indiana Office of Inspector General

**From:** Riggs, Monique  
**Sent:** Thursday, June 08, 2017 11:16 AM  
**To:** Savage, Matthew (Matt) <MSavage@ig.IN.gov>  
**Subject:** RE: Ethics Informal Advisory Opinion; Riggs; DNR; Post Employment

Good morning Matt,

Thank you for putting together the Informal Advisory Opinion, I appreciate your time and effort. I do have a couple questions for you. I understand the opinion provided. I am seeking a post-employment waiver from the DNR Director. What will the next steps be? I see that I will need to request to be heard at the June 22<sup>nd</sup> Commission meeting for a formal opinion where I will present the waiver. Do I need to include a copy your informal opinion as part of that request as well? I would appreciate any relevant information you can provide about the next steps, or anything else I need to be aware of. I want to be sure not to miss anything that may create a delay.

Thank you again for your help with this.

Monique

Monique Riggs  
Water Rights & Use, Division of Water  
Indiana Dept of Natural Resources  
402 W Washington St Rm:W264  
Indianapolis, IN 46204-2641  
Ph: 317-234-1085  
Fx: 317-233-4579  
[mriggs@dnr.in.gov](mailto:mriggs@dnr.in.gov)



Please consider the environment before printing this email.  
For Information on Continuing Education for Indiana Water Well Drillers and Pump Installers  
please visit <http://www.in.gov/dnr/water/6110.htm>

**From:** Savage, Matthew (Matt)  
**Sent:** Wednesday, June 07, 2017 5:00 PM  
**To:** Riggs, Monique <[mriggs@dnr.in.gov](mailto:mriggs@dnr.in.gov)>  
**Subject:** Ethics Informal Advisory Opinion; Riggs; DNR; Post Employment

Monique,

Thank you for contacting our office for ethics advice. I understand that you work for the Indiana Department of Natural Resources (DNR) Division of Water, and you are considering leaving State employment to work for a local non-profit organization (the non-profit).

Your primary duty at DNR is to administer the State's licensing program for water well drillers and pump installers. This program requires water well drillers and pump installers to pass examinations, pay fees, and accumulate continuing education hours. Your secondary duties at DNR involve water supply from state owned reservoirs and data collection for water resource evaluations. Regarding water supply from state owned reservoirs, you process invoices and have attended public meetings to gather public input regarding contracts; however, you do not make recommendations or decisions related to these matters. You collect data for water resource evaluation when the Division of Water investigates whether a Significant Water Withdrawal Facility is liable for a water rights conflict. Your duties include measuring water levels and providing this information to your supervisor so he can make a determination.

The non-profit with whom you are considering a position provides training and technical assistance to water and wastewater operators for their certifications to operate public water supply and wastewater utilities (the Utilities) that are regulated through the Indiana Department of Environmental Management (IDEM). These certifications through IDEM are separate from the licensing program you administer for DNR, and DNR does not regulate the Utilities. You note that Utilities with a high capacity must register with and report water use to DNR on an annual basis, but this is for informational purposes only and does not involve permitting or evaluation by DNR. You are not involved in this reporting process. You would work for the non-profit as a program manager, and your role would focus on organizing trainings, workshops, and conferences for the Utilities to receive continuing education.

The non-profit also provides training/education to the governing boards of member utilities, and it has provided workshops for water well drillers and pump installers to receive continuing education required by the licensing program you administer for DNR. You and other DNR staff have presented at some of these events, but you were not compensated for doing so. In order for attendees to receive continuing education credit, DNR must approve the workshops based on acceptable topics outlined in 312 IAC 13. You review submissions by the non-profit (and other providers of continuing education) to determine whether the workshops qualify. You note that this process is very transparent and it does not involve confidential information. You mention that the non-profit's primary focus is the Utilities, and water well drillers and pump installers account for a very small part of the non-profit's activities. The non-profit does not currently have a contract with any state agency, but it did have a contract last year to conduct eight workshops for the Indiana Finance Authority's (IFA) Why-Fi Water project.

