

**MINUTES OF THE MEETING OF  
THE INDIANA STATE ETHICS COMMISSION  
July 11, 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; Sue Anne Gilroy; Priscilla Keith; Corinne Finnerty; and Kenneth Todd (arriving at 10:15am). Staff present included Jennifer Cooper, Ethics Director; Lori Torres, Inspector General; Kelly Elliott, Staff Attorney; Tiffany Mulligan, Chief Legal Counsel; Darrell Boehmer, Director of Investigations, Office of Inspector General; and Cynthia Scruggs, Director of Administration, Office of Inspector General.

Others present were Gary Haynes, Chief of Staff, Board of Animal Health; Dr. Bret O. Marsh, State Veterinarian, Board of Animal Health; David Bough, Director of Meat and Poultry Inspection, Board of Animal Health; Stephanie Mullaney, Deputy Attorney General, Attorney General’s Office; Deana Smith, Staff Attorney and Ethics Officer, Indiana State Department of Health; Chris Kulik, Staff Attorney, Indiana State Department of Health; Sarah Kamhi, Assistant General Counsel, Department of Revenue; Nicholas Broderick, Intern, Department of Revenue; Rachel Russell, Deputy General Counsel and Ethics Officer, Department of Child Services; Elizabeth Polleys Burden, Associate General Counsel, Department of Workforce Development; Olajumoke Adeyeye, Legal Intern, Department of Workforce Development; James French, Ethics Officer, Indiana Department of Environmental Management; Matthew Mikkell, Compliance Ethics Specialist, Department of Revenue; Mya Parker, Inspector General Intern, Department of Revenue; Zach Yavger, Investigations Intern, Department of Revenue; Amber Nicole Ying, Special Counsel, Compliance and Ethics, Department of Revenue; Funmi Bab-Oke, Ethics and Compliance, Department of Revenue; Daniel Spears, Meat and Poultry Inspector, Board of Animal Health; Shilang Chen, Legal Intern, Department of Workforce Development; Macey Shamberg, Legal Intern, Management Performance Hub; Erika Steuerwald, Attorney, Indiana State Department of Health; Josh Ganninn, Associate Commissioner, Commission for Higher Education; and, Alecia Nafziger, CFO, Commission for Higher Education.

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

Commissioner Gilroy moved to adopt the Agenda and Commissioner Keith seconded the motion which passed (4-0). Commissioner Gilroy moved to approve the Minutes of the May 9, 2019 Commission Meeting and Commissioner Keith seconded the motion which passed (4-0).

**III. Inspector General’s Report**

Inspector General Torres presented a report on the second quarter of 2019. She reported the following: The OIG received 92 requests to investigate, and of these 92 requests, 19 new cases were opened. The OIG also closed 12 investigations. The office received 76 requests for informal

advisory opinions. The office issued 71 informal advisory opinions in an average of 1.24 days for each opinion. The OIG also made 18 recommendations.

Inspector General Torres reported that the Auditor & Investigator Conference on Tuesday, June 4<sup>th</sup> from was a success with 215 attendees. The speaker for the event was the CEO from Reid Investigations and there was very good feedback from the attendees. The feedback was so good that there is now a plan to host a three-day training conference with trainers from Reid Investigations. This is set to be held in October 2019 and will require attendees to pay for attendance.

Finally, Inspector General Torres summarized the Inspector General's Annual Report which was issued prior to this month's SEC meeting.

From the IG Report, for the 2020 Budget:

- The IG budget increased by 3.3%.
- The SEC budget decreased by ~75% due to decreased cost of payments to Commissioners.
- The reversion of the budget was \$11,700.
- Reserve reduced to 1% (was previously 2%).
- Dedicated fund has shifted so that now conferences hosted by the IG's office are free to attend.

Inspector General Torres took questions from the Commissioners. Regarding a question about the lower amount of closed investigations, she reported this is not a staffing issue (as all positions have been filled), but is more likely due to the amount of investigations and how complicated the investigations are. When asked if there are any "red flags" in the IG Report, Inspector General Torres indicated she had no matters which she was worried about.

#### **IV. Consideration of BOAH Waiver of Post-Employment Restrictions for Daniel Spears**

Dr. Bret Marsh, BOAH State Veterinarian, and Gary Haynes, BOAH Chief of Staff and Ethics Officer, 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 Keith seconded the motion which passed (5-0).

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

2019-FAO-0012

Harold Gil, Informatics Director,

Epidemiology Resource Center

Deana M. Smith, Attorney/Ethics Officer

Indiana State Department of Health

Harold Gil is a state employee with the Indiana State Department of Health (ISDH). Deana Smith serves as ISDH's Ethics Officer and has submitted a Formal Advisory Opinion request on behalf of Mr. Gil.

