

**MINUTES OF THE MEETING OF
THE INDIANA STATE ETHICS COMMISSION
June 14, 2018**

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 James Clevenger, Chairperson; Corinne Finnerty; Sue Anne Gilroy; Priscilla Keith (arrived at 10:04 a.m.); and Katherine Noel. Staff present included Jennifer Cooper, Ethics Director; Sam McGlone, Intern; Lori Torres, Inspector General; and Celeste Croft, Legal Assistant, Office of Inspector General.

Others present were Matthew Savage, Deputy General Counsel, Department of Workforce Development; Rachel Russell, Ethics Officer/Deputy General Counsel, Department of Child Services; Deana Smith, Attorney, State Department of Health; Beth Green, General Counsel, Department of Workforce Development; Jared Prentice, Compliance Director, Department of Revenue; Michelle Stanley, Legal Specialist, State Board of Accounts; Chris Serak, Ethics Officer, Department of Transportation; Sam Charbonneau, Family Case Manager Supervisor, Department of Child Services; Sarah Kamhi, Assistant General Counsel/Director of Agreements, Department of Revenue; Dyllan Kemp, Intern, Department of Revenue; Whitney Fritz, Staff Attorney, Department of Child Services; Alexander BeMiller, Governor’s Summer Intern, Department of Revenue; Mark Hawkins, Attorney, Department of Revenue; Sara Martin, License Control Counsel/Ethics Officer, Gaming Commission; Tamera Glickman, Assistant General Counsel, Department of Administration; Ted Cotterill, General Counsel/Chief Data Officer/Ethics Officer, Management Performance Hub; Patrick Clark, Intern, Management Performance Hub; Stephanie Semaan, Intern, Department of Workforce Development.

II. Adoption of Agenda and Approval of Minutes

Commissioner Gilroy moved to adopt the Agenda and Commissioner Noel seconded the motion which passed (4-0). Commissioner Gilroy moved to approve the Minutes of the May 10, 2018 Commission Meeting and Commissioner Noel seconded the motion which passed (4-0).

III. Consideration of Limited Personal Use of State Property/Resources Policy Presented by Ted Cotterill, General Counsel/Chief Data Officer/Ethics Officer Management Performance Hub

Ted Cotterill, General Counsel, Chief Data Officer, and Ethics Officer for Management Performance Hub, presented a Limited Personal Use of State Property/Resources Policy to the Commission because he wanted to ensure Management Performance Hub could leverage state resources in order to complete important tasks and the agency was not established until July 1, 2017, and therefore, does not have such a policy in effect. Per Mr. Cotterill, the policy presented before the Commission was the same as the policy the Commission approved for the Office of

Management and Budget in 2015. Mr. Cotterill further explained that the Office of Management and Budget wanted all policies throughout the various offices of the Office of Management and Budget to be uniform. After the Commission discussed the matter, Commissioner Noel moved to approve the Limited Personal Use of State Property/Resources Policy and Commissioner Gilroy seconded the motion which passed (4-0).

IV. Request for Formal Advisory Opinion

**2018-FAO-0016 Sam Charbonneau, Family Case Manager Supervisor
Rachel Russell, Deputy General Counsel/Senior Counsel for Strategic
Initiatives & Special Projects/Ethics Officer
Indiana Department of Child Services**

Sam Charbonneau serves as a Family Case Manager (FCM) Supervisor for the Indiana Department of Child Services' (DCS) Floyd County office. Rachel Russell serves as DCS' Ethics Officer and has submitted a request for a Formal Advisory Opinion on behalf of Mr. Charbonneau.

Mr. Charbonneau is also a candidate for Indiana State Representative. In November of 2017, Mr. Charbonneau reached out to the former DCS Ethics Officer to advise her that he was considering running for a political office. In February of 2018, Mr. Charbonneau notified Ms. Russell that he was planning to run for an Indiana State Representative seat.

Ms. Russell advised Mr. Charbonneau to seek an informal advisory opinion from the Office of the Inspector General (OIG). Mr. Charbonneau requested advice regarding his ability to accept campaign contributions from companies who do business with DCS or from attorneys who have represented clients in Child in Need of Services (CHINS) proceedings in Floyd County. Mr. Charbonneau shared the informal advisory opinion he received from the OIG with Ms. Russell on April 19, 2018. Mr. Charbonneau won his district's primary on May 8, 2018, and the general election will be held on November 6, 2018.

Ms. Russell is now requesting a Formal Advisory Opinion to determine whether Mr. Charbonneau would have any conflicts of interests under the Code if he runs for and/or is elected as an Indiana State Representative and maintains his employment as a FCM Supervisor with DCS.

