

**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.