

JUL 12 2018



INDIANA DEPARTMENT OF TRANSPORTATION

FILED

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Indianapolis, Indiana 46204

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Eric Holcomb, Governor  
Joe McGuinness, Commissioner

July 5, 2018

Mr. James Clevenger, Chair  
Indiana State Ethics Commission  
315 West Ohio Street, Room 104  
Indianapolis, IN 46202

RE: Designation of Authority to Represent Commissioner and INDOT at July 12, 2018 Ethics Commission Meeting

Dear Mr. Clevenger:

As the Commissioner of INDOT, I have approved and executed a waiver of the one-year "cooling-off" period for INDOT employee Stephen Summers. Unfortunately, I will be speaking at an event on behalf of INDOT on July 12, 2018, at 10:00 a.m. Due to this engagement, I cannot attend the next meeting of the State Ethics Commission. Chris Kiefer, INDOT's Chief of Staff, is also unavailable on July 12, 2018, due to a previously scheduled intra-department meeting that cannot be rescheduled.

I have discussed my reasons for granting this waiver with Alison Grand, INDOT's Chief Legal Counsel. Ms. Grand will be able to attend the next State Ethics Commission meeting, present the waiver to the Commission, and answer all questions of the Commission members concerning the form and substance of the waiver for Mr. Summers.

Thank you for allowing Ms. Grand to serve as my representative at the Commission's July 12, 2018 meeting.

Sincerely,

Joe McGuinness  
Commissioner  
Indiana Department of Transportation

Co: Alison Grand, Chief Legal Counsel, INDOT  
Chris Serak, INDOT Ethics Officer

**IC 4-2-6-11**

**Post-employment waiver**

As the Appointing Authority of the Indiana Department of Transportation, I am filing this waiver of the application of the Code of Ethics' post-employment restriction as it applies to Stephan Summers in his post-employment with Troyer Group.

I understand that I must file and present this waiver to the State Ethics Commission at their next available meeting. I further understand that this waiver is not final until approved by the State Ethics Commission.

A. This waiver is provided pursuant to IC 4-2-6-11(g) and specifically waives the application of  
*(Please indicate the specific restriction in 42 IAC 1-5-14 (IC 4-2-6-11) you are waiving):*

IC 4-2-6-11(b)(1): 365 day required "cooling off" period before serving as a lobbyist.

IC 4-2-6-11(b)(2): 365 day required "cooling off" period before receiving compensation from an employer for whom the state employee or special state appointee was engaged in the negotiation or administration of a contract and was in a position to make a discretionary decision affecting the outcome of such negotiation or administration.

IC 4-2-6-11(b)(3): 365 day required "cooling off" period before receiving compensation from an employer for which the former state employee or special state appointee made a directly applicable regulatory or licensing decision.

IC 4-2-6-11(c): Particular matter restriction prohibiting the former state employee or special state appointee from representing or assisting a person in a particular matter involving the state if the former state officer, employee, or special state appointee personally and substantially participated in the matter as a state worker. *(Please provide a brief description of the specific particular matter(s) to which this waiver applies below):*

B. IC 4-2-6-11(g)(2) requires that an agency's appointing authority, when authorizing a waiver of the application of the post-employment restrictions in IC 4-2-6-11(b)-(c), also include specific information supporting such authorization. Please provide the requested information in the following five (5) sections to fulfill this requirement.

1. Please explain whether the employee's prior job duties involved substantial decision-making authority over policies, rules, or contracts;

The following information is based upon information provided by the employee to INDOT's Ethics Officer in connection with the process of considering this waiver.

Stephan Summers has served as a project manager with the Indiana Department of Transportation since July of 2015. The primary roles and responsibilities of a project manager, as defined by INDOT, are: 1) coordinating with construction and maintenance divisions in the development of projects from the time of programming through the completion of construction; 2) supervising the project scope, budget, and schedule throughout the life of the project; 3) coordinating project stake holders; 4) planning various meetings during project development; 5) scheduling and monitoring Constructability Reviews during project development; 6) reviewing and recommending solutions to the designer for project issues (design, utilities, R/W, etc.); 7) communicating with all personnel associated with the project to coordinate the work to achieve project success; 8) monitoring project status and identifying any risks with Area Engineer; 9) providing direction to Contracts Administration for the interpretation of project intent; 10) providing project updates, as needed, to various offices and divisions including INDOT Executive Staff; 11) attending Pre-Construction meetings; 12) attending regular meetings with contractors; 13) reviewing requests for changes to design or scope of contracts and making recommendations to appropriate construction personnel; and 14) contacting the INDOT assigned Engineer of Record regarding any project issues that arise during construction pertaining to Errors and Omissions for timely resolution with the designer.

The duties of a project manager are essentially to manage the project from the project kick-off to the start of construction. These duties include keeping track of the scope, schedule and budget of the construction cost estimates provided by the Asset Management Team. In some instances, the project manager is involved in direct contract negotiations with the consultant but, most often not as much. A Central Office Contract Negotiator is assigned to perform these duties. Once the contract has been finalized, the contract is transferred back to the Project Manager for delivering the project to construction. All major decisions throughout the process are approved by the Asset Owner of the contract, for example a change in scope for a bridge is approved by the Bridge Asset Owner, not the project manager. If the costs exceed \$250,000, then it must

be approved by the State Wide Change Management Board. As a project manager, I oversee over 250 projects over the next five years in various design phases.

