

**MINUTES OF THE MEETING OF
THE INDIANA STATE ETHICS COMMISSION
July 11, 2024**

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; Sue Anne Gilroy; and Rafael Sanchez. Office of Inspector General (OIG) staff present included David Cook, Inspector General; Tiffany Mulligan, Chief of Staff, Chief Legal Counsel; Regan Perrodin, State Ethics Commission Director; Doreen Clark, Staff Attorney; Mike Lepper, Special Agent; Jason Fajt, Special Agent; and Nathan Baker, Legal Assistant.

Others present were Matthew Gerber, Ethics Officer, Family and Social Services Administration; Gary Haynes, Chief of Staff, Board of Animal Health; Larry Reed, former employee, Board of Animal Health; Jennifer Thuma, General Counsel, State Comptroller; Rachel Russell, Ethics Officer, Department of Child Services; Aaron Atwell, Chief of Staff, Department of Child Services; Chris McDonald, Internal Affairs Officer, Department of Child Services; and the following interns from the Department of Revenue: Dylan Schutte, Reese Langhome, and Kyle Carlson.

II. Election of Acting Chair, Adoption of Agenda and Approval of Minutes

Commission Chair Noel was not in attendance. Commissioner Krauss nominated Commissioner Finnerty to serve as Acting Commission Chair. Commissioner Gilroy seconded the motion, which passed (3-0).

Commissioner Gilroy moved to adopt the agenda. Commissioner Krauss seconded the motion, and the Commission passed the agenda (3-0).

Commissioner Krauss moved to approve the Minutes of the June 13, 2024, Commission Meeting, and Commissioner Gilroy seconded the motion, which passed (3-0).

III. Consideration of Waiver of Post-Employment Restrictions for Larry Reed

Gary Haynes, Chief of Staff and Ethics Officer for the Indiana State Board of Animal Health, presented the proposed Waiver of Post-Employment Restrictions in this matter to the Commission for their approval.

Commissioner Gilroy moved to approve the Waiver, and Commissioner Krauss seconded the motion, which passed (3-0).

IV. Request for Formal Advisory Opinion

2023-FAO-003

Aaron Atwell, Chief of Staff

Rachel Russell, Ethics Officer

Indiana Department of Child Services

Rachel Russell is the Ethics Officer for the Indiana Department of Child Services (DCS). Ms. Russell is requesting the Commission's FAO on behalf of Mr. Aaron Atwell, DCS's Chief of Staff. Specifically, Ms. Russell is requesting an opinion from the Commission regarding Mr. Atwell's proposed post-state employment opportunity with The Villages of Indiana, Inc. (The Villages). The Villages is a nonprofit child and family services agency.

Mr. Atwell began working for DCS as Chief Financial Officer on October 26, 2020, and he became Chief of Staff on April 30, 2023. As DCS Chief of Staff, Mr. Atwell is responsible, directly or indirectly, for the policy, fiscal, personnel and operational decisions for DCS. He reports to the DCS Director.

Mr. Atwell has entered employment negotiations to serve as the Chief Financial Officer for The Villages. The position has responsibility for sound financial management at The Villages through planning, implementation, managing and running of all finance activities, including business planning, budgeting, forecasting, government contracts and audits. According to Ms. Russell, Mr. Atwell will not engage in any lobbying activities in his prospective employment with The Villages.

On June 11, 2024, DCS filed an Ethics Disclosure Statement for Conflicts of Interests – Decisions and Voting with the Commission on Mr. Atwell's behalf because Mr. Atwell had interviewed with and received a contingent employment offer from The Villages. The Disclosure Statement includes a screen that prohibits Mr. Atwell from working with The Villages as a DCS employee. The screen also prohibits Mr. Atwell from handling any duties that would relate to decisions or votes or related matters in which The Villages is involved. Mr. Atwell represents that he has not disclosed confidential information in his employment negotiations with The Villages.

According to Ms. Russell, The Villages receives funding through DCS contracts and grants awarded on a competitive basis. There are teams that review these bids, and Mr. Atwell has advised he is not on any of those teams and is never in the position where he scores proposals for each agency/provider. Mr. Atwell has worked to create programs and establish parameters around programs that have been competitively bid, but he has not been directly involved in who gets what contracts. Furthermore, Mr. Atwell represents that he has never personally

engaged in the negotiation or administration of any contracts between DCS and The Villages, and he is not in a position to make discretionary decisions affecting the outcome of the negotiation or nature of the administration of contracts with The Villages.