Your question primarily involves the post-employment rule, found at 42 IAC 1-5-14 (IC 4-2-6-11). It appears that this rule's cooling off period prohibits your employment with the non-profit until 365 days after you leave state employment unless you receive a waiver. It is also important that you comply with the rule on conflicts of interests, found at 42 IAC 1-5-6 (IC 4-2-6-9), if and when you begin employment negotiations with the non-profit. All rules discussed are included at the end of this opinion for your reference.

#### **1. Post-Employment Rule, 42 IAC 1-5-14 (IC 4-2-6-11)**

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

It appears that subsections (1) and (2) do not apply to your prospective employment with the non-profit. No information you provided indicates that you would be lobbying the executive branch, and you have not negotiated or administered a contract with the non-profit. I do suggest that you read the Indiana Department of Administration's Executive Branch Lobbying Manual to learn about the types of interactions with members of the executive branch that are considered executive branch lobbying.

Your role in approving or disapproving the non-profit's continuing education programs most likely constitutes a regulatory decision that triggers subsection (3) of the cooling off period. You administer the program that requires continuing education of water well drillers and pump installers, and you are responsible for determining whether an organization's (such as the non-profit) programs qualify for continuing education credit. If you have approved or disapproved of any continuing education program of the non-profit (or if you made any other regulatory or licensing decision that directly applied to the non-profit), the post-employment rule's cooling off period prohibits your employment with the non-profit for 365 days after leaving state employment.

Our opinion that your role constitutes a regulatory decision is our best guess at what the Commission would decide. The Commission has not, however, had occasion to rule on this fact pattern. You have the option to seek a formal advisory opinion from the State Ethics Commission (Commission) to get a public and final determination on this matter. The next Commission meeting is Thursday, June 22, 2017, and you must submit your request no later than Monday, June 12, 2017. You can find more information about the formal advisory opinion process at this link: <http://www.in.gov/ig/2334.htm>.

You also have the option to seek a post-employment waiver from DNR's appointing authority. If you decide to seek a waiver from the Executive Director of DNR, you would need to present the waiver to the Commission for approval at its monthly meeting. The requirements for a post-employment waiver are set out in IC 4-2-6-11(g). Waivers are issued at the discretion of the appointing authority. This seems like reasonable grounds for requesting a waiver from the Executive Director of DNR of the post-employment cooling off period. If you are interested in requesting a post-employment waiver, I recommend that you contact DNR's Ethics Officer, Samantha DeWester, about the possibility. I am happy to answer any questions about the formal advisory opinion or waiver process.

You also may not accept employment if the circumstances surrounding the employment would lead a reasonable person to believe that it was given for the purpose of influencing you in the performance of your state duties. This portion of the post-employment rule may not be waived by an agency's appointing authority; however, no information you provided indicates that the job would be offered to influence you in your capacity as a state employee.

You are also subject to the post-employment rule's separate "particular matter" restriction. This restriction prevents you from working on the twelve types of matters listed in IC 4-2-6-11(a) if you personally and substantially participated in the matter as a state employee. These matters are: 1) an application, 2) a business transaction, 3) a claim, 4) a contract, 5) a determination, 6) an enforcement proceeding, 7) an investigation, 8) a judicial proceeding, 9) a lawsuit, 10) a license, 11) an economic development project or 12) a public works project. The 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, you would be prohibited from representing or assisting the non-profit, any of its clients, customers or members as well as any other person, in a particular matter that you personally and substantially participated in as a state employee. It appears that you are likely involved in various applications, investigations, licenses, and determinations related to water well drillers and pump installers. You are prohibited from representing or assisting any individual/entity in these particular matters that you personally and substantially participated in as a state employee; however, you may work on new matters. If you have any questions regarding your work after reviewing the twelve matters listed above, please feel free to follow up with our office.

