

**MINUTES OF THE MEETING OF  
THE INDIANA STATE ETHICS COMMISSION  
September 10, 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 Corinne Finnerty; Sue Anne Gilroy; Rafael Sanchez; and Kenneth Todd. Staff present included Lori Torres, Inspector General; Jennifer Cooper, State Ethics Director; Tiffany Mulligan, Chief Legal Counsel, Office of Inspector General; Kelly Elliott, Staff Attorney, Office of Inspector General; Luba Gore, Staff Attorney, Office of Inspector General; Cindy Scruggs, Director of Administration, Office of Inspector General; Mike Lepper, Special Agent, Office of Inspector General; and Nathan Baker, Legal Assistant, Office of Inspector General.

Others present were: Amber Nicole Ying, Special Counsel/Director and Ethics Officer, Compliance and Ethics, Department of Revenue; Deana Smith, Ethics Officer, Indiana State Department of Health; Ed Feigenbaum, Indiana Legislative Insight; Beth Green, General Counsel, Department of Workforce Development; Kathleen Mills, Ethics Officer, Indiana Department of Environmental Management; Tammera Glickman, Deputy General Counsel, Indiana Department of Administration; Sylvia Watson, General Counsel and Ethics Officer, Indiana State Library, Joan Blackwell, General Counsel and Ethics Officer, Office of Attorney General; Claire Szpara, Attorney and Ethics Officer, Indiana Department of Insurance; Amy Owens, Staff Attorney, Indiana State Department of Health; Lt. Col. Larry Turner, Indiana State Police, Assistant Chief of Staff/Intelligence and Investigations; Master Trooper Micky Dockery, Indiana State Police; Major Anthony Casto, Indiana State Police; Latosha N. Higgins, Managing Attorney/Ethics Officer, Family and Social Services Administration; Mattheus Mitchel, Compliance & Ethics Specialist, Indiana Department of Revenue; Rachel Russell, Ethics Officer, Department of Child Services; and Christine Macdonald, Internal Affairs Officer, Department of Child Services.

**I. Appointment of Temporary Commission Chair**

The Commission Chair, Katherine Noel, was absent for the Commission meeting. Commissioner Todd moved to appoint Commissioner Finnerty as temporary Commission Chair for the September 10, 2020 meeting and Commissioner Sanchez seconded the motion which passed (4-0).

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

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

Commissioner Gilroy moved to approve the Minutes of the August 13, 2020 Commission Meeting and Commissioner Todd seconded the motion which passed (4-0).

### **III. Director's Report**

While waiting for the parties regarding the Formal Advisory Opinion to arrive at the meeting, the Commission heard the Director's Report first. State Ethics Director, Jen Cooper, stated that since the last Commission meeting, the Office of Inspector General had issued 16 informal advisory opinions on the subjects of post-employment restrictions, conflicts of interests, outside employment, and gifts.

Director Cooper also reported that the OIG will be holding the annual Legal & Ethics Conference virtually this year with plans to hold it during the week of November 16th, likely on the 17th, 18th or 19th of November. They are still working on confirming the dates and speakers.

Commissioner Gilroy asked about OIG personnel working in office during Covid-19. Director Cooper noted that remote work continues with staff rotating into the office a few days a week and taking all State-mandated precautions.

The State Ethics Commission took this time to express their condolences to Major Nila Miller-Cronk of the Indiana State Police upon learning of a death in her family which caused her to be unable to attend this day's meeting to speak on behalf of ISP regarding the scheduled Formal Advisory Opinion.

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

2020-FAO-009

Master Trooper Micky E. Dockery, Indiana State Trooper

Lt. Colonel Larry Turner

Family and Social Services Administration

Major Nila Miller-Cronk serves as Commander and Ethics Officer in the Office of Professional Standards for the Indiana State Police (ISP). She is requesting a Formal Advisory Opinion on behalf of Master Trooper Mickey E. Dockery, related to his proposed non-department business during his off-duty hours.

