

**MINUTES OF THE MEETING OF  
THE INDIANA STATE ETHICS COMMISSION  
September 9, 2021**

**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, chair; Sue Anne Gilroy; Kenneth Todd; and Rafael Sanchez. Staff present included Tiffany Mulligan, Chief Legal Counsel, Office of Inspector General; Jennifer Cooper, State Ethics Director; Luba Gore, Staff Attorney, Office of Inspector General; Mark Mader, Staff Attorney, Office of Inspector General; and Nathan Baker, Legal Assistant, Office of Inspector General.

Others present were: Tammera Glickman, Deputy General Counsel, Indiana Department of Administration; Ed Feigenbaum, Indiana Legislative Insight; Jessica Keyes, Ethics Officer, Family and Social Services Administration; Mattheus Mitchel, Compliance and Ethics Specialist, Department of Revenue; Christine McDonald, Internal Affairs Officer, Department of Child Services; Amber Nicole Ying, Director/Special Counsel, Compliance and Ethics and Ethics Officer, Department of Revenue; Keith Beesley, Attorney, State Personnel Department; John Walls, Ethics Officer and Chief Counsel of Advisory, Attorney General; James French, Attorney and Interim Ethics Officer, Indiana Department of Environmental Management; Ted Cotterill, General Counsel, Management Performance Hub; Alexander Van Gorp, Attorney, Indiana State Department of Health; Rachel Russell, Ethics Officer, Department of Child Services; Kathy Mills, Ethics Officer, Indiana Department of Environmental Management; Jennifer Thuma, Administrative Law Judge and Ethics Officer, Indiana Board of Tax Review; Master Trooper David Caswell, Instructor, Indiana State Police; Major Nila Miller-Cronk, Ethics Officer, Indiana State Police; and Major Anthony Casto, Indiana State Police.

**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 12, 2021, Commission Meeting and Commissioner Sanchez seconded the motion which passed (3-0). Commissioner Todd abstained due to his absence from the August Commission Meeting.

**III. Request for Formal Advisory Opinion**

2021-FAO-009

Master Trooper David Caswell, ISP Instructor

Major Nila Miller-Cronk, Ethics Officer

## Indiana State Police

Major Nila Miller-Cronk serves as Commander with the Office of Professional Standards and Ethics Officer for the Indiana State Police (ISP). She is requesting a Formal Advisory Opinion on behalf of Master Trooper David Caswell. Master Trooper Caswell serves as an Unarmed Response to Active Shooter Event (URASE) trained ISP instructor, in addition to performing other duties.

Master Trooper Caswell was trained in URASE in 2015. Master Trooper Caswell has off-duty employment through his company, DC Consulting LLC (LLC), that ISP has approved. The Indiana Toll Road Concession Company LLC (ITRCC) has asked the LLC to put together a Workplace Violence presentation to train their remote employees (mowing crews, toll takers and roadside workers) in dealing with an active shooter/violence situation.

ITRCC has requested to purchase Master Trooper Caswell's presentation and are asking that the presentation be approximately twenty to thirty minutes in length. Master Trooper Caswell has met with ITRCC to discuss what information they would like included in the presentation. He also has met with a marketing company to discuss cost for the preparation of the presentation. During these talks, ITRCC's Chief Operating Officer informed Master Trooper Caswell that ITRCC leases the Toll Road from the State of Indiana, and ITRCC does not receive any funding from the State. ITRCC is a subsidiary of IFM Global Fund.

Major Miller-Cronk requested an Informal Advisory Opinion (IAO) from the Office of Inspector General (OIG) on behalf of Master Trooper Caswell in July of 2021. In this request, she asked whether it would be permissible for Master Trooper Caswell to produce and sell the requested training to ITRCC through his LLC. The IAO advised that the opportunity would likely not create any conflicts of interests for Master Trooper Caswell but that Major Miller-Cronk could seek a Formal Advisory Opinion from the Commission if she wanted a final determination that this outside employment activity would not create a conflict of interests for Master Trooper Caswell.

After reviewing the IAO and having discussions with ISP legal personnel and executive staff, Major Miller-Cronk informed Master Trooper Caswell that ISP was denying his request to engage in the off-duty employment opportunity of providing the training to ITRCC. ISP's response to Master Trooper Caswell stated that "[t]his request from the [ITRCC] would be something you are paid by ISP to do as part of your assigned duties." The response also stated that if Master Trooper Caswell was interested in developing a Workplace Violence presentation for his off-duty employment, such work would only be permitted for out-of-state clients, not Indiana clients.