## **2. Conflict of Interests, 42 IAC 1-5-6 (IC 4-2-6-9)**

This rule prohibits you from participating in any matter related to a decision or vote in which a person with whom you are negotiating employment has a financial interest. The Commission has determined that employment negotiations begin once there is a back and forth exchange between you and the employer. It is not clear whether employment negotiations with the non-profit have begun. If they have, you must refrain from participating in any matter related to a decision or vote (including approval of continuing education programs) in which the non-profit has a financial interest

When you identify a potential conflict of interests, IC 4-2-6-9(b) requires you to notify DNR's appointing authority and ethics officer in writing and either seek a formal advisory opinion from the Commission or file a written disclosure with our office. A link to the disclosure form can be found here: <http://www.in.gov/ig/2782.htm>.

### **3. Confidential Information**

Finally, please be aware of the ethics rules pertaining to confidential information found at 42 IAC 1-5-10 and 42 IAC 1-5-11. These rules would prohibit you from benefitting from, permitting another person to benefit from, or divulging information of a confidential nature except as permitted by law. To the extent that you will possess information of a confidential nature by virtue of your position at DNR that could be used to benefit any person, you need to ensure you comply with these rules.

Thank you again for contacting our office for ethics advice. Please let me know if you have any questions regarding this opinion. Please note that this response does not constitute an official advisory opinion. Only the State Ethics 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 I understand them. If this e-mail misstates facts in a material way, or omits important information, please bring those inaccuracies to my attention.

Sincerely,

Matt Savage  
Indiana Office of Inspector General

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

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

(2) "Agency" means an authority, a board, a branch, a bureau, a commission, a committee, a council, a department, a division, an office, a service, or other instrumentality of the executive, including the administrative, department of state government. The term includes a body corporate and politic set up as an instrumentality of the state and a private, nonprofit, government related corporation. The term does not include any of the following:

- (A) The judicial department of state government.
- (B) The legislative department of state government.
- (C) A state educational institution.
- (D) A political subdivision.

(3) "Appointing authority" means the following:

- (A) Except as provided in clause (B), the chief administrative officer of an agency. The term does not include a state officer.
- (B) For purposes of section 16 of this chapter, "appointing authority" means:

- (i) an elected officer;
- (ii) the chief administrative officer of an agency; or
- (iii) an individual or group of individuals who have the power by law or by lawfully delegated authority to make appointments.

(6) "Commission" refers to the state ethics commission created under section 2 of this chapter.

(9) "Employee" means an individual, other than a state officer, who is employed by an agency on a full-time, a part-time, a temporary, an intermittent, or an hourly basis. The term includes an individual who contracts with an agency for personal services.

(10) "Employer" means any person from whom a state officer or employee or the officer's or employee's spouse received compensation.

(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 4-2-6-11 (42 IAC 1-5-14)**

#### **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.

## **Conflicts of interest; decisions and voting**

Sec. 6. Decision and voting restrictions are set forth in IC 4-2-6-9.

### **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.

### **42 IAC 1-5-10 Benefiting from confidential information**

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

**42 IAC 1-5-11 Divulging confidential information**

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

My pesky thing is not ending a phrase with a preposition....

**From:** Riggs, Monique  
**Sent:** Wednesday, June 07, 2017 8:47 AM  
**To:** Savage, Matthew (Matt) <MSavage@ig.IN.gov>  
**Subject:** RE: 2017-IN-0478/Ethics IAO Riggs

Good morning Matt,  
That is quite alright.

I have approved as well as denied coursework for this particular organization as it relates to continuing education credit for well drillers and pump installers.

