

**MINUTES OF THE MEETING OF
THE INDIANA STATE ETHICS COMMISSION
November 16, 2023**

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 were Katherine Noel, Chair; Corinne Finnerty; John Krauss; and Sue Anne Gilroy (via telephone). Office of Inspector General (OIG) staff present included David Cook, Inspector General; Tiffany Mulligan, Chief of Staff and Chief Legal Counsel; Sean Gorman, State Ethics Director; Mark Mitchell, Director of Investigations; Doreen Clark, Staff Attorney; Mark Mader, Staff Attorney; Hope Blankenberger, Staff Attorney, Mike Lepper, Special Agent; Jason Fajt, Special Agent; Sam Stearley, Special Agent; and Nathan Baker, Legal Assistant.

Others present were Mattheus Mitchell, Compliance and Ethics Specialist, Indiana Department of Revenue; Tamera Glickman, Deputy General Counsel, Indiana Department of Administration; Kate Shelby, Ethics Officer, Indiana Department of Transportation; Michael Smith, Commissioner, Indiana Department of Transportation; Jeffrey Brooks, Deputy Commissioner of Operations, Indiana Department of Transportation; Taffanee Keys, Civil Rights Counsel, Indiana Department of Transportation; Anne Valentine, Chief of Staff, Office of Lieutenant Governor; Denny Spinner, Director, Office of Community and Rural Affairs; Amy Borland, former employee, Indiana Department of Natural Resources; David Bausman, Ethics Officer, Indiana Department of Natural Resources; Beth McCord, Director of the Division of Historic Preservation, Indiana Department of Natural Resources; Joe Basile, Assistant General Counsel, Indiana Department of Natural Resources; George Dremonas, General Counsel and Ethics Officer, Indiana Department of Financial Institutions; Major Nila Miller-Cronk, Ethics Officer, Indiana State Police; and, Matthew Gerber, Ethics Officer, Family and Social Services Administration.

II. Adoption of Amended Agenda and Approval of Minutes

Commissioner Krauss moved to adopt the amended agenda (adding INDOT Ethics Officer Kate Shelby as a presenter on the Brooks Post-Employment Waiver matter), Commissioner Finnerty seconded the motion, and the Commission passed the agenda via roll call vote (4-0).

Commissioner Krauss moved to approve the Minutes of the October 12, 2023, Commission Meeting, and Commissioner Finnerty seconded the motion, which passed via roll call vote (3-0). Commissioner Gilroy abstained from voting as she was not present at the October meeting.

III. Consideration of Waiver of Post-Employment Restrictions for Denny Spinner

Anne Valentine, Chief of Staff for the Office of Lieutenant Governor and Appointing Authority for the Office of Community and Rural Affairs, presented the proposed Waiver of Post-Employment Restrictions in this matter to the Commission for their approval.

Commissioner Krauss moved to approve the Waiver, and Commissioner Finnerty seconded the motion, which passed via roll call vote (4-0).

IV. Consideration of Waiver of Post-Employment Restrictions for Jeffrey Brooks

Michael J. Smith, Commissioner of the Indiana Department of Transportation, and Kate Shelby, Ethics Officer of the Indiana Department of Transportation, presented the proposed Waiver of Post-Employment Restrictions in this matter to the Commission for their approval.

Commissioner Krauss moved to approve the Waiver, and Commissioner Finnerty seconded the motion, which passed via roll call vote (4-0).

V. Request for Reconsideration of Formal Advisory Opinion 2023-FAO-009

Amy Borland, a former employee of the Indiana Department of Natural Resources, and Kate Shelby presented additional information in this matter for a reconsideration of the Commission's decision as issued in Formal Advisory Opinion 2023-FAO-009. Additionally, Kate Shelby, Ethics Officer of the Indiana Department of Transportation, David Bausman, Ethics Officer of the Indiana Department of Natural Resources, and Beth McCord, Director of the Division of Historic Preservation of the Indiana Department of Natural Resources, were present to offer information on behalf of their respective agencies.

Commissioner Finnerty moved to confirm the findings of the Commission's previous decision, and Commissioner Krauss seconded the motion, which passed via roll call vote (4-0).

