

**MINUTES OF THE MEETING OF
THE INDIANA STATE ETHICS COMMISSION
May 14, 2020**

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, Chairperson; Corinne Finnerty; Sue Anne Gilroy; Kenneth Todd; and Rafael Sanchez. Staff present included Lori Torres, Inspector General; Jennifer Cooper, State Ethics Director; Tiffany Mulligan, Chief Legal Counsel, Office of Inspector General; Darrell Boehmer, Director of Investigations, Office of Inspector General; Luba Gore, Staff Attorney, Office of Inspector General; Cynthia Scruggs, Director of Administration, Office of Inspector General; and Nathan Baker, Legal Assistant, Office of Inspector General.

Others present were: Mattheus Mitchel, Compliance & Ethics Specialist, Department of Revenue; Amber Nicole Ying, Special Counsel/Director and Ethics Officer, Compliance and Ethics, Department of Revenue; Christine MacDonald, Internal Affairs Officer, Department of Child Services; Bill Anthony, Deputy Attorney General, Office of Attorney General; Rachel Russell, Deputy General Counsel/Ethics Officer, Department of Child Services; Claire Szpara, Attorney & Ethics Officer, Indiana Department of Insurance; Andrew Bernlohr, General Counsel and Ethics Officer, Indiana Department of Education; Deana Smith, Ethics Officer, Indiana State Department of Health; Ed Feigenbaum, Indiana Legislative Insight; Mark Hawkins, Legislative Director, Auditor of State; Sarah Parks-Reese, Pre-K Expansion Specialist, Indiana Department of Education; Keith Beesley, Attorney, State Personnel Department, Beth Green, General Counsel, Department of Workforce Development; and Kathleen Mills, Ethics Officer, Indiana Department of Environmental Management.

II. Adoption of Agenda and Approval of Minutes

Commissioner Sanchez moved to adopt the Agenda and Commissioner Finnerty seconded the motion which passed (5-0).

Commissioner Sanchez moved to approve the Minutes of the March 12, 2020 Commission Meeting and Commissioner Todd seconded the motion which passed (4-0). Commissioner Noel abstained from voting due to her absence at the March meeting.

III. Inspector General’s Report

Inspector General Lori Torres presented a report on the first quarter of 2020. 66 Informal Advisory Opinions were issued (compared to 103 issued in Q4 of 2019 and 77 in Q1 of 2019). There were 88 requests for investigations (compared to 83 requests in Q4 of 2019 and 87 in Q1 of 2019). Twelve (12) new investigations were opened by OIG (compared to 15 in Q4 of 2019 and 14 in Q1

2019). Six (6) investigations were closed by OIG (compared to 8 in Q4 of 2019 and 15 in Q1 2019). All six closed investigations were published to the OIG website.

Regarding KPI's for Q1:

- KPI #1 - Number of informal advisory opinions (“IAO”s) requested: **71**
- KPI #2 - Average number of business days to provide an IAO: **1.21**
- KPI #3 - Number of recommendations made to reduce waste, inefficiency, fraud and improve integrity: **1 recommendation in Q1 in 6 published reports**

The 2020 Auditors & Investigators Conference was tentatively planned to be webcast on Wednesday, June 3, 2020 1:00 – 4:00 p.m. The agenda was being finalized with 3 distinct presentations

IG Torres noted that the OIG 2019 Annual Report would be issued before the next Commission meeting.

Regarding COVID-19, IG Torres reported to the Commission that all OIG staff had been working remotely except as needed in the office to collect the mail, deposit checks or access the evidence room. She went on to outline OIG's reopening plans in accordance with Governor Holcomb's executive order. In addition, the next State Ethics Commission meeting set for June 11, 2020 would be announced once arrangements were made, but that it would likely be broadcast via the Microsoft Teams platform.

IV. Request for Formal Advisory Opinion

2020-FAO-006

Sarah Parks-Reese, Pre-K Expansion Specialist

Andrew Bernlohr, General Counsel & Ethics Officer

Indiana Department of Education

Sarah Parks-Reese serves as a Pre-K Expansion Specialist with the Indiana Department of Education (IDOE). In this role, she helps schools understand the benefits of Pre-K and how to fund it in their building or district. Andrew Bernlohr serves as IDOE's General Counsel and Ethics Officer.

