

**MINUTES OF THE MEETING OF  
THE INDIANA STATE ETHICS COMMISSION  
November 18, 2021**

**I. Call to Order**

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

Others present were: Ed Feigenbaum, Indiana Legislative Insight; Jessica Keyes, Ethics Officer, Family and Social Services Administration; Mattheus Mitchel, Compliance and Ethics Specialist, Department of Revenue; Amber Nicole Ying, Director/Special Counsel, Compliance and Ethics and Ethics Officer, Department of Revenue; Alexander Van Gorp, Attorney, Indiana State Department of Health; Kathy Mills, Ethics Officer, Indiana Department of Environmental Management; Jennifer Thuma, Administrative Law Judge and Ethics Officer, Indiana Board of Tax Review; Kristi Shute, Deputy General Counsel and Ethics Officer, Indiana Department of Homeland Security; Beth Green, General Counsel/Ethics Officer, Department of Workforce Development; Kyleen Welling, Chief of Staff and Chief Operating Officer, Indiana Housing and Community Development Authority; David Snell, Ethics Officer, Office of Indiana State Chemist; Randy Koester, Chief of Staff and Ethics Officer, Indiana Department of Correction; Sylvia Watson, General Counsel, Indiana State Library; Justin Bruce, Community Programs Fiscal Monitor, Indiana Housing and Community Development Authority; Ted Cotterill, General Counsel, Management Performance Hub; Larissa Patterson, Graduate Student, Marian University; Sarah Stallings; and McKinzie Mimms.

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

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

Commissioner Todd moved to approve the Minutes of the October 14, 2021, Commission Meeting and Commissioner Sanchez seconded the motion which passed (4-0). Commission Chair Noel abstained due to her absence from the October Commission Meeting.

**III. Consideration of Waiver of Post-Employment Restrictions for Justin Bruce**

S. Kyleen Welling, Chief of Staff and Chief Operating Officer for the Indiana Housing and Community Development Authority presented the proposed Waiver of Post-Employment Restrictions in this matter to the Commission for their approval.

Commissioner Gilroy moved to approve the Waiver, and Commissioner Sanchez seconded the motion which passed (5-0).

**IV. Request for Formal Advisory Opinion**

2021-FAO-011

Randall Koester, Chief of Staff and Ethics Officer  
Indiana Department of Correction

Randy Koester is the Chief of Staff and Ethics Officer for the Indiana Department of Correction (IDOC). He is requesting a formal advisory opinion regarding an opportunity that has been presented to IDOC to determine whether it is permissible under the ethics rules.

Specifically, IDOC has been presented with an offer for staff to receive discounted post-secondary educational opportunities through a contractual agreement with Purdue University Global (Purdue Global). Purdue Global serves as Purdue University's (Purdue) online educational provider.

Purdue Global provides educational opportunities to a large class of students, including niche programs for first responders and those in the military. Purdue Global approached IDOC to develop a specialized educational program for those in corrections that would work closely with IDOC's Staff Development & Training (SD&T) Division to offer specialized curricula towards degrees. Mr. Koester has attached a PowerPoint presentation that Purdue provided that offers more information on this program. Through this program, IDOC employees would be able to leverage their IDOC training to earn college credits and financial savings towards degrees.

To date, IDOC has had no business relationship or contractual relationship with Purdue Global. IDOC wishes to enter into an agreement with Purdue Global so qualified IDOC staff can receive educational credits for specific training they earn through IDOC's SD&T Division and so staff can receive discounted credit, including a 20% discount on credits leading to an undergraduate degree and a 14% discount for credits leading toward a graduate degree (see page 9 of attached PowerPoint presentation). These discounts are also reflected in the exhibit included in the proposed agreement (copy attached).

Mr. Koester provides that IDOC supports this agreement for several reasons. IDOC is currently experiencing unprecedented low staff retention and high staff turnover. Providing these benefits could encourage some staff to stay with the agency to pursue their education. A more highly educated workforce would also benefit the agency generally and potentially prepare more staff for opportunities to promote to higher level positions within the agency.

This opportunity was generally discussed and cleared with the Indiana State Personnel Department (SPD) via IDOC's Human Resources Director. As IDOC proceeded through the formal state contracting process, the Indiana Department of Administration (IDOA) stopped the process and expressed concerns that the proposed agreement might, at least appear, to violate the Gift rule (42 IAC 1-5-1). IDOA also questioned whether Purdue Global would be recognized as a "public institution" for purposes of the exception under 42 IAC 1-5-1(b)(1) for gifts from a public institution.

IDOC sought an informal advisory opinion from the Office of Inspector General (OIG), which the OIG issued on September 20, 2021. IDOC included a copy of the informal advisory opinion in this formal advisory opinion request. The informal advisory opinion concluded that the Gift rule, 42 IAC 1-5-1, would not apply to the educational credits/discounts as these are part of the consideration of the proposed contract agreement between IDOC and Purdue Global and not free “gifts” to IDOC employees.

