

**MINUTES OF THE MEETING OF  
THE INDIANA STATE ETHICS COMMISSION  
June 9, 2022**

**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 were Katherine Noel, Chair; Corinne Finnerty; Sue Anne Gilroy; and Rafael Sanchez (by telephone). Office of Inspector General staff present included David Cook, Inspector General; Tiffany Mulligan, Chief of Staff and Chief Legal Counsel; Sean Gorman, State Ethics Director; Mark Mader, Staff Attorney; Doreen Clark, Staff Attorney; Jan Kruse, Special Agent; and Nathan Baker, Legal Assistant.

Others present were David Bausman, General Counsel, Department of Natural Resources; Amanda Foor, Human Resources Director, State Personnel Department; Karen Hinton, Deputy Director, Indiana State Parks; Matthew Re, Staff Attorney, Department of Natural Resources; Jordan Hert, Construction Inspector, Lochmueller Group; Mattheus Mitchell, Compliance and Ethics Specialist, Department of Revenue; Nyh Wa, Partner, Ice Miller; Tim Prerret, Summer Associate, Ice Miller; Paul Peaper, IU Health; Keith Beesley, General Counsel, State Personnel Department; Andrew Stonehing, Personnel Director, State Personnel Department; David Holt, Chief Operating Officer, Indiana Destination Development Corporation; Joe Basile, Director of Legal Services, Office of the Lieutenant Governor; Erin Elam, Ethics Officer, Indiana Department of Health; Laura Parks, Staff Attorney, Indiana Department of Health; Jessica Keyes, Ethics Officer, Family and Social Services Administration; Kyleen Welling, Ethics Officer, Indiana Housing and Community Development Authority; Arnette Richard, IT Director, Indiana Housing and Community Development Authority; Mia Tapella, Intern, Indiana Department of Transportation; Chris Serak, Ethics Officer, Indiana Department of Transportation; Brennan Chopp, Intern, Indiana Department of Transportation; Chris MacDonald, Internal Affairs Officer, Department of Child Services; Krisi Shute, Deputy General Counsel, Indiana Department of Homeland Security; Jen Cooper, Assistant General Counsel, Management Performance Hub; Tamera Glickman, Deputy General Counsel, Indiana Department of Administration; and Beth Green, General Counsel, Department of Workforce Development.

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

Commissioner Gilroy moved to adopt the agenda, and Commissioner Finnerty seconded the motion, and the Commission passed the agenda via roll call vote (4-0).

Commissioner Finnerty moved to approve the Minutes of the April 14, 2022, Commission Meeting, and Commissioner Sanchez seconded the motion, which passed via roll call vote (4-0).

**III. Consideration of Waiver of Post-Employment Restrictions for Annette Richard**

Kyleen Weling, Chief of Staff and Ethics 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 Sanchez moved to approve the Waiver, and Commissioner Gilroy seconded the motion, which passed via roll call vote (4-0).

**IV. Request for Formal Advisory Opinion**

2022-FAO-010

Anne Valentine, Chief of Staff

David Holt, Chief Operating Officer of IDDC

Office of Lieutenant Governor

Commissioner Finnerty moved to table further discussion of this matter to the July State Ethics Commission Meeting until more information could be considered from the requesting party. Commissioner Sanchez seconded the motion, which passed via roll call vote (4-0).

**V. Request for Formal Advisory Opinion**

2022-FAO-011

Jordan Hert, Construction Inspector, Lochmueller Group

Chris Serak, Ethics Officer

Indiana Department of Transportation

Jordan Hert (Hert) is a former Indiana Department of Transportation (INDOT) employee, having started in the role of INDOT Highway Technician 3 in 2015. INDOT promoted Hert to a Highway Technician 1 position in 2018 and again to a Construction Project Supervisor position in 2021. Hert left his position with the State on March 2, 2022, to begin work at his current employer, Lochmueller Group (Lochmueller), as a Construction Inspector 1.

During his employment at INDOT, Hert was assigned to complete a stage 2 constructability review for a bridge replacement project in Martin County (B-40589 Project). In conducting that review, he was provided a set of plans and engineers' estimates of pay items and quantities for the B-40589 Project. Based on the review, he provided a list of questions and suggestions for designers to consider. Prior to his separation from state employment in March of 2022, INDOT slated Hert to serve as Project Supervisor in charge of overseeing construction for the B-40589 Project for INDOT.

