

**MINUTES OF THE MEETING OF
THE INDIANA STATE ETHICS COMMISSION
October 10, 2019**

I. Call to Order

A regular meeting of the State Ethics Commission (“Commission”) was called to order at 10:00 a.m. Commission members present included Katherine Noel, Chairperson; Corinne Finnerty; Priscilla D. Keith; and Kenneth G. Todd (arrived at 10:12 A.M.). Staff present included Jennifer Cooper, Ethics Director; Kelly Elliott, Staff Attorney; Tiffany Mulligan, Chief Legal Counsel; and Nathan Baker, Legal Assistant, Office of Inspector General.

Others present were Trooper Steven Glass, Indiana State Police; Laura Turner, Deputy General Counsel, Indiana Criminal Justice Institute; Major Daniel Price, Indiana State Police; Major Anthony Castro, Indiana State Police; Benjamin Smith, Construction Project Manager, Glenroy Construction; Susan Dean, Legal Counsel, Indiana State Police; Major Nila Miller-Cronk, Ethics Officer, Indiana State Police; Samantha Dewester, General Counsel, Indiana Department of Natural Resources; Dale Gick, Engineering Director, Indiana Department of Natural Resources; Amber Nicole Ying, Special Counsel – Compliance and Ethics, Indiana Department of Revenue; Marshall Depew, DRE/SFSS Coordinator, Indiana Criminal Justice Institute; Beth Green, General Counsel and Ethics Officer, Indiana Department of Workforce Development; Jon Ferguson, Ethics Officer, Indiana Department of Corrections; Natalie Stidd, Staff Attorney, Indiana Department of Corrections; Chris Kulik, Staff Attorney, Indiana State Department of Health; Erika Steuerwald, Staff Attorney, Indiana State Department of Health; Trooper David Caswell, Indiana State Police; Bill Anthony, Deputy Attorney General, Office of Attorney General; Andrew Lang, Deputy General Counsel, Indiana Secretary of State; James M. French, Attorney and Ethics Officer, Indiana Department of Environmental Management.

II. Adoption of Agenda and Approval of Minutes

Commissioner Finnerty moved to adopt the Agenda and Commissioner Keith seconded the motion which passed (3-0). Commissioner Finnerty moved to approve the Minutes of the September 12, 2019 Commission Meeting and Commissioner Keith seconded the motion which passed (3-0).

III. Inspector General’s Report

Office of Inspector General Chief Legal Counsel Tiffany Mulligan presented a report on behalf of Inspector General Lori Torres on the third quarter of 2019. 74 Informal Advisory Opinions were issued (compared to 71 issued in Q2 and 78 in Q3 of 2018). There were 61 requests for investigations (compared to 92 in Q2 and 90 in Q3 of 2018). Seven (7) new investigations were opened by OIG (compared to 19 in Q2 and 18 in Q3 2018). Fifteen (15) investigations were closed by OIG (compared to 12 in Q2 and 10 in Q3 2018).

Regarding KPI's for Q3:

- KPI #1 - Number of informal advisory opinions ("IAO"s) requested: **84**
- KPI #2 - Average number of business days to provide an IAO: **1.1**
- KPI #3 - Number of recommendations made to reduce waste, inefficiency, fraud and improve integrity: **10 recommendations in Q3 in 5 public reports**

Ms. Mulligan reported that the 2019 Legal and Ethics Conference is set for Tuesday November 13, 2019. She also noted that FY2018 reverted \$34,650.00 from the OIG operating fund.

Upon completion of the Inspector General's Report, State Ethics Commissioner Priscilla D. Keith was recognized by both the Office of Inspector General and the Governor's office for fifteen years of service on the State Ethics Commission. Commissioner Keith is retiring from the position upon completion of today's meeting.

IV. Request for Formal Advisory Opinion

2019-FAO-018

Benjamin Smith, Code Compliance Inspector (former)

Samantha DeWester, General Counsel & Ethics Officer

Indiana Department of Natural Resources

Benjamin Smith is a former employee of the Indiana Department of Natural Resources (DNR). Mr. Smith served as an Inspector for DNR's Division of Engineering. His last day with the State was October 6, 2018. In his role as an Inspector, he worked with Glenroy Construction (Glenroy). Glenroy serves as one of DNR's Job Order Contracting (JOC) General Contractors. Mr. Smith provides that he was responsible for inspecting the work that Glenroy's subcontractor, Smither Roofing, completed at Turkey Run State Park, and he routinely approved Glenroy's payment applications, which required his review to check for accurate numbers.

