



# INVESTIGATIVE REPORT

Lori Torres, Inspector General

OFFICE: INDIANA STATE DEPARTMENT OF HEALTH (ISDH)

TITLE: ISDH CONFLICT OF INTERESTS

CASE ID: 2019-11-0289

DATE: June 16, 2020

*Inspector General Chief Legal Counsel, Tiffany Mulligan, after an investigation by Director of Investigations, Darrell Boehmer, reports as follows:*

The Indiana General Assembly charged the Office of Inspector General (OIG) with addressing fraud, waste, abuse and wrongdoing in the executive branch of state government. Ind. Code § 4-2-7-2(b). The OIG also investigates criminal activity and ethics violations by state workers. Ind. Code § 4-2-7-3. The OIG may recommend polices and carry out other activities designed to deter, detect and eradicate fraud, waste, abuse, mismanagement and misconduct in state government. Ind. Code § 4-2-7-3(2).

## **Complaint**

On November 18, 2019, the OIG received an anonymous complaint alleging that a senior leader with the Indiana State Department of Health (ISDH) (Employee) was participating in decisions whether to fund an organization while serving as a member of the organization's board. The complaint was anonymous and contained very few details. The OIG initially declined to

investigate the matter due to the limited information contained in the complaint but forwarded the complaint to the Employee<sup>1</sup> to make the Employee aware of it.

After the Employee received the complaint, the Employee contacted the Inspector General. The Employee said that he/she knew what the complaint was referencing and said that he/she had made a mistake. The Employee explained that he/she had accepted an invitation to serve as a member of the Board of Directors for a non-profit organization (Organization). The Employee said that he/she agreed to serve on the Board because of his/her background and that he/she did not make the connection that ISDH funds the Organization.

The Employee said that an ISDH Division recommended pulling funding for the Organization because the Division did not have data to support continued funding. The Employee disagreed with the recommendation and told others at ISDH that he/she supported continued ISDH funding for the Organization. The Employee explained that ISDH had discontinued funding for another organization because of lack of data and received significant criticism for doing so. The Employee feared discontinuing funding for the Organization would result in similar public outcry. Furthermore, the Employee stated that the Organization receives funding from a federal agency, and he/she wanted to avoid pulling funds for an organization that the federal agency supports. The Employee stated that his/her decision to continue funding for the Organization was not influenced by his/her serving on the Organization's Board.

The Employee explained that after he/she announced in a meeting that he/she wanted to continue funding for the Organization, another ISDH staff member (Staff Member) advised her that the Employee could not be involved in decisions involving the Organization while the Employee served on the Organization's Board. The Employee said that after receiving the Staff

---

<sup>1</sup> Although the complaint was anonymous, the OIG notified the Employee that the identity of an individual who submits a complaint to the OIG is deemed confidential under Ind. Code § 4-2-7-8 and such individual is protected from retaliation under Ind. Code § 4-2-6-13. The OIG advised the Employee that he/she should make no effort to determine who reported the matter to the OIG.

Member's advice, the Employee recused himself/herself from future involvement with decisions involving the Organization. The Employee also stated that he/she would resign from the Organization's Board.

### **Investigation**

OIG Director of Investigations Darrell Boehmer conducted an investigation into this complaint. As part of the investigation, Director Boehmer asked for information from the Organization regarding the Employee's involvement with the organization and the amount of funding ISDH provided to the organization. He reviewed the documents the Organization provided to the OIG, which included the Organization's Board meeting notes and minutes for the meetings the Employee attended.

The Organization informed Director Boehmer that the Employee joined the Organization's Board in March of 2018 and resigned in November of 2019. The Organization wrote that they recruited the Employee for the Board position. The Organization wrote that the Employee attended two meetings during his/her service on the Board.

The Organization provided the OIG copies of the meeting notes and minutes for the two meetings the Employee attended. According to the meeting notes and minutes, the Organization did not discuss funding from ISDH during these meetings.

The Organization informed Director Boehmer that they received federal funding that is administered by ISDH. The Organization received approximately \$300,000 of funds through ISDH in the last three years.

The OIG searched the State Ethics Commission (SEC) files and found that the Employee did not disclose his/her involvement on the Organization's Board of Directors to the SEC. The OIG also confirmed that the Employee did not request a Formal Advisory Opinion from the SEC regarding the Employee's involvement with the organization.