INDOT recently published a Request for Proposal (RFP) for the B-40589 Project, with an anticipated letting date of June 15, 2022. Lochmueller is interested in submitting a proposal for the RFP and would like to list Hert as the proposed Highway Technician or Inspector for the Project. If INDOT selects Lochmueller's proposal for the B-40589 Project contract, Hert's role on behalf of Lochmueller would be measuring, tracking and paying for project materials, as well as being responsible for a large portion of the material and testing requirements under the contract. He would also be responsible for ensuring that the contractor follows all INDOT standards and specifications for the Project.

The RFP for the B-40589 Project identifies a delayed start date of February 1, 2023, with the need for construction inspection activities from January 1, 2023, through November 2023. The RFP requires identification of a contractor's personnel who will be supplying services under the construction contract for the Project.

Hert requested INDOT's review of whether Lochmueller may bid on the B-40589 Project and identify Hert as one of Lochmueller's assigned personnel. Hert's proposed work on the B-40589 Project was reviewed for a recommendation by INDOT's Selection Review Committee (SRC) for a conflict of interest under INDOT agency policy. The SRC recommendation determined that Lochmueller may pursue work on the B-40589 Project and that Hert's proposed involvement on behalf of Lochmueller would not violate INDOT's agency conflict of interest policy.

Hert is requesting the Commission's opinion as to whether Lochmueller may identify Hert as one of Lochmueller's personnel who will be supplying services in Lochmueller's proposal for the B-40589 Project RFP. Further, should INDOT award Lochmueller the B-40859 Project, Hert requests that the Commission determine whether he would be permitted by the Code of Ethics (Code) to begin work on the Project in January of 2023, approximately ten months following his separation from state employment.

The analysis stated the following:

*A. Confidential Information*

IC 4-2-6-6 prohibits Hert, as a former state employee, 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.

So long as any compensation Hert receives does not result from confidential information that he learned in his role at INDOT and in his work as a state employee on the B-40589 Project, his post-employment position at Lochmueller 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 Hert from accepting employment from an employer for 365 days from the date that he left state employment under various circumstances.

The Commission notes that Hert has already begun employment with Lochmueller within the 365 day "cooling off" period following his separation from state employment. Therefore, the Commission declines to analyze Hert's compliance with this provision retroactively.

The second prohibition, known as the "particular matter" restriction prevents a state employee 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.

Hert is prohibited under this provision from representing or assisting Lochmueller, as well as any other person, in a particular matter in which he personally and substantially participated as a state employee.

Hert asked if he can serve as the proposed Highway Technician or Inspector for Lochmueller on the B-40589 Project. Based on the information provided, Hert's role for INDOT on the B-40589 Project involved evaluating the construction quantities based on preliminary plans and preparing a list of questions and suggestions for INDOT designers.

The Commission finds that the B-40589 Project is a public works project subject to the particular matter restriction under IC 4-2-6-11. Furthermore, the Commission finds that, based on the information provided, Hert's work on the B-40589 Project while with INDOT was personal and substantial. The Commission determines that his proposed work on the B-40589 Project on behalf of Lochmueller or any other person is prohibited under the particular matter restriction.

Commissioner Gilroy moved to approve the Commission's findings, and Commissioner Finnerty seconded the motion, which passed via roll call vote (4-0).

**VI. Request for Formal Advisory Opinion**

2022-FAO-012

David Bausman, General Counsel

Indiana Department of Natural Resources

David Bausman, the Ethics Officer and General Counsel for DNR, is requesting a formal advisory opinion from the Commission as to whether the Code permits employees of the Indiana State Park Inns Authority (Authority) to receive tips as part of their compensation for work performed in their official duties. Mr. Bausman is requesting this opinion on behalf of DNR and the Authority.

According to Mr. Bausman, Indiana State Park Inns were part of the first seven Indiana State Parks, which were developed in 1916. Currently there are seven state park inns and lodges operating nearly 700 hotel and cabin rooms, a golf course and a central reservation system. Plans are being developed for two more lodges at existing Indiana State Parks.

The operation and management of Indiana State Park Inns were originally handled by an individual appointed by the county chair. Eventually, this responsibility was brought under DNR, although the operating structure was not codified. Under this system, State Park Inn employees were not considered state employees.

During the 2022 legislative session, the Indiana General Assembly passed Senate Enrolled Act 186 (SEA 186) to modernize the operations at State Park Inns. SEA 186 created the Authority as

a public body corporate and politic. Under SEA 186, which is effective July 1, 2022, the Authority's executive director and employees of the State Park Inns are not state employees, but they will be able to participate in state benefits and retirement options as state employees. Furthermore, SEA 186 specifically reads that the Authority's executive director and employees are under the jurisdiction of the Commission, and they are subject to ethics rules and requirements that apply to the executive branch of state government.