Mr. Smith explains that JOC's are typically composed of several "projects" or "jobs"; for example, a roof repair and road repair can be part of the same JOC. Mr. Smith provides that all of these jobs are combined into one PO, as opposed to two separate contracts.

After becoming aware of this request, Samantha DeWester, DNR's General Counsel and Ethics Officer, sought further information on Mr. Smith's involvement with Glenroy from Mr. Smith's former supervisor, Dale Gick, Director of the Division of Engineering. Mr. Gick provides that each JOC contractor utilizes one contract, and each contract can have an unlimited number of individual projects. Each project has its own separate purchase order (PO). The PO that Mr. Smith was working on has been closed out. Mr. Gick further provided that he approves all of Glenroy's invoices and that Mr. Smith's authority was limited to recommending approval of invoices.

Mr. Smith has recently accepted a position as a Project Manager with Glenroy. He has learned that Glenroy executives intend for him to manage DNR projects that are assigned to them through the JOC process, thus presenting what Mr. Smith views as a potential conflict of interests.

Additionally, Mr. Smith provides that he is dating a DNR Division of Engineering employee who is responsible for writing JOC contracts after they have been awarded, but the employee is not involved with any decision making and is not aware of (nor will ever be aware of) any proprietary information related to the contracts. Mr. Smith notes that these contracts do not go out to bid and are handled by the Indiana Department of Administration.

Mr. Smith requested an Informal Advisory Opinion (IAO) from the Office of Inspector General in September of 2019. The IAO suggested he seek a Formal Advisory Opinion from the Commission for a final determination as to the application of the post-employment restrictions to his opportunity with Glenroy. His cooling off period expired on October 6, 2019, so Mr. Smith is seeking a Formal Advisory Opinion regarding the application of the post-employment rule's particular matter restrictions to the DNR projects on which Glenroy would like him to work.

ISSUE

Does the particular matter restriction apply to any of the DNR projects on which Mr. Smith would be asked to work by his new employer, Glenroy?

ANALYSIS

As an initial matter, Mr. Smith is no longer a state employee and thus is no longer subject to the rules on conflict of interests. Accordingly, these rules' application to Mr. Smith due to his dating relationship with the current DNR employee will not be analyzed in this opinion.

A. Confidential Information

IC 4-2-6-6 prohibits Mr. Smith 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. Based on the information provided, it does not appear that Mr. Smith would utilize confidential information in his employment with Glenroy. So long as any compensation Mr. Smith receives does not result from confidential information, his post-employment opportunity with Glenroy 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 Mr. Smith from accepting employment from an employer for 365 days from the date that he leaves state employment under various circumstances. The cooling off period for Mr. Smith expired on October 6, 2019; accordingly, the cooling off limitations of the post-employment rule no longer apply to Mr. Smith.

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

In this instance, Mr. Smith would be prohibited from representing or assisting Glenroy, as well as any other person (including subcontractors such as Smither Roofing), in a particular matter in which he *personally and substantially* participated as a state employee. This restriction would not prevent him from working on new matters or any matters in which he was not previously involved.

In his DNR position, Mr. Smith worked with Glenroy, one of DNR's JOC General Contractors, and inspected the work performed by its subcontractor, Smither Roofing. Additionally, he was involved in approving their payment applications. Although he did not have the authority to approve their invoices, he recommended their approval to his supervisor. In his new position at Glenroy, he will be expected to manage DNR projects assigned to them through the JOC process. As his supervisor notes, each JOC contractor (such as Glenroy) utilizes one contract, and each contract can have an unlimited number of individual projects. Each project has its own separate purchase order (PO). The POs that included the projects on which Mr. Smith worked and reviewed under Glenroy's contract with DNR have been closed out.

Samantha DeWester, DNR's Ethics Officer and General Counsel, provided additional information related to DNR's contractual relationship with Glenroy. According to Ms. DeWester, Glenroy did and does have POs under an overarching JOC with DNR. Mr. Smith worked on several PO-related projects underneath the previous version of that overarching contract. Those POs and related projects have been closed out since he left state employment, so he would not be working on anything for Glenroy that he had previously worked on for the State. Further, the overarching contract is not the same contract that was in effect when Mr. Smith was an employee of DNR. The contract was renewed, with new provisions, after Mr. Smith left state employment.