The informal advisory opinion also stated that the credits/discounts would likely not be considered additional compensation under the Additional compensation rule, 42 IAC 1-5-8; however, the OIG recommended IDOC request a formal determination from the Commission on this question.

IDOC is now seeking a formal advisory opinion from the Commission to determine whether the IDOC employees would be able to accept the education credits.

The analysis stated the following:

*A. Gifts and Donor Restrictions*

The Gift rule prohibits state employees from knowingly soliciting or accepting any gift, favor, service, entertainment, food, drink, travel expenses or registration fees from:

- 1) a person who has a business relationship with the employee’s agency; or
- 2) a person who is seeking to influence an action by the employee in her official capacity.

The donor restrictions rule mirrors the Gift rule and prohibits those with a business relationship with a state employee’s agency from offering a gift in that same circumstance.

In order for the Gift rule to apply, the “person,” defined in IC 4-2-6-1(a)(13), from whom the gift is being accepted or solicited must either have a “business relationship” with the employee’s agency or must be seeking to influence an action by the employee in her official capacity. “Business relationship” is defined in IC 4-2-6-1(a)(5) to include the “dealings of a person with an agency seeking, obtaining, establishing, maintaining or implementing: (i) a pecuniary interest in a contract or purchase with the agency or (ii) a license or permit requiring the exercise of judgment or discretion by the agency.”

The contract that IDOC plans to enter into with Purdue Global to establish this educational partnership would create a business relationship between Purdue Global and IDOC. This relationship would ordinarily prohibit Purdue Global from providing the proposed educational credit and discounts to IDOC employees under the donor restrictions rule. Likewise, IDOC employees would be prohibited from accepting the credits/discounts provided by Purdue Global under the Gift rule; however, because the credits/discounts are part of the consideration of the contract between Purdue Global and IDOC, they would not be considered gifts to IDOC employees. In other words, Purdue Global is not offering anything additional (or free) to IDOC employees beyond what it is providing IDOC through the contract. Because the Commission finds that the credits/discounts are not gifts, the Commission did not consider whether any of the exceptions to the Gift rule, such as gifts from public agencies or institutions, would apply.

The Commission finds that the educational credits/discounts are part of the consideration of the prospective contract between IDOC and Purdue Global and would not be considered gifts. Accordingly, IDOC employees would be permitted to accept the educational credits/discounts from Purdue Global.

*B. Additional compensation*

The Additional compensation rule prohibits a state employee from soliciting or accepting compensation for the performance of official duties other than provided for by law.

Mr. Koester provides that IDOC employees may be eligible to receive educational credits for certain trainings they complete through IDOC's SD&T. If completion of these trainings is part of their official state duties, IDOC employees would be prohibited from accepting the educational credits, if they would be considered compensation for completion of these trainings.

"Compensation" is defined in IC 4-2-6-1(a)(7) as any money, thing of value or financial benefit conferred on or received by any person in return for services rendered or for services to be rendered whether by that person or another. The Commission has never interpreted "compensation" in the context of educational credits provided to an employee by their agency through a contract with an educational institution. The Commission has, however, interpreted the term "compensation" when analyzing the application of the Additional compensation rule to the payment of state agency attorneys' professional licensing fees.

In [09-I-14](#), the Commission determined that the payment of state attorneys' dues and continuing legal education fees were not considered "compensation;" thus, the Additional compensation rule did not prohibit state agencies from paying the annual attorney registration fees for attorneys practicing law within their agencies. The Commission rationalized that the payment of dues and fees, although a thing of value, would not necessarily be paid "in return for services rendered". The Commission opined that the term "in return for services" implies a specific quid pro quo, and the fees in these types of situations would be paid to maintain the professional standards of the attorneys involved and not necessarily specifically in return for services rendered by the attorneys.

Consistent with 09-I-14, the Commission finds that Purdue Global would not be providing the educational credits to IDOC employees in return for specific services rendered by IDOC employees. Rather, Purdue Global would provide the credits as part of the educational partnership that IDOC and Purdue Global are pursuing through their upcoming contract. Accordingly, this rule would not prohibit IDOC employees from accepting the educational credits/discounts from Purdue Global.

Commissioner Gilroy moved to approve the Commission's findings, and Commissioner Todd seconded the motion which passed (5-0).

**V. Director's Report**

State Ethics Director, Jen Cooper, indicated that OIG staff has issued 34 informal advisory opinions since the previous last meeting. The majority of these requests dealt with questions concerning conflicts of interests, use of state property, ghost employment, outside employment, post-employment and gifts.

She continued that the 2021 Legal and Ethics Conference was held on November 16, 2021. The Conference was virtual this year and there has been a lot of positive feedback from the attendees.

Finally, Director Cooper noted that the new Ethics Training is still in progress with hopes for a roll-out in early 2022.

## **VI. Adjournment**

Commissioner Finnerty moved to adjourn the public meeting of the State Ethics Commission. Commissioner Todd seconded the motion which passed (5-0).

The public meeting adjourned at 10:21 a.m.