Master Trooper Dockery is an ISP trooper and former ISP K-9 officer. Master Trooper Dockery has worked for ISP for over 20 years and intends to remain with ISP. Master Trooper Dockery is currently assigned to the Bremen District 24 Post for road patrol duties. Master Trooper Dockery does not have any contracting or decision-making responsibilities for ISP and does not currently train any K-9 teams for ISP.

Master Trooper Dockery has created Relentless Elite, LLC (LLC), a company through which he seeks to conduct training and consulting and write publications in the areas of self-defense; canine

training; certifications; tactical deployments; Strategies and Tactics for Patrol Stops (STOPS); and leadership. Master Trooper Dockery has submitted to ISP an application for non-department employment based on his plans for operating the LLC. According to Master Trooper Dockery, he will not disclose any confidential ISP information and will be integrating the K-9 deployment tactics with the STOPS curriculum of Pro Train Inc. Master Trooper Dockery explains that his duties with the LLC will not interfere with his responsibilities and current duties as an ISP employee.

Master Trooper Dockery explains that he will not conduct his business using state property, state equipment or state time. Master Trooper Dockery will conduct his business when he is off duty and on his personal time. Master Trooper Dockery does not intend to contract with ISP or any other Indiana state agencies while remaining employed with ISP. Further, he provides that if any proposed contract would result in him having a financial interest in a contract with the State, Master Trooper Dockery will comply with IC 4-2-6-10.5 by filing a written statement with the Indiana Office of Inspector General (OIG) prior to the contract's execution. According to Master Trooper Dockery, his clients will be local, state and federal/government agencies, but his clients will not include any Indiana state agencies.

Major Miller-Cronk is requesting a Formal Advisory Opinion on behalf of Master Trooper Dockery regarding whether he could carry out his non-departmental employment with the LLC while remaining employed with ISP. Her supervisor, Lt. Col. Larry Turner, attended the Commission meeting on Major Miller-Cronk's behalf to assist in answering the Commission's questions.

The analysis stated the following:

*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.

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).

The Commission generally defers to an agency's ethics officer regarding outside employment opportunities as these individuals are in a better position to determine whether a

conflict of interests might exist between an employee's state duties and an outside employment/professional activity opportunity. Based on the information provided by Major Miller-Cronk and Lt. Col. Turner, Master Trooper Dockery's outside position with the LLC is not inherently incompatible with his ISP position nor would it require his recusal from his official state duties to the extent that his ability to perform them would be materially impaired. Master Trooper Dockery is currently assigned to the Bremen District 24 Post conducting road patrol duties and is a former ISP K-9 officer. Master Trooper Dockery does not currently train any K-9 teams for ISP. Master Trooper Dockery provides that his duties with the LLC would include conducting trainings, consulting and writing publications in the areas of self-defense; canine training; certifications; tactical deployments; Strategies and Tactics for Patrol Stops (STOPS); and leadership. According to Master Trooper Dockery, his duties with the LLC will not interfere with his responsibilities and current duties as an ISP employee in any way.

Further, Lt. Col. Turner provided in his testimony at the Commission meeting that ISP is supportive of Master Trooper Dockery's outside employment and does not have any concerns that his outside activities would interfere with his ISP duties and responsibilities.

The Commission confirmed that Master Trooper Dockery would not have to disclose any confidential ISP information through the LLC. Similarly, nothing in the information presented suggests that Master Trooper Dockery would use or attempt to use his official ISP position to secure unwarranted privileges or exemptions that subsection (3) prohibits, such as using his position to secure clients or customers for the LLC.

Accordingly, based on all of the information provided, the Commission finds that IC 4-2-6-5.5 does not prohibit Master Dockery from operating the LLC while also working for ISP.