The Commission finds that a renewed contract with added or different provisions is a new contract and not the same contract as existed previously. Accordingly, the Commission finds that because the current overarching contract (JOC) was not in existence at the time Mr. Smith left state employment, he is not prohibited by the particular matter restriction from working on any part of the current contract for Glenroy.

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

V. **Request for Formal Advisory Opinion**

2019-FAO-019

Major Daniel Price, Indiana State Trooper

Major Nila Miller-Cronk, Internal Investigations

Indiana State Police

Major Nila Miller-Cronk serves as Commander, Office of Professional Standards, and Ethics Officer for the Indiana State Police (ISP). She is requesting a Formal Advisory Opinion on behalf of Major Danny Price, a Commander in ISP's Training Section, related to his non-department employment providing training and consulting services through his personal business.

Major Price's primary responsibilities for ISP include planning, development and implementation of training programs for Department personnel; developing a training budget for the Department; and coordinating with other state, county and local officials on training functions. Other duties include setting standards of performance for the Recruit Training Schools; preparing and submitting annual training reports and fiscal reports of training funds; establishing division goals with input from Section Commanders; and serving as an instructor at Recruit and in-service training schools. Major Miller-Cronk provides that Major Price has no contracting authority for ISP; rather, his role is only to approve requested training to determine if the training complies with ISP's current training and practice. Once approved, it is sent to the Fiscal Division, which handles contractual matters and obtains payment authorization from Col. French, Lt. Col. Turner or Lt. Col. Bilkey on behalf of the Superintendent.

According to Major Miller-Cronk, ISP permits non-department employment for ISP personnel, subject to Department approval. Major Miller-Cronk provides that Major Price has the Department's approval for his personal training and consulting business, the Price Consulting Group, LLC (Price Consulting). Through his business, he is associated with other trainers from across the country. Over the last eight years, Price Consulting has developed a model and training program called the Q6 Performance Leadership Model (Q6). Major Price has trained several agencies outside of Indiana through Price Consulting. He has also been providing Q6 training to ISP personnel while on duty. **She provides** that teaching Q6 to ISP personnel and to other Indiana law enforcement agencies is part of his official duties. **She writes** that he has not received compensation for this beyond his ISP salary.

Major Price has advised ISP that the popularity of Q6 is increasing. Price Consulting **is a member of** the Emerson Group, LLC (Emerson Group). The Emerson Group only accepts revenue for licensing and production of Q6 materials. Thus far, when Major Price teaches Q6 for ISP, there is no charge for the materials; however, with the development of the Emerson Group, there will now be a fee for materials for each student. Major Miller-Cronk provides that Major Price personally will not receive any compensation for the materials purchased through the Emerson Group; rather,

that money goes back into an account used for legal fees, material production and administrative expenses managed by the Emerson Group.

Major Miller-Cronk provides that if the Department decides to continue to provide this training, ISP will need to buy the materials from the Emerson Group. Major Miller-Cronk explains that while Major Price is a member of the Emerson Group through his personal business, he does not receive any payments from the group at this time. When teaching at other police agencies in Indiana upon request, he teaches as a courtesy from ISP and receives no compensation from the other agency. These other Indiana police agencies buy the materials directly from the Emerson Group. When Major Price teaches Q6 at out-of-state police agencies, Major Price does so on his own time and receives compensation through Price Consulting.

Major Miller-Cronk requested an Informal Advisory Opinion from the Office of Inspector General (OIG) on July 19, 2019. The Informal Advisory Opinion issued to Major Miller-Cronk recommended that Major Price request a Formal Advisory Opinion from the Commission regarding whether Major Price's involvement with Price Consulting, Q6 and/or the Emerson Group and ISP's future payment to the Emerson Group would create any conflicts of interests for him under the Code of Ethics.

The Commission, upon a motion from Commissioner Noel, agreed to hold the decision and not issue a Formal Advisory Opinion until such time as the requestor produced a screening mechanism and additional information on how FSSA would address the conflict of interests concerns raised by the Commission. Commissioner Finnerty seconded the motion which passed (4-0).