Mr. Gil is an ISDH employee who is seeking part-time employment as a contractor for the Marion County Public Health Department (MCPHD). The opportunity is a position as a part-time computer programming contractor for MCPHD with work hours outside of his normal ISDH work hours. The funding for the contract position is from a Centers for Disease Control (CDC) grant that is not in any way affiliated with ISDH.

Mr. Gil is the Informatics Director for ISDH's Epidemiology Resource Center. His job is to ensure that ISDH is getting the patient information that it needs from emergency departments, labs and local health departments. He is also responsible for overseeing drug and opioid use disorder surveillance being performed by his team. He has no authority to make significant decisions that will benefit MCPHD.

In March, Mr. Gil was involved in a recent grant awarded to MCPHD. His involvement was limited to receiving and forwarding MCPHD's proposed budgets and associated activities to Eric Hawkins, the grant's Project Director for ISDH, and incorporating those associated MCPHD activities into the grant application. From there, Mr. Hawkins and Irene Jameson, an ISDH Project Manager, decided which MCPHD budget option was accepted. Mr. Gil did not have any influence or authority over the grant award.

Based on the information presented, ISDH believes that Mr. Gil's part-time employment is not incompatible with his duties at ISDH nor does it require recusal from his official responsibilities. Furthermore, in his role as the Informatics Director, he is not in a position to participate in any decisions or votes or other matters related to a decision or vote where MCPHD would have a financial interest.

Mr. Gil knows and understands that if permitted to pursue this outside part-time employment opportunity, the Code still applies. He understands and agrees to abide by the Code, specifically the rules governing conflicts of interest, ghost employment, use of state property and confidential information.

Mr. Gil received an informal advisory opinion from the Office of Inspector General in August 2018. The informal advisory opinion included an advisement to study the applicability of the screening and disclosure requirements in IC 4-2-6-9(b). Because Ms. Smith determined that Mr. Gil does not have any influence or authority over the award of grants, ISDH and Mr. Gil did not pursue that process.

Given that Mr. Gil's potential part-time employer, MCPHD, has a business relationship with ISDH, Ms. Smith, on behalf of Mr. Gil, seeks a formal advisory opinion regarding whether he may accept the part-time employment opportunity without violating IC 4-2-6-10.5 and its prohibitions against an employee knowingly having a financial interest in a contract made by a state agency. ISDH also seeks a formal advisory opinion regarding the applicability of IC 4-2-6-5.5, 4-2-6-9, and the criminal conflict of interest statute set forth in IC 35-44.1-1-4.

The advisory opinion stated the following 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.

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.

Ms. Smith, ISDH's Ethics Officer, provides that Mr. Gil's part-time employment with MCPHD is not incompatible with his ISDH duties, nor does it require recusal from any of his official responsibilities. Besides Mr. Gil's recent limited involvement in a grant awarded to MCPHD, he is not involved in any matters in which MCPHD would have a financial interest.

The Commission confirmed that Mr. Gil understands that he is prohibited from disclosing confidential information he gained from ISDH in his position with MCPHD and that he must not use or attempt 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.

Accordingly, the Commission finds that the employee's outside employment with MCPHD would not violate IC 4-2-6-5.5.

*B. Conflict of interests-decisions and votes*

IC 4-2-6-9 (a)(1) prohibits Mr. Gil 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. Gil 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 employee 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. Gil currently works as the Informatics Director for ISDH's Epidemiology Resource Center and is seeking to work part-time as a computer programming contractor for MCPHD.

Accordingly, he would be prohibited from participating in any decisions or votes, or matter relating to those decisions or votes, in which MCPHD would have a financial interest in the outcome.

Ms. Smith provides that Mr. Gil's ISDH responsibilities do not include having any influence or authority over the award of grants or other matters in which MCPHD would have a financial interest in the outcome.

Accordingly, the Commission finds that a potential conflict of interests has not been identified at this time. If, however, Mr. Gil'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 ISDH's appointing authority and seeking an advisory opinion from or filing a written disclosure statement with the Commission.

### *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, provided certain statutory criteria are met.

Mr. Gil's part-time outside employer, MCPHD, has a business relationship with ISDH through which MCPHD has a grant agreement with ISDH; however, Ms. Smith provides that Mr. Gil's compensation is not related to this agreement. The funding source for his contract position is from a CDC grant that is not in any way affiliated with ISDH.