Master Trooper Caswell responded to the ISP denial of his request with additional information. Master Trooper Caswell provided that ITRCC was not seeking the URASE training that he could provide as a State Trooper. He provided that ITRCC had already received that training. They were looking to purchase a training program designed specifically for ITRCC with specific training modules geared towards their organization, including their policies and procedures, that they can then provide to their current and new employees. He further provided that he cannot alter the URASE presentation to fit the needs and customization that ITRCC needs. He added that he does not intend to use the URASE training he received through ISP for his outside employment venture. Rather, the program he wishes to provide to ITRCC is based on his research of other

workplace/violence prevention response training, other than the ISP URASE training, including: Run, Hide, Fight; Los Angeles Police Run, Hide, Fight training; OSHA Violence in the Workplace resources; and numerous other online articles and trainings.

Major Miller-Cronk is now requesting a Formal Advisory Opinion on behalf of Master Trooper Caswell regarding whether he can accept the opportunity to produce a customized training program for ITRCC through his LLC. In addition to the workplace violence training program, ITRCC has more recently approached Master Trooper Caswell, through his LLC, to produce an Impairment in the Workplace training. Major Miller-Cronk informed the Commission that the new information Master Trooper Caswell provided clarified that he would not be performing the same training he provides for ISP to ITRCC; therefore, ISP did not have the same objection they had to the original request.

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 because 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.

Regarding subsection (a)(1), nothing in the information Major Miller-Cronk provided indicates that Master Trooper Caswell's potential production and sale of the training programs for ITRCC through his LLC is inherently incompatible with his ISP position or would require his recusal from his official state duties to the extent that his ability to perform them would be materially impaired. The duties of each position are similar, but they do not overlap. Further, Master Trooper Caswell will be providing the training services through his LLC during his off-duty time.

As for subsection (a)(2), the Commission confirmed that this arrangement would not require Master Trooper Caswell to disclose confidential information learned in the course of state employment; therefore, such employment will not violate this subsection.

The Commission also confirmed that Master Trooper Caswell is aware that he is prohibited from using his official ISP position to secure unwarranted privileges or exemptions that subsection (a)(3) prohibits.

Accordingly, the Commission finds that Master Trooper Caswell's outside employment opportunity in producing and selling the customized training programs for ITRCC while also working for ISP would not create a conflict of interests under IC 4-2-6-5.5.

#### *B. Conflict of interests-decisions and votes*

IC 4-2-6-9 (a)(1) prohibits Master Trooper Caswell 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 Caswell 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 Caswell if he participates in any matter related to a decision/vote in which his LLC has a financial interest. This restriction goes beyond the actual decision/vote and prohibits his participation in any matter related to the decision/vote.

Based on the information provided, the Commission finds that Master Trooper Caswell is 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 his LLC would have a financial interest in the outcome.

If, however, Master Trooper Caswell'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 does not participate in or have official

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

Master Trooper Caswell's outside business has received requests to provide customized training presentations that ITRCC would purchase from the LLC. According to the information provided by Major Miller-Cronk, ITRCC does not receive any funding from ISP or the State. Accordingly, the Commission finds that Master Trooper Caswell's compensation for production of these training presentations would not be derived from a state contract or state fund, and this rule would not apply.

*D. Confidential information*

Master Trooper Caswell 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 Caswell 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 Master Trooper Caswell 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 his outside business or its clients, in any manner.

*E. Use of state property and Ghost employment*

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

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

**IV. Consideration of Final Report**

In the Matter of Paul Sipples  
Case Number 2020-06-0183  
Indiana 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 August meeting and that the Final Report would be the final disposition in this case.

Commissioner Sanchez moved to approve the Agreed Settlement and Commissioner Gilroy seconded the motion which passed (4-0).

**V. Consideration of Final Report**

In the Matter of Megan Arszman-Weisbrodt

Case Number 2020-10-0310

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

Commissioner Gilroy moved to approve the Agreed Settlement and Commissioner Sanchez seconded the motion which passed (4-0).

**VI. Consideration of Final Report**

In the Matter of Elston Boldery

Case Number 2018-01-0019

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

Commissioner Sanchez moved to approve the Agreed Settlement and Commissioner Gilroy seconded the motion which passed (4-0).

**VII. Director's Report**

State Ethics Director, Jen Cooper, indicated that OIG staff has issued 19 informal advisory opinions since the previous last meeting. The majority of these requests dealt with questions concerning conflicts of interests, use of state property, ghost employment, outside employment, post-employment and gifts.

She continued that a new Ethics Training for Fall 2021 is being worked on which will hopefully be completed and rolled out in October.

Finally, Director Cooper reported that the 2021 Legal and Ethics Conference has been officially scheduled for November 16, 2021 with hopes that it will be held in-person this year. Staff is working on securing speakers for the event with three hours of CLE available.

### **VIII. Adjournment**

Commissioner Todd moved to adjourn the public meeting of the State Ethics Commission. Commissioner Sanchez seconded the motion which passes (4-0).

The public meeting adjourned at 10:25 a.m.