VI. Request for Formal Advisory Opinion

2019-FAO-020

Master Trooper David Caswell, Indiana State Trooper

Major Nila Miller-Cronk, Internal Investigations

Indiana State Police

Major Nila Miller-Cronk serves as Commander, Office of Professional Standards, and Ethics Officer for the Indiana State Police (ISP). She is requesting a Formal Advisory Opinion on behalf of Trooper David Caswell, a Drug Recognition Expert (DRE) and a DRE Instructor for ISP, related to his non-department employment providing educational consulting to the Indiana Criminal Justice Institute (ICJI).

ICJI contracted with Dedicated Training Resources, LLC to serve as the State's DRE Coordinator. Dedicated Training Resources, LLC, by member, Marshall Depew, as the State of Indiana's DRE Coordinator, asked Trooper Caswell to provide educational consulting services to ICJI on the effects and long-term deficits of drug use and impairment. The purpose of this training is to reduce the impact of the drug epidemic affecting Indiana. Trooper Caswell is a DRE instructor for ISP and has been instructing outside law enforcement agencies together with Trooper Glass (*see* 2019-FAO-021) for approximately two years.

Prior to Dedicated Training Resources, LLC's contract with the State, ICJI contracted with Assured Program Solutions, LLC to serve as the State's DRE Coordinator. Major Miller-Cronk provides that Trooper Caswell, through his own LLC, DC Consulting, LLC, had provided educational consulting services to Assured Program Solutions, LLC as the former DRE Coordinator. Major Miller-Cronk is now asking the Commission whether he can provide such services to the new DRE Coordinator, Dedicated Training Resources, LLC.

Major Miller-Cronk provides that instructing DRE courses for ISP personnel is a part of Trooper Caswell's official state duties. As a consultant to Dedicated Training Resources, LLC, he would be conducting the training through his own LLC, outside of his state hours, to police officers from various police agencies and would not use state equipment or resources when doing so.

Major Miller-Cronk requested an Informal Advisory Opinion (IAO) from the Office of Inspector General (OIG) on behalf of Trooper Caswell in January of 2017. In this request she asked whether it would be permissible for Trooper Caswell to provide DRE training services to Gibson Insurance during his off-duty hours; this current outside employment opportunity seems unrelated to the Gibson Insurance opportunity other than in both cases he was being hired to provide DRE training. There was no state contract connected to the Gibson Insurance opportunity. The IAO advised that the opportunity would likely not create any conflicts of interests for Trooper Caswell but that Major Miller-Cronk could seek a Formal Advisory Opinion from the Commission if she wanted a final determination; she did not pursue this option.

In August of 2019, Major Miller-Cronk requested an IAO from the OIG regarding a similar request for Trooper Glass of ISP. In the information she provided to the OIG in this IAO request, Major Miller-Cronk mentioned that Trooper Caswell was also invited to provide the training services to the DRE Coordinator along with Trooper Glass. ICJI's Ethics Officer, Laura Turner, provided additional information and clarified that if Trooper Caswell accepts this opportunity, he would be a subcontractor of Dedicated Training Resources, LLC and would be providing DRE instruction to police officers from various police agencies. ICJI would not be contracting with Trooper Caswell; ICJI only contracts with the DRE Coordinator for the State.

Major Miller-Cronk is now requesting a Formal Advisory Opinion on behalf of Trooper Caswell regarding whether he can accept the opportunity to subcontract with Dedicated Training Resources, LLC to provide training services that are similar to the services he provides in his role at ISP.

ISSUES

- 1) Would Trooper Caswell's outside employment as a subcontractor with Dedicated Training Resources, LLC create any conflicts of interests for him under the Code of Ethics?
- 2) What other ethics issues, if any, arise for Trooper Caswell given his position as a DRE instructor and his simultaneous outside employment providing DRE training services as a subcontractor to Dedicated Training Resources, LLC?

ANALYSIS

The Commission does not provide advice regarding past conduct; therefore, it does not advise whether Trooper Caswell's outside employment with the previous DRE Coordinator was in compliance with the Code of Ethics prior to seeking this opinion. Accordingly, this opinion only addresses Trooper Caswell's outside employment with Dedicated Training Resources, LLC going forward.