Ms. Parks-Reese is considering running for a position on the school board in her home district of Hamilton Southeastern Schools (HSES) in Hamilton County, Fishers, Indiana. She would be running in the fall 2020 election. The board position receives compensation (per diem) for certain meetings and events. In her role with IDOE, Ms. Parks-Reese has a professional relationship with the Preschool Director for HSES. Ms. Parks-Reese has communicated with the HSES Preschool Director in the past to ask for her feedback on resources she created. The Preschool Director has asked Ms. Parks-Reese and her early learning colleagues to present at a conference HSES co-sponsored with the Indiana Division of Early Childhood.

Ms. Parks-Reese's position at IDOE does not involve awarding grants or overseeing funding offered to school districts. She makes all districts and non-public schools aware of possible funding streams to support preschool programs. On occasion, she assists other specialists with grant approval, specifically the Early Intervention Grant that supports literacy programs in K-3 sites; however, in those grant reviews, IDOE approves all complete applications. For all incomplete applications, IDOE asks the school districts to resubmit them and then IDOE approves the applications. According to Ms. Parks-Reese, it is entirely within the control of the other specialists to decide whether to send a grant from HSES to her for approval and she can specifically request them not to send her HSES grants for review or approval.

Ms. Parks-Reese provides that should she be elected, the school board position would not interfere with her IDOE duties, as the school board position is only part-time. She understands that she would not be permitted to campaign on state government time or to state government employees. In addition, she understands that she must not disclose any confidential information she has by virtue of her IDOE position for the purposes of benefiting HSES or use any such information in any decisions she makes in her position with the school board.

Ms. Parks-Reese has made both her supervisor, IDOE's Chief Academic Officer, and IDOE's Ethics Officer aware of her intent to pursue a school board position. She understands that she should be screened from any matters related to HSES. Mr. Bernlohr, on behalf of IDOE, does not have any specific concerns regarding Ms. Parks-Reese's pursuit of the HSES school board position.

Ms. Parks-Reese is now requesting a formal advisory opinion regarding whether she can pursue the opportunity to run for and serve on the HSES school board while maintaining her position as Pre-K Expansion Specialist for IDOE.

The analysis stated the following:

Ms. Parks-Reese's request for a formal advisory opinion invokes consideration of the provisions of the Code pertaining to Political Activity, Conflicts of Interests, Use of State Property, Ghost Employment and Benefitting from and Divulging Confidential Information. The application of each provision to Ms. Parks-Reese is analyzed below.

A. Political Activity

The political activity rule prohibits Ms. Parks-Reese from engaging in political activity, including solicitation of political contributions from anyone when she is on duty or while acting in an official capacity for the State. This rule also prohibits Ms. Parks-Reese from soliciting political contributions at any time, whether on duty or not, from persons with whom IDOE has a business relationship or from state employees or special state appointees she directly supervises. Additional restrictions apply if Ms. Parks-Reese has purchasing or procurement authority for the State.

Ms. Parks-Reese is permitted to seek political contributions for her own campaign as a candidate from anyone other than her direct reports and those with a business relationship with IDOE when not on duty or acting in her official capacity.

Mr. Bernlohr provided that IDOE has a political activity policy that he has reviewed with Ms. Parks-Reese. She is running and plans to serve on the board in her personal capacity and not as an IDOE employee. Mr. Bernlohr has no concerns with Ms. Parks-Reese's ability to fully comply with the political activity rule and the IDOE policy.

The Commission finds that Ms. Parks-Reese would not violate this rule so long as she refrains from engaging in political activity while on duty or while acting in her official capacity for IDOE and does not solicit political contributions from anyone who has a business relationship with IDOE.

Mr. Bernlohr provided that he can assist Ms. Parks-Reese in ensuring she is not soliciting political contributions from any person who has a business relationship with IDOE, but that she is aware that it is her responsibility to ensure that she is not soliciting contributions from any person with whom IDOE has a business relationship. He further provided that she can run any possible solicitations through IDOE's financial team to confirm the absence of a business relationship with IDOE. The Commission requested, as an added precaution, that Ms. Parks-Reese report her political contributions to IDOE to ensure she is not soliciting contributions from any person who has a business relationship with IDOE.

B. Outside Employment/Professional Activity

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.

The Commission generally defers to an agency's Ethics Officer regarding outside employment/professional activity 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. Mr. Bernlohr has not identified any concerns that IDOE has with Ms. Parks-Reese running for or holding a position on the HSES school board. Mr. Bernlohr further provided that IDOE has an outside employment policy and Ms. Parks-Reese would be in full compliance with this policy if she holds the HSES school board position.