Mr. Summers had direct authority over the administration of contracts with certain consulting firms. However, all such negotiated contracts were submitted for approval to Mr. Summer's supervisor, Lisa Shrader, INDOT's Consultant Services Manager for the LaPorte District. All major financial decisions on Mr. Summer's administered contracts were discussed with said supervisor and, if the amount was greater than \$250,000, the change had to be submitted for approval by the change management board.

Mr. Summers presently has over 250 projects and out of those projects, he had 12 projects with the Troyer Group. One in active construction, which is being administered by the Area Engineer for SR-51. Other projects in active design are SR-2 at CR-100S, SR-2 at CR-500 W, US-6 at SR-2, SR-55 at 73<sup>rd</sup> Ave, SR-2 at Heavilin Rd, SR-2 at Horse Prairie Rd, SR-55 at 73<sup>rd</sup> Ave and US-35 pavement project. Previous projects I have had with the Troyer Group are SR-51 at 10<sup>th</sup> St, SR-130 at CR-450 W and SR-130 at SR-149. Mr. Summers directly negotiated the US 35 project, and has been administering the other contracts through the design phase. He signs purchase orders each month for all consultants, including the Troyer Group, that perform contracted design work for INDOT. He has been screen from doing so for the Troyer Group.

The Troyer Group has some amendments to these contracts that the firm wants INDOT to consider, but the firm has decided to wait until another INDOT project manager is assigned to these contracts.

INDOT's Ethics Officer made the determination that Stephan would be subject to a 365-day "cooling-off" period between the date he left state employment and the date that he could start working for any of several consulting firms because Stephan was engaged in the negotiation and/or administration of one or more contracts with the Troyer Group on behalf of INDOT.

2. Please describe the nature of the duties to be performed by the employee for the prospective employer:

Based solely on the information provided to me by Mr. Summers, and contingent on the approval of this waiver by the State Ethics Commission, Stephan will be working in the development and management of the Troyer Group's design projects. This will involve developing and managing project schedules, project status reports, utility coordination, permits, and design plans.

3. Please explain whether the prospective employment is likely to involve substantial contact with the employee's former agency and the extent to which any such contact is likely to involve matters where the agency has the discretion to make decisions based on the work of the employee:

Most likely future employers that are civil engineering consultant firms will likely have contracts with INDOT providing professional engineering services for transportation infrastructure projects in need of repair, rehabilitation or replacement. Mr. Summers anticipates that he will have contact with various INDOT personnel in the natural execution of transportation design projects, similar to other any design consultant providing services to INDOT.

Mr. Summers has told INDOT's Ethics Officer that Stephan will scrupulously observe the "particular matters" post-employment restriction in the state ethics rules and will not have any involvement on behalf of his future employer whatsoever in any contract or other matter where Stephan personally and substantially participated in the matter as an INDOT employee. Stephan has also committed to clearly working with his future employer so that the company understands and agrees to similarly help Stephan comply at all times with the "particular matters" restriction.

4. Please explain whether the prospective employment may be beneficial to the state or the public, specifically stating how the intended employment is consistent with the public interest:

It is in the public's interest and beneficial to the state and other public agencies having Mr. Summers's extensive engineering experience available to provide professional engineering performance and guidance for state and local public works projects. In addition, Stephan's position with any prospective employer would apply his extensive INDOT experience to provide a better product to the state and public agencies. It is also in the public's interest to continue to receive a return on the investment made in Stephan's professional development during his time with INDOT.

5. Please explain the extent of economic hardship to the employee if the request for a waiver is denied:

As a professional engineer, most relevant outside employment opportunities for Mr. Summers would have to undergo ethics scrutiny and some would be prohibited. Stephan is the sole income earner for his family. Failure to approve this waiver would severely limit his subsequent employment opportunities and cause a severe economic hardship for Mr. Summers and his plans for his future.

(REST OF PAGE 4 LEFT INTENTIONALLY BLANK)

C. Signatures

1. Appointing Authority/state officer of agency

By signing below I authorize the waiver of the above-specified post-employment restrictions pursuant to IC 4-2-6-11(g)(1)(A). In addition, I acknowledge that this waiver is limited to an employee who obtains the waiver before engaging in the conduct that would give rise to a violation.

  
\_\_\_\_\_  
Joseph McGuinness, Commissioner  
INDIANA DEPARTMENT OF TRANSPORTATION

7/5/2018  
\_\_\_\_\_  
DATE

2. Ethics Officer of agency

By signing below I attest to the form of this waiver of the above-specified post-employment restrictions pursuant to IC 4-2-6-11(g)(1)(B).

  
\_\_\_\_\_  
Christopher B. Serak, Ethics Officer  
INDIANA DEPARTMENT OF TRANSPORTATION

7/5/2018  
\_\_\_\_\_  
DATE

D. Approval by State Ethics Commission

FOR OFFICE USE ONLY  
Approved by State Ethics Commission  
  
7/10/18

Mail to:  
Office of Inspector General  
315 West Ohio Street, Room 104  
Indianapolis, IN 46202  
OR  
Email scanned copy to: [info@ig.in.gov](mailto:info@ig.in.gov)  
  
Upon receipt you will be contacted with details regarding the presentation of this waiver to the State Ethics Commission.