The advisory opinion stated the following analysis:

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

The Commission does not have jurisdiction to interpret or address concerns regarding the dual office holding prohibition in the Indiana State Constitution or the federal Hatch Act. Mr. Charbonneau should review the federal Hatch Act as well as consult the Indiana Office of the

Attorney General's [Dual Office Holding Guide](#) and their recent [opinion](#) regarding state employees holding political office.

A. *Political Activity*

The political activity rule prohibits Mr. Charbonneau from engaging in political activity, including solicitation of political contributions from anyone, when he is on duty or while acting in an official capacity for the State. This rule also prohibits Mr. Charbonneau from soliciting political contributions at any time, whether on duty or not, from persons with whom DCS has a business relationship or from state employees or special state appointees he directly supervises. So long as Mr. Charbonneau is soliciting contributions for his own campaign, it makes no difference if he has purchasing or procurement authority.

The Commission finds that Mr. Charbonneau is permitted to engage in political activity when he is not on duty or acting in his official capacity. On duty and acting in his official capacity means during his normal work hours when he is actively performing work for DCS. He also cannot actively solicit political contributions any time that he is scheduled to be on call and/or expected to respond to calls. The Commission further finds that Mr. Charbonneau would be prohibited from using his official DCS title on any campaign materials.

The Commission further finds that Mr. Charbonneau may solicit political contributions for his own campaign as a candidate from anyone other than his direct reports and those with a business relationship with DCS, as an agency, and not just those with a business relationship with his local DCS office/region.

In addition, the Commission finds that Mr. Charbonneau may *accept* unsolicited political contributions from persons with whom DCS has a business relationship so long as he is not soliciting or asking others to solicit these individuals on his behalf. The Commission recommends that Mr. Charbonneau have a disclaimer on his website and on any campaign materials that are intended to solicit political contributions, including invitations to events where funds will be solicited, in order to make it clear that he cannot solicit funds from any person who has a business relationship with DCS. The disclaimer should include a reference to the political activity rule and the definition of business relationship found in IC 4-2-6-1(a)(5).

So long as Mr. Charbonneau adheres to the above restrictions, his political campaign and subsequent service as an Indiana State Representative would not be contrary to the political activity rule.

The gift rule (42 IAC 1-5-1) also prohibits state employees from accepting a gift from a person who has a business relationship with the employee's state agency; however, it exempts political contributions subject to IC 3-9-2 from the prohibition. Therefore, so long as any unsolicited contributions comply with IC 3-9-2, the gift rule would permit Mr. Charbonneau to accept campaign contributions from persons who have a business

relationship with DCS. The gift rule would not apply to donations, either solicited or unsolicited, from persons who do not have a business relationship with DCS.

Finally, the Commission notes that DCS Policy Number HR 3-3 provides further rules and procedures for DCS employees seeking political office and further restrictions on political activity with which Mr. Charbonneau will need to ensure he complies as he continues to seek and/or is elected to public office. These restrictions include a prohibition on soliciting political contributions from other employees. The policy restrictions also prohibit directly or indirectly requesting that subordinates assist, in any way, with a campaign for a political party or candidate.

B. Outside Employment/Professional Activity

IC 4-2-6-5.5 prohibits Mr. Charbonneau from 1) accepting other employment involving compensation of substantial value if those responsibilities are inherently incompatible with his responsibilities in his state employment or would require his recusal from matters so central or critical to the performance of his duties with the State that his ability to perform them would be materially impaired; 2) accepting employment or engaging in business or professional activity that would require him to disclose confidential information that was gained in the course of his employment with the State; and 3) using or attempting to use his position with the State to secure unwarranted privileges or exemptions that are of substantial value and not properly available to similarly situated individuals outside state government.

Mr. Charbonneau has notified both the former and the current DCS Ethics Officer to ensure he is following all of the applicable rules and procedures. Ms. Russell confirmed that he has been very transparent about his intentions to run for political office and has been in constant communication with DCS staff as needed.

Based on the information provided by Mr. Charbonneau and Ms. Russell, the Commission finds that the employee's activities as a candidate for Indiana State Representative would not create a conflict of interests for him under IC 4-2-6-5.5. Specifically, Mr. Charbonneau's responsibilities as a candidate would not be inherently incompatible with his DCS responsibilities, nor would they require his recusal from matters that are central or critical to the performance of his state duties.

In addition, Mr. Charbonneau would not be required to disclose confidential information he gained through his state employment as part of his candidacy for political office. He must also ensure that he does not use his official position during his campaign to secure unwarranted privileges or exemptions that are of substantial value and not properly available to similarly situation individuals outside state government.