SEA 186 requires the Authority to establish a personnel system for Authority employees, including a pay scale and benefit package. The legislation also provides the Authority with the option of adopting its own personnel system separate from the State's personnel system.

Under the State Personnel Department's (SPD) pay plan rules, a state employee's salary is the total remuneration for the employee, and an employee is prohibited from accepting tips as part of their employment compensation. The Authority intends to adopt a separate personnel system that will allow tips to be included in an employee's remuneration for certain positions that customarily receive tips as part of overall compensation, such as service/wait staff and housekeeping. Authority employees in these positions would be considered "tipped employees" as defined by the U.S. Department of Labor (DOL).

Mr. Bausman provides that DNR is unaware of any other agency or body under the executive branch of state government that has employees in professions that traditionally include tips from guests as part of the employee's compensation. No other state agency utilizes state employees to serve as staff operating restaurants and inns.

Under the Fair Labor Standards Act, employers are permitted to take a tip credit for employees receiving tips toward the employer's minimum wage obligation, effectively permitting an employer to pay an hourly rate for tipped employees of at least \$2.13 per hour. If Authority employees are not permitted to accept tips under the Code, the Authority will be responsible for paying at least the federal minimum wage of \$7.25 per hour. Mr. Bausman notes that the Authority will compete with the private sector for retaining and hiring staff for roles that customarily receive tips; therefore, the inability to structure designated Authority employees' compensation to receive tips would negatively impact the fiscal viability of the Authority's operation of State Park Inns.

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 his or 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 his or 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 a pecuniary interest in a contract or purchase with the agency.

Mr. Bausman writes that the Authority intends to allow tips to be included in the remuneration of certain positions that customarily receive tips, such as service/wait staff and housekeeping. In most instances, it seems unlikely that individuals who are tipping Authority employees would have a business relationship with the Authority. Most visitors to the State Park Inns are not seeking, obtaining, establishing, maintaining or implementing a pecuniary interest in a contract or purchase with the Authority or license or permit with the Authority; instead, they are simply visiting the State Parks Inns for personal enjoyment. Nonetheless, it is possible that an individual visiting a State Park Inn may have a business relationship with the Authority.

The Code does not define the term "gift", but it does, however, define "compensation" 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". Per Internal Revenue Service (IRS) guidance, all cash and non-cash tips received by an employee are income and subject to federal income taxes. Further, if an employee's total tips in a calendar month exceed twenty dollars, the employee is required to report the tips to the employer and the employer is required to withhold Social Security, Medicare and federal income taxes from the employee's income.

Based on the information provided, the Commission finds that tips to specified employees are compensation and not gifts; therefore, the Gift rule and donor restriction rule would not apply, and the specified Authority employees would be able to accept tips as part of their compensation for employment.

#### *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.

"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 Authority proposes to structure these employees' compensation as tipped employees in compliance with IRS regulations providing for tips as income, as well as with the DOL regulations permitting an employer to count an employee's tips toward meeting the

employer's federal minimum wage requirements. Based on this information, the Commission determines that tips received by specified Authority employees are part of the employee's overall compensation as provided for by law. As such, tips received by specified Authority employees are not considered to be prohibited additional compensation under the Code.

Commissioner Gilroy moved to approve the Commission's findings, and Commissioner Sanchez seconded the motion, which passed via roll call vote (4-0).

## **VII. Request for Formal Advisory Opinion**

2022-FAO-013

Paul Peaper, Former Senior Operations Director  
Office of the Governor

Paul Peaper is a former Office of the Governor employee, who served as a Senior Operations Director for the Governor from January of 2017 through February of 2021. In this role, his primary responsibility was to serve as a liaison between assigned state agencies, including the Indiana Department of Health (IDOH) and the Family and Social Services Administration (FSSA). Mr. Peaper worked with agencies and their leaders to effectively communicate the Governor's agenda and served as the Governor's liaison to business and community organizations as well as other public and private entities on public health matters. During the course of his state employment, he did not have contracting authority or responsibility nor did he make any regulatory or licensing decisions regarding any matters.

Mr. Peaper provides that as a state employee, he participated in discussions with members of the Governor's Office and administration in the development of a long-term healthcare reform proposal as part of the Governor's 2021 agenda. To effectuate this proposal, the Governor directed FSSA to begin work with impacted stakeholders, including the Indiana Health Care Association (IHCA) and its members, to develop future policy and/or legislative proposals. The first of these stakeholder meetings occurred on February 15, 2021, prior to Mr. Peaper's separation from state employment on February 28, 2021.