Thanks,

Monique Riggs  
Water Rights & Use, Division of Water  
Indiana Dept of Natural Resources  
402 W Washington St Rm:W264  
Indianapolis, IN 46204-2641  
Ph: 317-234-1085  
Fx: 317-233-4579  
[mriggs@dnr.in.gov](mailto:mriggs@dnr.in.gov)



Please consider the environment before printing this email.  
For Information on Continuing Education for Indiana Water Well Drillers and Pump Installers  
please visit <http://www.in.gov/dnr/water/6110.htm>

**From:** Savage, Matthew (Matt)  
**Sent:** Tuesday, June 06, 2017 2:31 PM  
**To:** Riggs, Monique <[mriggs@dnr.in.gov](mailto:mriggs@dnr.in.gov)>  
**Subject:** RE: 2017-IN-0478/Ethics IAO Riggs

Monique,

Sorry for another email, but I want to clarify one thing as I'm finishing the informal advisory opinion. Have you personally approved (or disapproved) this particular non-profit's courses/workshops/etc for continuing education credit?

Thanks again,  
Matt Savage

**From:** Riggs, Monique  
**Sent:** Monday, June 05, 2017 10:10 AM  
**To:** Savage, Matthew (Matt) <MSavage@ig.IN.gov>  
**Subject:** RE: 2017-IN-0478/Ethics IAO Riggs

Good morning Matt,

I understand the back and forth, no problem. I know as we have discussed things, I have thought of a couple things I would like to clarify as well, which are included below. But first, I want to answer your follow up. To address my interaction/involvement with public water supply & waste water utilities *through DNR*, is easy, there isn't any regulatory involvement in my position. However, the DNR does have a registration and reporting program under Indiana Code 14-25-7-15 for any type of water facility that has the capacity to pump 100,000 gallons a day or more. This is *not* a permit program, but does require that *any* facility (not just utilities) meeting that threshold register (for free, there's no evaluation) and report water use on an annual basis. DNR is only concerned with understanding the quantity of the resource, and where it is withdrawn. Again, this is not my position, but it is within DNR.

Public water supply and waste water regulation is fully an IDEM function, not one of the DNR. As we always say for the public: "IDEM is quality, DNR is quantity." Related, but also totally different from an agency perspective.

6) The organization does not have a contractual relationship with the DNR.

7) The organization does not currently have any contracts with the State. They had one last year where they conducted eight (8) workshops to help collect data for IFA's Why-Fi Water project they did for the Indiana State Legislature.

8) First part, the answer is no. The individual course providers oversee the individual events. Second part is yes, but I would also like to qualify that answer. The approvable topics are very specific and outlined in 312 IAC 13. As such, there is no special or 'inside' information here to get program approvals, or not. It wouldn't and doesn't matter who (me or my successor, or any present staff here) looks at the approval submissions, the playing field is a level one with the same criteria. For instance if I, Monique Riggs of the nonprofit submitted an approval request to my successor, it wouldn't matter that I used to do that work. The request would be evaluated according to the topic list in 312 IAC 13--the same as if I was an unknown (which I likely would be to any successor). Any course provider—including companies that organize in-house trainings, not just this or other membership nonprofits are required to submit programs for review before they can count for the license holders. Again, all of these proceedings are very open and transparent, and there is nothing confidential. I look at submissions from people I have become familiar with in the industry all the time—it doesn't change whether or not material is approved or denied for a particular education course. Further, the well drillers and pump installers are a bit player for the organization. They focus on the utilities and their operators with a very small percentage for the drillers and installers.

9) Absolutely not. Not this organization, or any other organization or company that I have provided presentations for as DNR staff.

Again, I wanted to stress that there isn't any proprietary information in play here. It is all public record, and visible as such, with specific guidance by rule that I think eliminates any potential favoritism etc. But I know you need to cover your bases and I appreciate that. The last thing I want is to cause any issues with the good relationship this organization has providing education to State and IDEM regulated individuals & utilities. I have enjoyed my time here at the DNR

immensely, and also wish to cover the appropriate bases and that is why I had reached out to begin with, even though I do not feel there is any existing conflict in play. Do let me know if you have any additional questions or if you would like to discuss further.