The Commission did not analyze whether Mr. Charbonneau would be able to continue serving as a DCS FCM Supervisor if he were to win the election and take the office of Indiana State Representative because Ms. Russell pointed out that, under IC 4-15-2.2-45(b), a "classified" employee who is elected to a federal or state public office is considered

to have resigned from state service on the date the person takes office. Ms. Russell informed the Commission that Mr. Charbonneau is considered a classified employee and that she informed him before the meeting that he would need to resign his position as Family Case Manager Supervisor before taking office if he is elected to Indiana State Representative. While the Commission does not have jurisdiction to interpret this statute, the Commission recognizes that Mr. Charbonneau would need to follow this statute and resign from his current DCS position if he is elected and takes the office of Indiana State Representative.

C. Conflict of Interests

IC 4-2-6-9(a) prohibits a state employee from participating in any decision or vote, or matter relating to that decision or vote, if he has knowledge that various persons may have a “financial interest” in the outcome of the matter, including himself or a business organization in which he is serving as an employee or member. The term financial interest, as defined in IC 4-2-6-1(a)(11), includes an interest involving property or services. However, the term does not include an interest that is not greater than the interest of the general public or any state officer or any state employee.

Based on the information provided, the Commission finds that Mr. Charbonneau would not be required to participate in decisions or votes, or related matters, as an FCM Supervisor in which the State legislature would have a financial interest in the outcome. So long as no such decisions or votes, or matters related to such decisions or votes, come before Mr. Charbonneau in his position at DCS, he would not be in violation of this rule. In the event he would otherwise participate in any such matters during the course of his state employment, he should follow the procedure set forth in IC 4-2-6-9 (b) to disclose the conflict.

D. Use of State Property

The use of state property rule prohibits a state employee from using state property for purposes other than official state business absent a written policy allowing for such use that has been approved by the Commission. The Commission confirmed that Mr. Charbonneau understands that he cannot use state property for any political purpose. This means he must refrain from using his state phone, computer, email account, etc. for any political purpose, even if the use is *de minimis*.

To the extent that Mr. Charbonneau refrains from using state property for duties related to his candidacy for Indiana State Representative, he would not be in violation of this rule.

E. Ghost Employment

The ghost employment rule prohibits a state employee from engaging in or directing others to engage in work other than the performance of official duties during working hours absent a written agency policy allowing it. Mr. Charbonneau must ensure that he refrains from working on any campaign or State Representative-related matters during his state working

hours and when he is on duty as an FCM Supervisor. As noted earlier in the opinion, the Commission also determined when he is scheduled to be on-call and/or expected to respond to calls, Mr. Charbonneau must refrain from actively soliciting political contributions. In other words he cannot attend a fundraiser or other campaign event during his on-call hours.

To the extent that Mr. Charbonneau refrains from engaging or directing others to engage in work other than official state duties during his working hours, he would not be in violation of this rule.

F. *Confidential Information*

42 IAC 1-5-10 and 42 IAC 1-5-11 prohibit a state employee from benefitting from or divulging confidential information.

To the extent that Mr. Charbonneau complies with these restrictions, he would not be in violation of these rules.

Subject to the foregoing analysis, the Commission finds that Mr. Charbonneau's candidacy for the office of Indiana State Representative would not create a conflict of interests under the Code of Ethics. Further, Mr. Charbonneau can engage in political activity, including the solicitation of political contributions from persons who do not have a business relationship with DCS, so long as he engages in this activity only when he is not on duty and he does not use his official title.

Commissioner Finnerty moved to approve the Commission's findings, and Commissioner Keith seconded the motion which passed (5-0).

V. **Director's Report**

State Ethics Director, Jen Cooper, stated that the number of informal advisory opinions issued by the Office of Inspector General since the last meeting was 28, which covered post-employment restrictions, conflicts of interests, outside employment, use of state property, and ghost employment.

Ms. Cooper also stated that there were over 150 attendees at the Auditor & Investigator Conference hosted by the Office of Inspector General, held June 5, 2018. Based on survey results from that Conference, the Office of Inspector General decided to change the venue from the History Reference Room in the Indiana State Library to the Auditorium in the Indiana Government Center South, and decided to provide a professional speaker and more relevant topics at the next Auditor & Investigator Conference.

Lastly, Ms. Cooper announced that the Office of Inspector General had begun planning for the upcoming Legal & Ethics Conference, which is currently set to take place during the fall of 2018.

VI. Adjournment

Commissioner Noel 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 11:12 a.m.