

**MINUTES OF THE MEETING OF
THE INDIANA STATE ETHICS COMMISSION
April 13, 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; Priscilla Keith; Bob Jamison; and Daryl Yost. Staff present included Lori Torres, Inspector General; Jennifer Cooper, Ethics Director; Stephanie Mullaney, Compliance Officer; Tiffany Mulligan, Chief Legal Counsel; Matthew Savage, Staff Attorney; Cynthia Scruggs, Director of Administration; Mark Mitchell, Special Agent; Mike Mischler, Special Agent; Chuck Coffin, Special Agent; and Celeste Croft, Legal Assistant, Office of Inspector General.

Others present were Benjamin Kemp, former Department of Education employee; Stanley Frank, South EMS District Manager Program Coordinator; Sarah Kamhi, Deputy General Counsel, Economic Development Corporation; Lee Ann Kwiatkowski, Chief of Staff, Department of Education; Chelsea Smith, Ethics Officer/Administrative Law Judge, Department of Homeland Security; Joan Blackwell, Chief of Staff, Attorney General’s Office; Mark Tidd, Ethics Officer/Prequalification and Permits Director, Department of Transportation; Will Wingfield, Public Information Officer, Department of Transportation; Britni Saunders, Talent Management Manager, Department of Transportation; Mark Albers, Funds Manager, Department of Transportation; Joe McGuinness, Commissioner, Department of Transportation; Jason Jones, Indiana State Highway Maintenance Director, Department of Transportation; Cathleen Nine-Altevogt, Ethics Officer/Attorney, Department of Insurance; Stephanie Pfendler, Ethics Officer/Administrative Assistant 2, Indiana Arts Commission; Rachel Russell, Ethics Officer, Department of Health; Adrienne Brune, Attorney, Department of Health; Deana Smith, Attorney, Department of Health; and Kathy Mills, Ethics Officer, Department of Environmental Management.

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 Yost moved to approve the Minutes of the February 9, 2017 Commission Meeting and Chairman Clevenger seconded the motion which passed (3-0).

III. Consideration of Limited Personal Use of State Property/Resources Policy

**Joan Blackwell, Chief of Staff
Office of Indiana Attorney General Curtis Hill**

Ms. Blackwell presented a revised version of the Limited Personal Use of State Property/Resources Policy, which was similar in wording to the prior Limited Personal Use of

State Property/Resources Policy, just reformatted. Chairman Clevenger agreed that the revised version of the Limited Personal Use of State Property/Resources Policy was mostly revised with regard to its form, not substance. Commissioner Yost moved to approve the revised Limited Personal Use of State Property/Resources Policy and Commissioner Jamison seconded the motion, which passed (4-0).

IV. Request for Formal Advisory Opinion

**17-I-5 Chelsea Smith, Administrative Law Judge/Ethics Officer
Stanley Frank, South EMS District Manager Program Coordinator
Department of Homeland Security**

Mr. Frank is a current employee of the Department of Homeland Security and serves as Southwest EMS District Manager Program Coordinator for the State Fire Marshall's Office for Districts 7 and 10. In that role, Mr. Frank is responsible for overseeing ambulance/EMS transport services, rescue, rule compliance, and complaint investigation.

Mr. Frank stated that he would like to serve as a part-time paramedic for Riley Fire, where he used to be employed. Riley Fire is located in Vigo County, which is one of twenty counties and one of almost two hundred providers that Mr. Frank oversees as Southwest EMS District Manager Program Coordinator. Riley Fire is a combination fire department that supplies ambulance services for three townships within Vigo County.

Mr. Frank explained that if he were to work as a part-time paramedic for Riley Fire, his responsibilities would be to inspect the ambulance service membership and handle complaints. Mr. Frank stated that part of this responsibility at Riley Fire would be to oversee complaints; however, Mr. Frank stated that Mr. Mike Garvey, the Director for EMS, would step in and appoint one of the other District Managers from the Southeast, the Northeast, or the Northwest to perform this responsibility in order to avoid any conflicts of interest. Ms. Smith stated that she had spoken with Mr. Garvey and that he was in full support of Mr. Frank's decision to become a part-time paramedic at Riley Fire.