Following Mr. Peaper's departure from state government, the stakeholder group developed and issued a Request for Information (RFI) to further develop a proposal to move long-term health care coordination and reimbursement into a managed care model. A subsequent Request for Proposal (RFP) was developed.

Furthermore, the General Assembly enacted legislation in both the 2021 and 2022 sessions that have impacted the development and the timeline of the proposal. As with the RFI and RFP, these legislative actions occurred after Mr. Peaper left state employment.

Mr. Peaper has recently received an offer of employment to serve as the next president of IHCA. IHCA is Indiana's largest trade organization and advocate representing proprietary, not-for-profit and hospital-based skilled nursing, assisted living and independent living communities. IHCA's more than 480 member facilities care for more than 35,000 of Indiana's

geriatric and disabled citizens, the majority of whom are low-income Medicaid recipients.

Mr. Peaper is seeking the Commission's opinion regarding the application of the Code to his post-employment opportunity with IHCA.

The analysis stated the following:

*A. Confidential Information*

IC 4-2-6-6 prohibits Mr. Peaper 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. So long as any compensation Mr. Peaper receives does not result from confidential information, his potential employment with IHCA 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 a former state employee from accepting employment from an employer for 365 days from the date that he leaves state employment under various circumstances.

Because Mr. Peaper left state employment in February of 2021, the "cooling off" period has expired, and he is not prohibited under this provision from accepting the proposed position at IHCA. Furthermore, this provision does not impose any restrictions on his activities in that role.

As a former state employee, Mr. Peaper is subject to the post-employment rule's "particular matter" prohibition. 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 statute specifically excludes "the proposal or consideration of a legislative matter or the proposal, consideration, adoption, or implementation of a rule or an administrative policy or practice of general application" from the definition of particular matter. 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. Peaper is prohibited from representing or assisting IHCA, its members or any other person in a particular matter in which he personally and substantially participated as a state employee.

Mr. Peaper provides that the proposed role at IHCA may require his interaction with IDOH, which is the state agency primarily responsible for long-term care facility and employee licensure. Based on the information provided, Mr. Peaper was not involved with long-term



care facility or employee licensure during his state employment and has not identified any particular matters associated with his contact with IDOH.

Mr. Peaper provides that in the proposed role at IHCA, he would be responsible for the organization's lobbying and advocacy efforts regarding current regulatory and reimbursement framework as well as the managed care model for long-term care services reform that developed from the Governor's 2021 agenda.

The Commission finds that Mr. Peaper's participation in the proposals of legislative matters, policies and related general matters while serving in the Office of the Governor are not "particular matters" under the Code. Therefore, this provision does not prohibit Mr. Peaper from representing or assisting IHCA, its member facilities or any other person on such matters related to the policies and legislation on which he worked as a state employee.

Commissioner Finnerty moved to approve the Commission's findings, and Commissioner Gilroy seconded the motion, which passed via roll call vote (4-0).

#### **VIII. Consideration of the Agreed Settlement**

In the Matter of Kris Meltzer  
Case Number 2021-12-0347

Doreen Clark presented the proposed Agreed Settlement in this matter to the Commission for their approval.

Commission Chair Noel moved to approve the Agreed Settlement and Commissioner Gilroy seconded the motion which passed via roll call vote (4-0).

#### **IX. Ethics Director's Report**

State Ethics Director Sean Gorman reported that the OIG has issued 30 Informal Advisory Opinions (IAOs) since the April 2022 State Ethics Commission meeting. Most of the IAOs were regarding the Code of Ethics on post-employment, outside employment, conflicts of interest, and gifts. Seven (7) Informal Advisory Opinion requests were withdrawn or referred.

He continued that the Auditors and Investigators Conference presented by the Office of Inspector General will be held on the afternoon of June 22, 2022. The conference will be held in person and would feature presentations from the U.S. Attorney's Office, Southern District of Indiana, as well as from personnel from the Office of Inspector General.

Finally, Mr. Gorman noted that since the Office of Inspector General will be presenting at the Attorney General's Contracts Seminar on July 13, 2022.

**X. Adjournment**

Commissioner Gilroy moved to adjourn the public meeting of the State Ethics Commission. Commissioner Finnerty seconded the motion, which passed via roll call vote (3-1).

The public meeting adjourned at 11:07 a.m.