VI. Request for Formal Advisory Opinion

2023-FAO-011

Sargeant Christopher Lambert, Training Officer

Major Nila Miller-Cronk, Ethics Officer

Indiana State Police

Major Nila Miller-Cronk is the Ethics Officer for the Indiana State Police (ISP). Maj. Miller-Cronk is requesting an advisory opinion on behalf of Lieutenant Christopher Lambert, a member of ISP's Training Division. Specifically, Maj. Miller-Cronk is requesting an opinion from the Commission to ensure that Lt. Lambert's proposed outside employment as a public safety salesperson for Shearwater Research, Inc. (Shearwater) is acceptable under the Code while he is employed at ISP.

Lt. Lambert is currently employed part-time at Shearwater as a consultant/trainer in public safety diving. ISP previously approved Lt. Lambert's off-duty outside employment with Shearwater. Shearwater has approached Lt. Lambert with an offer to assume additional duties as a public safety salesperson, in addition to his consultant/trainer role.

Lt. Lambert is a certified divemaster and past commander of ISP's dive team. In his current ISP Training Division role, he is no longer involved with ISP's dive team and is not involved in any procurement of equipment or supplies for ISP's dive team.

Shearwater is not a registered vendor for the State of Indiana; therefore, no direct sales to a state agency, including ISP can occur. ISP does not use Shearwater equipment or services. Lt. Lambert will not be marketing Shearwater products and services to ISP or any other state agency. Should a state agency choose to procure Shearwater products, these products are commercially available through other vendors who Lt. Lambert would not represent in his proposed additional duties at Shearwater as a public safety salesperson. Lt. Lambert maintains an understanding with Shearwater that he will not be involved in any marketing or sales to ISP on behalf of Shearwater.

Maj. Miller-Cronk's request for a formal advisory opinion invokes consideration of the provisions of the Code pertaining to Conflicts of Interests, Use of State Property, Ghost Employment and Benefitting from and Divulging Confidential Information. The application of each provision to Lt. Lambert's proposed outside activities as a salesperson for Shearwater is analyzed below.

A. Outside employment

An outside employment or professional activity opportunity creates a conflict of interests under IC 4-2-6-5.5 if it results in the employee: 1) receiving compensation of substantial value if 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 official duties that his 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 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 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 opportunity. ISP has previously approved Lt. Lambert's off-duty outside employment at Shearwater for his work as a consultant/trainer in public safety diving.

Shearwater is not a registered vendor for the State of Indiana, and therefore no direct sales to an executive branch agency can occur. Further, Lt. Lambert is not involved with ISP's dive team and is not involved in any procurement of equipment or supplies for ISP's dive team.

Lt. Lambert understands that he is prohibited from disclosing confidential information that he may have access to by virtue of his ISP role to Shearwater, its clients or anybody else. Nothing in the information presented suggests that Lt. Lambert would use or attempt to use his ISP position for any unwarranted privileges or exemptions.

B. Conflict of interests - decisions and votes

IC 4-2-6-9 (a)(1) prohibits Lt. Lambert 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 Lt. Lambert from participating in any decision or vote, or matter relating to that decision or vote, if he or a business organization such as Shearwater, who employs him, has a financial interest in the matter.

Per IC 4-2-6-1(a)(11), the term "financial interest" does not include an interest that is not greater than the interest of the general public or any state officer or any state employee.

IC 4-2-6-9(b) requires that an employee who identifies a potential conflict of interests notify his or her Ethics Officer and Appointing Authority in writing and seek an advisory opinion from the Commission or file a written disclosure statement.

Accordingly, Lt. Lambert would have a potential conflict of interests if he is in a position to participate in decisions or votes, or matters related to such decisions or votes, in which he or Shearwater would have a financial interest in the outcome.

In his role at ISP's Training Division, Lt. Lambert is not in a position to be involved in any procurement of equipment or supplies for ISP's diving team. Lt. Lambert's current position and his proposed additional duties at Shearwater do not involve any dealings with ISP or other State of Indiana agencies. The Commission finds that Lt. Lambert has not identified a potential conflict of interests at this time.

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 an agency. This prohibition however does not apply to an employee that does not participate in or have contracting responsibility for any of the activities of the contracting agency, provided certain statutory criteria are met.

Maj. Miller-Cronk provides that Shearwater is not registered as a vendor for the State of Indiana. ISP does not utilize Shearwater for products or services. Maj. Miller-Cronk states that nothing would prevent ISP or another state agency from seeking to do business with Shearwater in the future.