A. Outside employment

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

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

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

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

As for subsection two (2), nothing in the information Major Miller-Cronk provided indicates that this arrangement would require Trooper Caswell to disclose confidential information; therefore, such employment will not violate this subsection. So long as Trooper Caswell does not use his official ISP position to secure unwarranted privileges or exemptions that subsection (3) prohibits, IC 4-2-6-5.5 does not prohibit him from working with Dedicated Training Resources, LLC to provide off-duty DRE training while also working for ISP.

The Commission finds that Trooper Caswell would not have a conflict of interests under this particular rule as the two positions would not overlap; however, the Commission is not able to formally approve this outside position because of conflict of interests concerns under IC 4-2-6-10.5 (see analysis below).

B. Conflict of interests-decisions and votes

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

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

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

Based on the information provided, it does not appear that Trooper Caswell is in a position at ISP in which he would participate in decisions or votes, or matters related to such decisions or votes, in which Dedicated Training Resources, LLC would have a financial interest in the outcome. Accordingly, he does not have a potential conflict of interests at this time.

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

C. Conflict of interests – contracts

Pursuant to IC 4-2-6-10.5, a state employee may not knowingly have a financial interest in a contract made by any state agency. The Code defines “financial interest” to include an interest arising from employment. The Commission has interpreted this rule to apply when a state employee derives compensation from a contract between a state agency and a third party. This prohibition however does not apply to an employee that does not participate in or have official responsibility for any of the activities of the contracting agency, and files a written statement with the OIG prior to the contract’s execution.

The Commission finds that Trooper Caswell's compensation as a subcontractor to Dedicated Resources, LLC would be derived from an existing state contract. Accordingly, Trooper Caswell has a financial interest in a contract with a state agency. Although he does not have contracting authority for ICJI, he cannot meet the exception to the prohibition because is unable to meet all of the disclosure requirements in IC 4-2-6-10.5(b). Specifically, he would not be able to meet the requirement in IC 4-2-6-10.5(b)(2) of filing a written statement with the OIG before executing a contract with a state agency as the contract between ICJI and Dedicated Training Resources, LLC is already in place.

D. Confidential information

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

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

E. Use of state property and Ghost employment

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

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

Commissioner Finnerty moved to approve the Commission's findings, and Commissioner Keith seconded the motion which passed (3-0) with one abstention (recusal of Commission Chair Noel).

VII. Request for Formal Advisory Opinion

2019-FAO-021

Trooper Steven Glass, Indiana State Trooper
Major Nila Miller-Cronk, Internal Investigations
Indiana State Police

Major Nila Miller-Cronk serves as Commander, Office of Professional Standards, and Ethics Officer for the Indiana State Police (ISP). She is requesting a Formal Advisory Opinion on behalf of Trooper Stephen Glass, a Drug Recognition Expert (DRE) and a DRE Instructor for ISP, related to his non-department employment providing educational consulting to the Indiana Criminal Justice Institute (ICJI).

ICJI contracted with Dedicated Training Resources, LLC to serve as the State's DRE Coordinator. Dedicated Training Resources, LLC, by member, Marshall Depew, as the State of Indiana's DRE Coordinator, asked Trooper Glass to provide educational consulting services to ICJI on the effects and long-term deficits of drug use and impairment. The purpose of this training is to reduce the impact of the drug epidemic affecting Indiana. Trooper Glass is a DRE instructor for ISP and has been instructing outside law enforcement agencies together with Trooper Glass (*see* 2019-FAO-021) for approximately two years.

Major Miller-Cronk provides that instructing DRE courses for ISP personnel is a part of Trooper Glass's official state duties. As a consultant to Dedicated Training Resources, LLC, he would be conducting the training outside of his state hours to police officers from various police agencies and would not use state equipment or resources when doing so.

Major Miller-Cronk requested an Informal Advisory Opinion from the Office of Inspector General (OIG) on August 7, 2019. The Informal Advisory Opinion issued to Major Miller-Cronk recommended that Trooper Glass request a Formal Advisory Opinion from the Commission regarding whether Trooper Glass would have any conflicts of interests under the Code of Ethics if he were to provide the consulting services to the DRE Coordinator. ICJI's Ethics Officer, Laura Turner, provided additional information to Major Miller-Cronk and the OIG. Ms. Turner clarified that if Trooper Glass accepts this opportunity, he would be a subcontractor of the LLC and would be providing DRE instruction to police officers from various police agencies. ICJI would not be contracting with Trooper Glass; ICJI only contracts with the DRE Coordinator for the State. Major Miller-Cronk is now requesting a Formal Advisory Opinion on behalf of Trooper Glass regarding whether he can accept the opportunity to subcontract with Dedicated Training Resources, LLC to provide training services that are similar to the services he provides in his role at ISP.