I look forward to hearing your opinion on the matter.  
Have a great day!  
Monique

Monique Riggs  
Water Rights & Use, Division of Water  
Indiana Dept of Natural Resources  
402 W Washington St Rm:W264  
Indianapolis, IN 46204-2641  
Ph: 317-234-1085  
Fx: 317-233-4579  
[mriggs@dnr.in.gov](mailto:mriggs@dnr.in.gov)



Please consider the environment before printing this email.  
For information on Continuing Education for Indiana Water Well Drillers and Pump Installers please visit <http://www.in.gov/dnr/water/6110.htm>

**From:** Savage, Matthew (Matt)  
**Sent:** Wednesday, May 31, 2017 2:17 PM  
**To:** Riggs, Monique <[mriggs@dnr.in.gov](mailto:mriggs@dnr.in.gov)>  
**Subject:** RE: 2017-IN-0478/Ethics IAO Riggs

Monique,

Thanks for your response. Sometimes a bit of back-and-forth is required before I feel like I have a full understanding of the facts, and I do have a few more questions for you. I also noticed a typo in my question #4, which asked whether you had any interaction/involvement *through IDEM* with public water supply and waste water utilities. I intended to ask whether you had interaction/involvement with public water supply & waste water utilities *through DNR*. Could you please clarify your answer as it applies to DNR? Sorry for the confusion. In addition, could you please respond to the following questions?

6) Does the non-profit organization have any relationship (contractual or otherwise) with DNR?

7) Does the non-profit have a contract with any state agency?

8) You mentioned that the non-profit organization provides workshops for the continuing education of well drillers and pump installers. Does DNR have any oversight of these workshops? Is DNR's approval of the workshops required for them to count toward continuing education requirements?

9) Did you or the state receive compensation for your presentations at events put on by the non-profit organization?

I know you are out of the office for the rest of the week. Feel free to respond when you return, and I will finish the informal advisory opinion then.

Thank you,  
Matt Savage

**From:** Riggs, Monique  
**Sent:** Tuesday, May 30, 2017 3:40 PM  
**To:** Savage, Matthew (Matt) <[MSavage@ig.IN.gov](mailto:MSavage@ig.IN.gov)>  
**Subject:** Re: 2017-IN-0478/Ethics IAO Riggs

Hello Matt,

Thank you for your time and effort to review my situation. I would be happy to provide any additional info you need. Please find answers to your questions below, and let me know if you need anything further. I will be out of the office for the remainder of the week, but will look forward to your response.

- 1) Yes, the DNR Division of Water webpage referenced covers the water well driller and pump installer program under IC 25-39 accurately.
- 2) I process invoices and payments for water withdrawn under contract with the State, two monthly and six annually. I have also been involved in public meetings to gather public input as required for a new or renewal of the contracts, however, it is not my role to make any recommendations or decisions on the matter. The recommendation for particular action comes from the Assistant Director and Director of the Division of Water & also the Natural Resources Advisory Council. The final decision making to determine whether to approve, condition or deny a contract is carried out by the DNR's governing body, the Natural Resources Commission.
- 3) When there are water rights conflicts in Indiana under IC 14-25-4, one of the components of an investigation by the Division is the collection of water level data in the field to determine if a Significant Water Withdrawal Facility (SWWF) is liable or not, for the issue. There are protections for a domestic (private) well owner in Indiana if their water supply is impacted by high capacity pumping of an SWWF. This field data is a crucial part of the overall evaluation of the resource for a given area or issue. My duties are going to these areas and measuring water levels to provide information to my supervisor, the Water Rights & Use section head so that he can make a determination.
- 4) No.
- 5) The position is for Program Manager. The role would focus on facilitating & organizing the trainings, workshops and conferences that provide the continuing education that is required by law for water and wastewater operators to keep up their certifications as operators. I would not personally be conducting the actual training of the operators. The organization also provides training and education for the governing boards of member water utilities.

The organization has also provided workshops for the water well drillers and pump installers for their continuing education. This represents the most direct interaction I've had with the organization while in my current role at DNR. I have

provided presentations at some of these events, as has other DNR staff. Thanks again for your time, and do let me know if you have any questions. Have a good day!