*B. Conflict of interests – decisions and votes*

IC 4-2-6-9 (a)(1) prohibits Master Trooper Dockery 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 Master Trooper Dockery 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 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 . . . in a purchase, sale, lease, contract, option, or other transaction between an agency and any person; or . . . involving property or services. . ."

A potential conflict of interests would arise for Master Trooper Dockery if he participates in any matter related to a decision or vote for ISP in which the LLC would have a financial interest. This restriction goes beyond the actual decision or vote and prohibits his participation in any matter related to the decision or vote.

Based on the information provided, Master Trooper Dockery does not have any contracting or decision-making responsibilities for ISP. Master Trooper Dockery currently performs road patrol duties for the Bremen District 24 Post. Through his LLC, Master Trooper Dockery intends to provide various services to local, state and federal/government agencies with the exception of Indiana state agencies.

Accordingly, the Commission finds that Master Trooper Dockery is currently not in a position at ISP in which he would participate in decisions or votes, or matters related to such decisions or votes, in which the LLC would have a financial interest in the outcome.

If, however, Master Trooper Dockery'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 his agency's ethics officer and appointing authority in writing and either (1) seek a formal advisory opinion from the Commission; or (2) file a written disclosure form with the OIG.

### *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 (1) does not participate in or have official contracting responsibility for any of the activities of the contracting agency; and (2) files written statement with the OIG before the employee executes the contract with the state agency. If, however, an employee seeks to derive compensation from a contract between a third party and state agency, the Commission has found that the employee must instead file a written statement with the OIG before the third party executes the contract with the state agency (*See* [2019-FAO-020](#), [2019-FAO-021](#) and [2020-FAO-003](#)).

As a business owner, the rule would apply to Master Trooper Dockery in two ways. First, the rule would be implicated if Master Trooper Dockery contracts directly with a state agency to provide services. Master Trooper Dockery explains that he does not intend to contract with ISP or any other Indiana state agency while remaining employed with ISP.

Second, the rule would be implicated if the compensation Master Trooper Dockery receives from a client/customer is derived from a state agency contract/grant. This could occur if Master Trooper Dockery contracts with local Indiana clients or local government agencies that receive state funds under a contract/grant. The rule would prohibit Master Trooper Dockery from receiving compensation derived from those state funds unless he can meet both requirements of the rule.

Although Master Trooper Dockery does not participate in contracting nor does he have any contracting responsibilities in his state position, Master Trooper Dockery would still need to meet *both* requirements of the rule's exception before accepting compensation from any

client or customer who has a state contract if his compensation would be derived from a state contract.

Master Trooper Dockery confirmed that he understands that he cannot derive any compensation from an existing state contract and that he would not be entering into any contracts for his services with any Indiana state agencies. He further provided that, in his experience, local law enforcement agencies with whom the LLC may contract do not receive state funding for the type of training he intends to provide. In response to the Commission's concerns about the possibility of state funds being used as the revenue source for LLC contracts, Master Trooper Dockery confirmed that he would ensure that no state funding would be used to compensate the LLC for services rendered. Further, he agreed with the Commission's suggestion that he should include a provision in any contracts he enters into that the entity will not use any state funding to pay for LLC services.

Accordingly, the Commission finds that, so long as he does not enter into any Indiana state contracts, or contracts with other entities that would be state-funded, Master Trooper Dockery would not have a financial interest in a state contract.

*D. Confidential information*

Master Trooper Dockery 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 Master Trooper Dockery 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 Master Trooper Dockery is exposed to or has access to such confidential information in his position with ISP, he would be prohibited not only from divulging that information but from ever using it to benefit any person, including the LLC, in any manner.

*E. Use of state property and Ghost employment*

IC 4-2-6-17 prohibits Master Trooper Dockery 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 Master Trooper Dockery 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 Master Trooper Dockery observes these provisions in his outside work with the LLC, such outside employment activity would not violate these ethics laws.

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

**V. Adjournment**

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

The public meeting adjourned at 10:19 a.m.