ISSUES

- 1) Would Trooper Glass' outside employment as a subcontractor with Dedicated Training Resources, LLC create any conflicts of interests for him under the Code of Ethics?
- 2) What other ethics issues, if any, arise for Trooper Glass given his position as a DRE instructor and his simultaneous outside employment providing DRE training services as a subcontractor to Dedicated Training Resources, LLC?

ANALYSIS

A. Outside employment

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

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

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

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

As for subsection two (2), nothing in the information Major Miller-Cronk provided indicates that this arrangement would require Trooper Glass to disclose confidential information; therefore, such employment will not violate this subsection. So long as Trooper Glass does not use his official ISP position to secure unwarranted privileges or exemptions that subsection (3) prohibits, IC 4-2-6-5.5 does not prohibit him from subcontracting with the LLC to provide off-duty DRE training while also working for ISP.

The Commission finds that Trooper Glass would not have a conflict of interests under this particular rule, as the two positions would not overlap; however, the Commission is not able to formally approve this outside position because of conflict of interests concerns under IC 4-2-6-10.5 (see analysis below).

B. Conflict of interests-decisions and votes

IC 4-2-6-9 (a)(1) prohibits Trooper Glass from participating in any decision or vote, or matter relating to that decision or vote, if he has a financial interest in the outcome of the matter. Similarly, IC 4-2-6-9(a)(3) prohibits Trooper Glass from participating in any decision or vote, or matter relating to that decision or vote, if a business organization in

which he is serving as an officer, a director, a member, a trustee, a partner or an employee has a financial interest in the matter.

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

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

Based on the information provided, it does not appear that Trooper Glass is in a position at ISP in which he would participate in decisions or votes, or matters related to such decisions or votes, in which the LLC with whom he is a subcontractor would have a financial interest in the outcome. Accordingly, he does not have a potential conflict of interests at this time.

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

C. Conflict of interests – contracts

Pursuant to IC 4-2-6-10.5, a state employee may not knowingly have a financial interest in a contract made by any state agency. The Code defines “financial interest” to include an interest arising from employment. The Commission has interpreted this rule to apply when a state employee derives compensation from a contract between a state agency and a third party. This prohibition however does not apply to an employee that does not participate in or have official contracting responsibility for any of the activities of the contracting agency and files a written statement with the OIG prior to the contract’s execution..

The Commission finds that Trooper Glass’ compensation as a subcontractor to Dedicated Resources, LLC would be derived from an existing state contract. Accordingly, Trooper Glass has a financial interest in a contract with a state agency. Although he does not have contracting authority for ICJI, he cannot meet the exception to the prohibition because is unable to meet all of the disclosure requirements in IC 4-2-6-10.5(b). Specifically, he would not be able to meet the requirement in IC 4-2-6-10.5(b)(2) of filing a written statement with the OIG before executing a contract with a state agency, as the contract between ICJI and Dedicated Training Resources, LLC is already in place.

D. Confidential information

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

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

E. Use of state property and Ghost employment

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

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

Commissioner Finnerty moved to approve the Commission’s findings, and Commissioner Keith seconded the motion which passed (3-0) with one abstention (recusal of Commission Chair Noel).

VIII. Consideration of Final Report

In the Matter of Jason Coffey
Case Number 2019-02-0035
Heidi Adair, Staff Attorney
Indiana Office of Inspector General

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

Commissioner Finnerty moved to approve the Final Report and Commissioner Keith seconded the motion which passed (3-0) with one abstention (recusal of Commissioner Todd).

IX. Director's Report

State Ethics Director, Jen Cooper, stated that since the last Commission meeting, the Office of Inspector General had issued 19 informal advisory opinions on the subjects of post-employment restrictions, conflicts of interests, outside employment, and gifts.

She further advised that the State Ethics Training was set to launch on October 21, 2019 for all State Employees and Special State Appointees. The training had previously been set to launch on October 1st, 2019, but there had been some technical issues. Ms. Cooper also reported that the updated Title 40, Article 2 of the Indiana Administrative Code has been published.

X. Adjournment

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

The public meeting adjourned at 10:44 a.m.