Ms. Smith provided the Commissioners with a copy of the screening mechanism she devised, which was not submitted with the original materials.

Ms. Smith and Mr. Frank believed that the screening mechanism would allow Mr. Frank to perform his duties as Southwest EMS District Manager Program Coordinator while also serving as a part-time paramedic for Riley Fire without compromising his role and job responsibilities as a State employee. Mr. Frank further stated that his hours at Riley Fire would not interfere with the hours that he worked for with the State, as he would be working for Riley Fire during evenings and weekends and working for the State Monday through Friday from 8:00 a.m. until 5:00 p.m.

Chairman Clevenger questioned Mr. Frank regarding the appearance of favoritism and jealousy amongst coworkers to which Mr. Frank stated he did not foresee that ever being an issue, as he has always treated his subordinates fairly.

Mr. Frank is seeking advice to determine regarding whether outside employment with Riley Fire would violate the Indiana Code of Ethics, as he is in a position that make decisions that could affect Riley Fire. Further, Mr. Frank was seeking advice regarding whether a screening mechanism would resolve any of those potential violations.

The advisory opinion stated the following analysis:

A. Outside employment

An outside employment or professional activity creates a conflict of interests under IC 4-2-6-5.5 if it results in the employee: 1) receiving compensation of substantial value if 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 official duties that his 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 official position to secure unwarranted privileges or exemptions of substantial value that are not properly available to similarly situated individuals outside state government.

Based on the information provided, Mr. Frank is responsible for overseeing ambulance service within 20 counties and for nearly 200 providers in those counties. Riley Fire Department is one of those providers. Accordingly, Mr. Frank is responsible for conducting Riley Fire Department's ambulance inspections, approving its provider certifications, and conducting investigations into alleged violations of any EMS statutes or regulations. According to the proposed screening policy provided by Ms. Smith, Mr. Frank would be screened from all matters involving Riley Fire Department that he would normally oversee as the Southwest EMS District Manager. These matters would instead be overseen by the EMS Director for IDHS.

The Commission finds that Mr. Frank's recusal from Riley Fire Department matters would not result in him being unable to perform official duties that are central and critical to his position with IDHS because Riley Fire Department is only one of nearly 200 providers he oversees in his district. In addition, Mr. Frank would not have to divulge confidential information he gained as an IDHS employee while serving as a part-time paramedic. Further, Mr. Frank previously served as the EMS Division Chief for Riley Fire Department and was told he could continue serving the department if he accepted the IDHS position, so he did not use his state position to secure the part-time paramedic opportunity.

Accordingly, the Commission finds that Mr. Frank's outside employment with Riley Fire Department would not create a conflict of interests for him under this rule as long as he complies with the IDHS screening policy presented by Ms. Smith.

B. Conflict of interests - decisions and votes

IC 4-2-6-9 (a)(1) prohibits Mr. Frank 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 Mr. Frank from participating in any decision or vote, or matter relating to that decision or vote, if he or a business organization which employs him has a financial interest in the matter. The definition of "financial interest" in IC 4-2-6-1(a)(11) includes, in part, "an interest arising from employment".

Mr. Frank will be serving as the Southwest EMS District Manager and will also be employed as a part-time paramedic by Riley Fire. Although it is unclear if Riley Fire Department would be considered a "business organization" for purposes of this rule, Riley Fire Department is Mr. Frank's employer. As the Southwest EMS District Manager, Mr. Frank's responsibilities include regulatory and compliance oversight of Riley Fire Department. Decisions he would have to make in this capacity could have a financial impact on himself, as an employee of Riley Fire Department, and Riley Fire Department.

Accordingly, the Commission finds that Mr. Frank would have a potential conflict of interests if he were to participate in decisions and votes, or matters related to such decisions or votes, that would affect Riley Fire Department. IC 4-2-6-9(b) requires that an employee who identifies a potential conflict of interests notify their ethics officer and appointing authority and seek an advisory opinion from the Commission or file a written disclosure statement.