Based on the information provided, the Commission finds that subsection (1) would not prohibit Ms. Parks-Reese from serving on the HSES school board. Although she would receive some compensation for serving in the position, her IDOE position has no authority over funding offered to school districts. For the grant approvals with which Ms. Parks-Reese occasionally assists, Mr. Bernlohr confirmed that she would be screened from any involvement in any HSES grants. In regards to subsection (2), nothing in the information she provided indicates that serving on the school board would require Ms. Parks-Reese to disclose confidential information; therefore, she would not be violating this subsection by running for or holding a position on the school board. So long as she does not use her official IDOE position to secure unwarranted privileges or exemptions that subsection (3) prohibits, IC 4-2-6-5.5 does not prohibit Ms. Parks-Reese from serving on the HSES board while also working for IDOE.

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).

C. Conflict of interests-decisions and votes

IC 4-2-6-9 (a)(1) prohibits Ms. Parks-Reese from participating in any decision or vote, or matter relating to that decision or vote, if she has a financial interest in the outcome of the matter. Similarly, IC 4-2-6-9(a)(3) prohibits Ms. Parks-Reese from participating in any decision or vote, or matter relating to that decision or vote, if a business organization in which she 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 . . . (A) in a purchase, sale, lease, contract, option, or other transaction between an agency and any person; or . . . (B) involving property or services."

A potential conflict of interests would arise for Ms. Parks-Reese if she participates in any matter related to a decision/vote in which HSES has a financial interest in the outcome. This restriction goes beyond the actual decision/vote and prohibits her participation in any matter related to the decision/vote. The rule also requires a state employee who identifies a potential conflict of interests to notify her agency's appointing authority and ethics officer in writing and either (1) seek a formal advisory opinion from the Commission; or (2) file a written disclosure statement with the OIG.

Mr. Bernlohr provides that Ms. Parks-Reese does not make discretionary decisions regarding grants and contracts in her position at IDOE and that she does not have any oversight or discretion over funding to school districts. She does occasionally assist other specialists with grant approvals when needed, but this is a rare occurrence. Ms. Parks-Reese estimated she is asked to do this once a quarter.

The Commission finds that Ms. Parks-Reese would have a potential conflict of interests if she participated in decisions related to grants or other matters in which HSES would have a financial interest in the outcome. The Commission further finds that IDOE must have a screen in place to prevent Ms. Parks-Reese from having a conflict of interests.

Mr. Bernlohr provides that IDOE will screen Ms. Parks-Reese from participation in any matters in which HSES would have a financial interest. Mr. Bernlohr further provides that Ms. Parks-Reese's direct supervisors are aware of the situation and they will continue to ensure that she is screened from HSES-related matters while she is running for and if she is elected to and serves on the HSES board. To this end, Ms. Parks-Reese can continue to provide assistance with grants as needed, but she will not participate in this process if HSES would have any financial interest in the grant.

D. 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 contracting responsibility for any of the activities of the contracting agency, provided certain statutory criteria are met.

Ms. Parks-Reese provides that she will be compensated for her services to the HSES board. Mr. Bernlohr provided that he believes the funding would come from HSES' general operating budget and not from any state grants, but he and Ms. Parks-Reese will confirm this is the case. The Commission finds that so long as her compensation for serving on the HSES board will not be derived from any state contracts/grants, Ms. Parks-Reese would not have a financial interest in a state contract and would not be in violation of this rule.

E. Confidential information

Ms. Parks-Reese 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 Ms. Parks-Reese 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 Ms. Parks-Reese is exposed to or has access to such confidential information in her position with IDOE, she would be prohibited from divulging that information or ever using it to benefit any person, including HSES, in any manner.

F. Use of state property and Ghost employment

IC 4-2-6-17 prohibits Ms. Parks-Reese 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 Ms. Parks-Reese 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.

The Commission confirmed that Ms. Parks-Reese understands that that she must take particular care not to use her state computer, state email account or calendar, or state phone for activities related to running for or serving on the HSES board. All such activities must be done using her own resources and on her own time, such as after work or on the weekends. In addition, although most agencies, including IDOE, have policies regarding minimal personal use of state property, these policies strictly prohibit using state property for a political purpose.

To the extent that Ms. Parks-Reese observes these provisions in her outside work with HSES, the Commission finds that such outside employment activity would not violate these ethics laws.

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, stated that since the last Commission meeting, the Office of Inspector General had issued 33 informal advisory opinions on the subjects of post-employment restrictions, conflicts of interests, outside employment, and gifts.

She further expressed her thanks for everyone's patience in using the Microsoft Teams platform for this meeting and for their attendance.

VI. Adjournment

Commissioner Sanchez moved to adjourn the public meeting of the State Ethics Commission and Commissioner Gilroy seconded the motion, which passed (5-0).

The public meeting adjourned at 10:33 a.m.