Monique Riggs  
Water Rights & Use  
DNR, Division of Water  
317-234-1085

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**From:** Savage, Matthew (Matt)  
**Sent:** Friday, May 26, 2017 2:28 PM  
**To:** Riggs, Monique  
**Subject:** RE: 2017-IN-0478/Ethics IAO Riggs

Monique,

I am working on an informal advisory opinion for you, but I have a few questions that will help me provide accurate advice. Could you please answer the questions below?

- 1) Could you confirm that information available on the following website accurately describes the program you administer for water well drillers and pump installers? <http://www.in.gov/dnr/water/6110.htm>
- 2) Please describe your duties regarding water supply from state owned reservoirs.
- 3) Please describe your duties related to water rights and data collection for water resource evaluation.
- 4) Have you had any interaction/involvement through IDEM with public water supply and waste water utilities? If so, please describe.
- 5) If you accepted employment with the non-profit, what exactly would you be doing to train and assist water & wastewater operators?

Thanks for providing this information, and please note that I may have additional follow up questions.

Matt Savage  
Indiana Office of Inspector General

**From:** [mkriggs@dnr.in.gov](mailto:mkriggs@dnr.in.gov) [mailto:mkriggs@dnr.in.gov]  
**Sent:** Thursday, May 25, 2017 1:10 PM  
**Subject:** Advice

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



**Formstack Submission for  
form ig\_2334**

Submitted at 05/25/17 1:09 PM

**Name:** Monique Riggs  
**Email:** [mriggs@dnr.in.gov](mailto:mriggs@dnr.in.gov)  
**Phone:** (317) 234-1085  
**State Agency:** Department of Natural Resources

**Description of Your State Occupation:** I work in the DNR's Division of Water. I administer the State licensing program for water well drillers and pump installers as my primary duty, secondary duty of water supply from state owned reservoirs, and water rights issues and field work related to data collection for water resource evaluation.

**What is your ethics question?:** I am considering leaving State employment to work for a local 501 c 3 non profit organization that provides training and technical assistance for water and wastewater operators for their certification to operate public water supply and waste water utilities that are regulated through the Indiana Dept of Environmental Management. I have had zero regulatory or contractual involvement with these types of certifications in my time here at the



DNR. However, since they are still somewhat, although not directly related in the field of water resources, I wanted to seek guidance on whether or not I need to seek a formal waiver of the cooling off period, or have any other part of this employment reviewed.

I would certainly recuse myself and have a board member serve in any capacity for something that may even appear to be a potential for conflict occur, however unlikely. I would be happy to meet to discuss in more detail or provide anything further information to make a recommendation at this time. Thank you for the assistance!  
Monique Riggs

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STATE OF INDIANA     )  
                                  )SS:  
COUNTY OF MARION    )

INDIANA STATE ETHICS COMMISSION  
  
CASE NO: 2017-05-0096

IN RE: THE MATTER of KEVIN McMASTERS,  
RESPONDENT

CONSENT TO ENTRY OF VIOLATION AND IMPOSITION OF PENALTY

1. Respondent admits to failing to file the Financial Disclosure Statement for calendar year 2016 by February 1, 2017, in violation of Indiana Code 4-2-6-8.
2. Respondent shall be fined seven hundred fifty dollars (\$750), which amount shall be subject to approval by the State Ethics Commission (Commission). Respondent shall make payment payable to the State of Indiana and submitted to the Commission within sixty (60) days from the date that the Commission approves this consent entry.
3. Respondent acknowledges that approval of these terms by the Commission shall result in the final disposition of this proceeding and that he is waiving an alternative statutory right to a public hearing provided by Indiana Code 4-2-6-4 to contest the violation.
4. This Consent to Entry of Violation and Imposition of Penalty is valid only if signed and filed with the Commission on or before June 2, 2017.

Dated this 30 day of May 2017.

  
\_\_\_\_\_  
Kevin McMasters, Respondent