Ms. Smith and Mr. Frank have requested this formal advisory opinion, and Ms. Smith has proposed a screening mechanism, through a policy approved by the IDHS appointing authority, which requires the EMS Director for IDHS to retain complete decision-making authority with respect to any decision or delegation of any decision that would potentially result in a benefit (or detriment) to Riley Fire Department. This includes, but is not limited to, routine ambulance inspections at the Riley Fire Department, investigations into complaints and reports of violations by the Riley Fire Department, renewal of the Riley Fire Department's provider certifications, and other matters involving Riley Fire Department. The screening policy requires that when such a matter involving Riley Fire Department arises that would normally be submitted to or discussed with Mr. Frank, the matter shall be directed to the EMS Director.

In the event that Riley Fire is a "business organization" under IC 4-2-6-9(3), the Commission finds this screening policy to be satisfactory to prevent Mr. Frank from having a conflict of interests in violation of IC 4-2-6-9.

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 an agency. 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, provided certain statutory criteria are met. The Commission has interpreted the term “official responsibility” as contracting responsibilities.

Ms. Smith provides that Riley Fire Department does not receive funding through IDHS. Accordingly, Mr. Frank would not have a financial interest in a state contract through his position at Riley Fire Department and would not be in violation of this rule.

D. Confidential information

Mr. Frank 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 Mr. Frank from accepting any compensation from any employment, transaction, or investment which 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 or an entity, such as Riley Fire Department. In addition, the definition of “information of a confidential nature” is set forth in IC 4-2-6-1(a)(12).

To the extent Mr. Frank is exposed to or has access to such confidential information in his position as Southwest EMS District Manager, he would be prohibited not only from divulging that information but from ever using it to benefit any person, including Riley Fire Department, in any manner.

E. Use of state property and Ghost employment

42 IAC 1-5-12 prohibits Mr. Frank 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 that has been approved by the Commission. Likewise, 42 IAC 1-5-13 prohibits Mr. Frank 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 Mr. Frank observes these provisions regarding his employment with Riley Fire Department, such outside professional activity would not violate these ethics laws.

The Commission found that Mr. Frank’s outside employment with Riley Fire Department would not create a conflict of interests for him under the Code of Ethics.

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

V. Consideration of IDOE Waiver of Post-Employment Restrictions for Benjamin Kemp

Lee Ann Kwiatkowski, Chief of Staff
Marsha Bugalla, General Counsel
Department of Education

Ms. Kwiatkowski presented the waiver regarding the 365 cooling off period before Mr. Kemp could work with a State contractor. Mr. Kemp previously worked for the Department of Education in the Assessment Department, where he had the opportunity to work on one of the Department of Education's assessments contractors, Data Recognition Corporation. Ms. Kwiatkowski also stated that Mr. Kemp was never involved with any contract negotiation while he worked at the Department of Education. Mr. Kemp would still live in Indiana, but would no longer be working for the State of Indiana, and would be teleworking for another state for the Data Recognition Corporation.

Commissioner Jamison moved to approve the waiver and Commissioner Keith seconded the motion, which passed (4-0).

VI. Consideration of INDOT Waiver of Post-Employment Restrictions for Mark Albers

Mark Tidd, Ethics Officer
Joe McGuinness, Commissioner
Mark Albers, Fund Manager
Department of Transportation

Mr. Albers presented his post-employment waiver requesting permission to go to work for VS Engineering, Inc., a professional brand consulting firm that provides professional transportation services.

Mr. Albers stated he is a professional civil engineer and has been working in the transportation profession for thirty-four years. Mr. Albers started his career with the Indiana State Highway Commission, now known as the Indiana Department of Transportation, where he worked for two and a half years. Mr. Albers then working fourteen and a half years for Kentucky consulting engineering firms and five years as a Highway Executive Director before returning to the Indiana Department of Transportation. Mr. Albers has been serving as the District's Program Fund Manager since June of 2016. In this position, Mr. Albers has no substantial decision-making authority over policies or contracts. Prior to June of 2016, Mr. Albers served as the District's Consulting Service Manager, which he started in March of 2014. From March of 2014 through August, 2015, his job responsibilities were that of a Program Fund Manager. During this time

period, as a supervisor, his position had discretionary decision-making authority that could affect the outcome of negotiations to administration of the contract. During this time period, there were no contracts negotiated or administered by Mr. Albers in his official capacity with VS Engineering.