Accordingly, the Commission finds that Mr. Gil does not have a financial interest in a state contract at this time through his position at MCPHD and would not be in violation of this rule.

### *D. Criminal conflict of interests statute*

In the Formal Advisory Opinion request, Ms. Smith also asked whether IC 35-44.1-1-4, which prohibits certain public servants from having a pecuniary interest in or deriving a profit from a contract with the public servant's agency, would apply to Mr. Gil's circumstances.

IC 35-44.1-1-4 is the criminal statute that prohibits any public servant from knowingly or intentionally having a pecuniary interest in or deriving a profit from a contract/purchase connected with an action by the agency served by the public servant. The statute contains certain exceptions in subsection (c). One of these exceptions applies to an individual who obtains written approval from the Commission that the individual will not or does not have a

conflict of interests in connection with a contract or purchase under IC 4-2-6 and IC 35-44.1-1-4.

The Commission confirmed with Ms. Smith that Mr. Gil does not have a pecuniary interest in any contract with the agency he serves (ISDH), as the salary he will receive for his part-time employment at MCPHD is not derived from any ISDH or other state contracts.

Accordingly, this opinion serves as written approval from the Commission that the employee does not have a conflict of interests in connection with a contract or purchase under IC 4-2-6 and IC 35-44.1-1-4.

*E. Confidential information*

Mr. Gil 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. Gil 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 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 Mr. Gil is exposed to or has access to such confidential information in his position with ISDH, 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.

*F. Use of state property and Ghost employment*

IC 4-2-6-17 prohibits Mr. Gil 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 Mr. Gil 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. Gil observes these provisions in his employment with MCPHD, such outside professional activity would not violate these ethics laws.

The Commission found that that the employee’s outside employment would not be contrary to the Code of Ethics.

Commissioner Keith moved to approve the Commission’s findings for outside employment, and Commissioner Gilroy seconded the motion which passed (5-0).

## **VI. Rulemaking Presentation**

Title 40

Kelly Elliott, Staff Attorney

Tiffany Mulligan, Chief Legal Counsel

Indiana Office of Inspector General

Indiana Office of Inspector General Staff Attorney Kelly Elliott and Chief Legal Counsel Tiffany Mulligan presented a brief introduction to the rule promulgation of Title 40, Article 2 of the Indiana Administrative Code. The Commission is not being asked to vote on the proposed rule at this meeting.

Attorney Mulligan briefly outlined that Title 40, Article 2 of the Indiana Administrative Code (IAC) outlines the procedures for the Indiana State Ethics Commission (SEC). The SEC has the statutory authority to promulgate rules under IC 4-2-6-4(a)(5). OIG is currently in the process of revising 40 IAC 2 for adoption by the SEC. In the revised rules, OIG proposes repealing several sections of the rules that are repetitive or unnecessary and revising several sections that are contrary to other Indiana statutes or administrative code rules. The proposed rules will provide the procedures for how the SEC will conduct public meetings, issue formal advisory opinions, and enforce the Code of Ethics. The reason for the revisions are that the SEC last readopted 40 IAC 2 in 2013 and all administrative rules expire after seven years; therefore, the rules are set to expire on January 1, 2020.

Attorney Elliot then covered what next procedural steps would be: The OIG began the process of revising the rule in January of this year and is scheduled to hold a public hearing on July 25 to receive public comments on the proposed rules. The OIG will consider any comments received on the rules. Thereafter, the OIG plans to submit the proposed rules to the SEC for adoption at the August 8 meeting. Changes can be made to the proposed rule as it is currently published at the Indiana Register based on comments that may be received, but any changes must be a logical outgrowth from the proposed rule as it is published at this time. Should the SEC adopt the proposed rules at the August 8 meeting, the OIG will submit the rules to the Office of Attorney General and Governor's Office for final approval. OIG estimates that the proposed rules will become effective on November 8, 2019.

## **VII. Consideration of Final Report**

In the Matter of Jada Mocabay

Case Number 2018-08-0233

Heidi Adair, Staff Attorney

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 May meeting and that the Final Report would be the final disposition in this case.

Commissioner Noel moved to approve the Final Report and Commissioner Gilroy seconded the motion which passed (5-0).

### **VIII. Director's Report**

State Ethics Director Jen Cooper stated that since the last Commission meeting, the Office of Inspector General had issued 55 informal advisory opinions on the subjects of post-employment restrictions, outside employment, and gifts. Ms. Cooper also announced that the Office of Inspector General has hired a new Legal Assistant. Finally, Ms. Cooper conveyed that new Ethics Training is being worked on would be coming by fall 2019. The training will be accessed online.

### **IX. Adjournment**

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

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