So long as Shearwater is not compensating Lt. Lambert from funds derived from a state contract or grant, Lt. Lambert would not have a financial interest in a state contract that would create a conflict of interests under the Code.

D. Confidential information

Lt. Lambert 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 Lt. Lambert 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, such as Shearwater. In addition, the definition of “information of a confidential nature” is set forth in IC 4-2-6-1(a)(12).

To the extent Lt. Lambert is exposed to or has access to such confidential information in his ISP role, he would be prohibited not only from divulging that information but from ever using it to benefit any person, including Shearwater or its clients, in any manner.

E. Use of state property and Ghost employment

42 IAC 1-5-12 prohibits Lt. Lambert 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 that has been approved by the Commission. Likewise, 42 IAC 1-5-13 prohibits Lt. Lambert 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 Lt. Lambert observes these provisions regarding his outside employment at Shearwater, his proposed new role as a salesperson would not violate these ethics laws.

Commissioner Finnerty moved to approve the Commission’s findings, and Commissioner Krauss seconded the motion, which passed via roll call vote (4-0).

VII. Consideration of Agreed Settlement

In the Matter of Justin A. Breedlove
Case Number 2021-11-0319
Doreen Clark, Staff Attorney
OIG

Doreen Clark presented the proposed Agreed Settlement in this matter to the Commission for their approval.

Commission Chair Noel moved to approve the Agreed Settlement, and Commissioner Krauss seconded the motion, which passed via roll call vote (4-0).

VIII. Consideration of the Final Report

In the Matter of Myranda Strange
Case Number 2023-05-0181

State Ethics Director Sean Gorman presented the Final Report regarding the Agreed Settlement in the Matter of Myranda Strange for approval.

Commission Chair Noel moved to approve the Final Report, and Commissioner Krauss seconded the motion, which passed via roll call vote (4-0). The Final Report was signed by Commissioners present at the meeting. Commission Chair Noel signed on behalf of Commissioner Gilroy with permission.

IX. Ethics Director's Report

State Ethics Director Sean Gorman provided the following to the State Ethics Commission:

INFORMAL ADVISORY OPINIONS:

Since our last meeting, our office has issued 17 IAOs to requestors regarding the most commonly identified scenarios involving moonlighting and post-employment.

LEGAL & ETHICS CONFERENCE:

A reminder that this year's event is set to take place on the afternoon of November 16, 2023, and features presentations from Judge Thomas Kirsch from the U.S. Court of Appeals 7th Circuit, a session on parallel investigations involving an agency and the OIG, a session on ethics and government lawyers presented by Marion County Circuit Court Judge David Miller, and a review of the Code of Ethics' Political Activity rule.

OUTREACH:

Since the October meeting, OIG provided presentations to the Association of Indiana Counties (AIC), Professional Geologists of Indiana, Indiana State Police new recruits, Indiana Professional Licensing Agency new Board and Commission appointees, and the Department of Natural Resources' Division of Water staff.

Also conducted the 4th and final ethics officer roundtable event for 2023.

COGEL CONFERENCE:

The annual Conference for the Council on Governmental Ethics Laws in Kansas City takes place from December 3rd through 6th. Sessions on training upgrades for ethics commissions by ethics commissions, how to build confidence in public institutions and programs, early intervention and compliance efforts, navigating ethics issues with big ticket events, and ethics gift rules. Ethics Director Gorman will be attending and provide his takeaways to the Commission at the December meeting.

RECENT MEDIA INQUIRIES:

The Office of the Inspector General has received several inquiries from a local reporter regarding conflicts of interest disclosure statements filed with the OIG pursuant to the Code of Ethics. The inquiries identified multiple contracts that the reporter identified on the IEDC website and requested information on disclosure statements filed by IEDC board members regarding those contracts. The Commission previously issued advisory opinions in 2013 and 2017 regarding IEDC COI disclosures and the media inquiries in part referenced these decisions. It is our understanding that the story will be released 11/16/2023 and we will forward any coverage and provide follow-up information as appropriate.

X. Adjournment

Commissioner Krauss moved to adjourn the public meeting of the State Ethics Commission. Commissioner Finnerty seconded the motion, which passed via roll call vote (4-0).

The public meeting adjourned at 11:19 a.m.