Mr. Albers stated that he was first approached the VS Engineering about this job opportunity last fall, which ultimately led to him being offered and accepting a position at VS Engineering as the Chief Transportation Engineer and Project Manager. Mr. Albers stated that his acceptance is conditional upon the Commissioner approving his post-employment waiver. In this new role, Mr. Albers would be providing technical engineering expertise to specific transportation projects, quality assurance, quality control, mentoring of young professionals, client relations, assigning projects, deciding on services required, overseeing man-hours utilized, project budget administration, consulting with contractors, managing project development, and communicating and coordinating with INDOT's assigned Project Managers and at times INDOT's Technical Engineering Support Services, amongst other tasks.

Mr. Albers and Mr. Tidd further stated that Mr. Albers was not currently involved with any work that VS Engineering, Inc. has with the State.

Commissioner Keith moved to approve the waiver and Commissioner Yost seconded the motion, which passed (4-0).

VII. Consideration of INDOT Waiver of Post-Employment Restrictions for Jason Jones

Mark Tidd, Ethics Officer

Joe McGuinness, Commissioner

Jason Jones, Indiana State Highway Maintenance Director

Department of Transportation

Mr. Jones presented his post-employment waiver regarding the cooling off period and permission to work for Gauge Telematics. Mr. Jones is a Registered Civil Engineer and serves as the Statewide Director of Highway Maintenance for INDOT and has been with INODT since 1997, and in his most current role, for about the last seven and a half years, his duties have been to direct the routine maintenance of all pavements, bridges, and signage, and to set performance standards, update policies, and establish performance metrics, amongst other tasks. Mr. Jones recently had an opportunity to work with Gauge Telematics, and would now like to pursue employment with them. Gauge Telematics is a small company that provides telematic devices and data services for large fleets and construction equipment.

Mr. Jones further stated that Gauge Telematics does have a current contract with the State of Indiana through the Department of Administration by an IDOA Project Manager for installation of devices on six thousand five hundred State vehicles. Mr. Jones explained that he was asked, along with several other people in operational roles, to review snow plow related responses to an RFP and to provide feedback to same, but that he was not involved with the rest of the RFP or with

any final decisions or contract negotiations. Mr. Jones's involvement with this contract has strictly been with the snow plows and with scheduling the installations. Mr. Tidd concurred with these statements and Commissioner McGuinness provided his support for Mr. Jones's request.

The position Mr. Jones has tentatively accepted at Gauge Telematics is Operations Manager, His duties would include management of sales and accounts, management of sales and accounting personnel, sales floor casting, development of operational processes, project management for special projects, and assisting strategy, amongst other tasks. In this role, Mr. Jones would not have involvement with the current contract Gauge Telematics has with the State of Indiana.

Commissioner Yost moved to approve the waiver and Commissioner Keith seconded the motion, which passed (4-0).

VIII. Request for Formal Advisory Opinion

**17-I-6 Mark Tidd, Ethics Officer/Prequalification and Permits Director
 Britni Saunders, Talent Management Manager
 Department of Transportation**

Both Ms. Saunders and Mr. Tidd presented, both requesting to add professional association fees onto the policy regarding the use of state property. Ms. Saunders discussed that her current role at the Department of Transportation has been to oversee the procurement of any learning and development purchases including all licenses and other related items. Ms. Saunders stated that she believed that their agency, as well as many others, could benefit from having the ability to be a part of professional associations and that doing so has a direct business benefit to INDOT and other State agencies and taxpayers. Ms. Saunders provided five examples that spoke to why she wanted this change and Mr. Tidd provided one example for the same purpose. Ms. Saunders discussed how membership to certain associations has provided INDOT with timely knowledge and access to important decision-making information, resources, course materials, data, databases, and research, which has saved INDOT a large amount of time and money and has allowed it to improve other areas, such as social media, taxpayer education, and public notification of important information. Mr. Tidd described how employees, through professional associations, were able to bring INDOT's mission out into the world and interface with knowledgeable people in order to solve State problems in a more efficient and effective way. Ms. Saunders then explained the proposed approval process and justification that would be required in order for agency heads to approve some, not all, professional association dues. The Inspector General, Lori Torres, agreed, as did Ms. Joan Blackwell, that approval of some professional association fees did have direct State business benefit as well as benefit and enrichment to State employees.