## Conclusion

During the course of his investigation, Director Boehmer found no evidence that the Employee engaged in any criminal activity because the Employee had no personal financial interest in ISDH funding the Organization. However, Director Boehmer's investigation, as well as the Employee's statements to the Inspector General, confirmed that the Employee was involved in ISDH's decision to continue funding the Organization while the Employee served as a Board member for the Organization. This decision implicates Ind. Code § 4-2-6-9, the Indiana Code of Ethics' (Code)<sup>2</sup> rule on conflict of interests related to decisions and voting.

Ind. Code § 4-2-6-9 prohibits a state employee from participating in any decision or vote, or matter related to a decision or vote, if the employee knows that a business organization in which he or she serves as "an officer, director, a member, a trustee, a partner, or an employee" has a financial interest in the decision or vote. The statute requires a state employee who identifies a potential conflict of interests under this statute to notify the employee's appointing authority and ethics officer in writing and either seek a Formal Advisory Opinion from the SEC or file a written disclosure statement with the SEC.

The SEC likely would find that the Employee violated Ind. Code § 4-2-6-9 because the Employee participated in a decision for ISDH to continue funding the Organization while the Employee served as a Board member for the Organization. Furthermore, the Employee did not request a Formal Advisory Opinion or file a disclosure statement with the SEC regarding the Employee's service as a Board member with the Organization as required by the rule.

Although the Employee likely violated Ind. Code § 4-2-6-9, the OIG declines to file a complaint with the SEC for a variety of reasons. First, the Employee volunteered information to the Inspector General regarding his/her membership on the Organization's Board and his/her

---

<sup>2</sup> The Code is found in Ind. Code 4-2-6 and 42 IAC 1.

involvement with the ISDH funding decision. The Employee admitted that he/she made a mistake and that he/she failed to make the connection between his/her service on the Organization's Board and the ISDH funding decision. Second, the Employee explained his/her reasoning for supporting continued funding for the Organization. The Employee's reasoning was not based on his/her Board membership but was based on ISDH's past experience with discontinuing funding to another non-profit organization. Third, the Employee received no personal benefit from ISDH's decision to fund the Organization. Fourth, the Employee resigned from the Organization's Board soon after learning of the conflict of interests. For these reasons, the OIG is closing this case.

### **Recommendations**

Although the OIG is declining to file a complaint with the SEC in this case, the OIG makes the following recommendations to state agency employees that may help prevent these types of conflicts of interests in the future.

#### **Recommendation 1**

A state employee who serves on the Board of Directors for an outside for-profit or non-profit organization should disclose his or her Board membership to the agency's ethics officer, especially when the Board's mission aligns with the work of the state agency for which the employee works. The agency's ethics officer can help advise the employee on whether the board membership raises a potential conflict of interests under the Code of Ethics. The agency's ethics officer also can advise the employee on whether he or she should request an informal advisory opinion from the OIG, file a disclosure statement with the SEC or a request a formal advisory opinion with the SEC. The employee also has the option of requesting advice directly from the OIG through the informal advisory opinion process.

#### **Recommendation 2**

Before joining a Board of Directors for an outside for-profit or non-profit organization, a state agency employee should inquire as to whether the outside entity receives any funding or other

benefit from the state agency for which the employee works. If the entity receives funding or another benefit from the state agency for which the employee works, the employee should take steps to ensure compliance with Ind. Code § 4-2-6-9, such as disclosing the board membership to the agency's appointing authority and ethics officer. The employee should ensure that the agency fully screens the employee from participating in any decision or vote, or discussion related to a decision or vote, that would impact the outside entity with whom the employee is involved. The employee also should ensure agency employees involved with decisions affecting the outside entity are aware that the employee is screened from such decisions or votes.

Recommendation 3

A state employee who serves on the Board of Directors for an outside for-profit or non-profit organization should take steps to comply with Ind. Code § 4-2-6-5.5, the Code of Ethics' rule on outside employment and professional activity. This rule prohibits a state employee from engaging in outside employment or professional activity if the activity would require the employee to disclose confidential information that was gained in the course of state employment. It also prohibits the employee from using his or her official state position to gain privileges or exemptions of substantial value that are not available to others. The employee should avoid using his or her state position to gain special benefits for the outside entity, such as access to confidential documents or access to meetings they would not otherwise be able to attend.

Dated: June 16, 2020

APPROVED BY:



---

Lori Torres, Inspector General