The advisory opinion stated the following analysis:

IC 4-2-6-17 (42 IAC 1-5-12) prohibits a state officer, employee or special state appointee from using state materials, funds, property, personnel, facilities or equipment for purposes other than

official state business unless the use is expressly permitted by a general written agency, departmental or institutional policy or regulation that has been approved by the Commission.

In Advisory Opinion No. 08-I-22, the Commission determined that an agency would be permitted to use agency funds to pay for Continuing Legal Education (CLE) for attorneys employed within the agency. The Commission opined that attending CLE seminars would be considered official state business because these seminars provide legal training for an attorney that may be useful to an attorney in the performance of their duties within an agency. Further, obtaining CLE credit is one of the requirements for an attorney to maintain their license.

However, the Commission determined that an agency would not be permitted to use agency funds to pay for professional association fees for its attorneys because an attorney is able to perform their job duties without having to retain membership in professional associations. Accordingly, the Commission found that agencies would not be permitted to use state funds to pay for their attorneys to maintain professional memberships.

Advisory Opinion No. 08-I-22 was based on information provided by a former Inspector General without the benefit of input from other agencies as to the value of professional memberships for state employees serving as attorneys or in other professions within state government. INDOT and the other agencies who provided their letters of support believe that state agencies have a compelling interest to ensure that employees within their agencies have access to training and resources, including the latest industry information that may be necessary to the performance of their state duties.

Based on the information provided through this request, the Commission finds that professional memberships provide many benefits for state agencies, beyond those afforded to the employees who join the professional associations, including reduced continuing education fees, professional development of employees, retention of highly skilled professionals, and access to information that is valuable, and in some cases necessary, for state employees in carrying out their state responsibilities.

Accordingly, the Commission further finds that an agency's use of state funds to pay for professional association membership fees constitutes official state business and would not violate IC 4-2-6-17 as long as there is a demonstrated benefit to the agency.

The Commission found that state agencies can use state funds to pay the professional membership fees of state employees so long as agency leaders can demonstrate that the membership will benefit the agency.

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

IX. Consideration of Electronics Meeting Policy

Jennifer Cooper, State Ethics Director, Office of Inspector General

The State Ethics Director, Jennifer Cooper, presented information to the Commissioners regarding the consideration of adopting an Electronic Meeting Policy. Ms. Cooper stated that adopting such

a policy would allow Commissioners who could not be present to participate via electronic means, in order to roll call vote in matters, so that there would still be a quorum and so that business could still be conducted as opposed to rescheduling meetings.

Commissioner Keith moved to approve the policy and Commissioner Yost seconded the motion, which passed (4-0).

X. Director's Report

Ms. Cooper stated that the OIG issued fifty-five Informal Advisory Opinions since the last meeting of February 11, 2017 and that there were two outstanding Financial Disclosure Statements.

XI. Inspector General's Report

Inspector General Torres expressed her thanks and gratitude for all of the work that the agency Ethics Officers do to ensure their agencies are following the ethics rules. She also thanked her staff for allowing her to come in with a different perspective and do some new things. One of these things is the adoption of a new mission statement. The OIG staff also participated in a retreat and the website has been updated to include more information on Ethics Commission meetings and resources for Ethics Officers. The OIG is also working on new metrics to submit to the Management and Performance Hub. Inspector General Torres also shared that the OIG received just under 2000 Financial Disclosure Statements during this year's filing period and that OIG staff issued seventy-seven Informal Advisory Opinions during the first quarter of the year. The OIG also received sixty requests for investigation and opened nine cases during the first quarter.

XII. Adjournment

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

The public meeting adjourned at 11:44 a.m.