The Villages provides care to children with money calculated by the DCS finance team in a rate setting process. Mr. Atwell is involved in rate setting parameters that impact the rate setting process and licensing decisions for The Villages and all other similarly situated providers. Pursuant to 465 IAC 2-17, DCS annually sets cost-based rates for Child Placing Agencies (CPAs). These annual rates are set pursuant to the methodology outlined in the stated rule. This rule establishes the procedures DCS will use for determining and making maintenance payments to or for foster parents of children placed by DCS or a probation department with a CPA for foster care in a licensed foster home and administrative payments to CPAs in the State of Indiana. Moreover, rates are calculated based on a set formula and descriptions of each cost limit and adjustments are released annually in DCS's rate bulletins.

Mr. Atwell represents that he has not made any regulatory or licensing decisions in his position with DCS that directly applied to The Villages. Also, Ms. Russell writes that the present situation should not lead a reasonable person to believe there is or has been inappropriate influence here. DCS has screened Mr. Atwell from working with The Villages as a DCS employee. Furthermore, Mr. Atwell agrees that he must refrain from representing or assisting The Villages on any particular matter in which he personally and substantially participated as a state employee.

On behalf of Mr. Atwell, Ms. Russell is seeking the Commission's FAO regarding the application of any of the rules in the Code to Mr. Atwell's proposed post-employment with The Villages.

Ms. Russell's request for a FAO invokes consideration of the provisions of the Code pertaining to Conflicts of Interests, Post-employment and benefitting from and Divulging Confidential Information. The application of each provision to Mr. Atwell's situation is analyzed below.

A. Conflict of interests - decisions and votes

IC 4-2-6-9 (a)(1) prohibits Mr. Atwell 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)(4) prohibits Mr. Atwell from participating in any decision or vote, or matter relating to that decision or vote, if the business organization with whom he is negotiating or has an arrangement concerning prospective employment has a financial interest in the matter.

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 either seek an advisory opinion from the Commission or file a written disclosure statement.

DCS filed an Ethics Disclosure Statement for Conflicts of Interests – Decisions and Voting on Mr. Atwell’s behalf. The Disclosure Statement includes a screen that prohibits Mr. Atwell from working with the Villages as a DCS employee. The screen also prohibits Mr. Atwell from handling any duties that would relate to decisions or votes or related matters in which The Villages is involved. As such, he has complied with the requirements in IC 4-2-6-9 for any potential conflict of interests that exists between his DCS employment and his employment negotiations and arrangement concerning prospective employment with The Villages.

B. Post-employment

IC 4-2-6-11 consists of two separate limitations: a “cooling off” period and a “particular matter” restriction. The first prohibition, commonly referred to as the cooling off or revolving door period, prevents Mr. Atwell from accepting employment from an employer for 365 days from the date that he leaves state employment under various circumstances.

First, Mr. Atwell is prohibited from accepting employment as a lobbyist for the entirety of the cooling off period. A lobbyist is defined as an individual who seeks to influence decision making of an agency and who is registered as an executive branch lobbyist under the rules adopted by the Indiana Department of Administration. Based on the information provided, Mr. Atwell would not be engaging in any lobbying activities in his position at The Villages. To the extent that Mr. Atwell does not engage in executive branch lobbying for one year after leaving state employment, his post-employment opportunity at The Villages would not violate this provision of the post-employment rule.

Second, Mr. Atwell is prohibited from accepting employment for 365 days from the last day of his state employment from an employer with whom 1) he engaged in the negotiation or administration of a contract on behalf of a state agency and 2) was in a position to make a discretionary decision affecting the outcome of the negotiation or nature of the administration of the contract. Based on the information provided, Mr. Atwell has not negotiated or administered a contract with The Villages, and he is not in a position at DCS to make discretionary decisions affecting the outcome of the negotiation or nature of the administration of contracts with The Villages.

Third, Mr. Atwell is prohibited from accepting employment for 365 days from the last day of his state employment from an employer for whom he made a regulatory or licensing decision that directly applied to the employer or its parent or subsidiary. Mr. Atwell represents that he has not

made any regulatory or licensing decisions in his position with DCS that directly apply to The Villages.

Fourth, Mr. Atwell is prohibited from accepting employment from an employer if the circumstances surrounding the hire suggest the employer's purpose is to influence him in his official capacity as a state employee. The information presented to the Commission does not suggest that The Villages has extended an offer for Mr. Atwell's prospective new role in an attempt to influence Mr. Atwell in his capacity as a state employee.

Accordingly, the Commission finds that the post-employment rule's cooling off period would not apply to Mr. Atwell's intended employment opportunity with The Villages, and he may begin such employment immediately after his separation from state employment.

Finally, Mr. Atwell is subject to the post-employment rule's "particular matter" prohibition in his prospective post-employment. This restriction prevents him from representing or assisting a person on any of the following twelve matters if he personally and substantially participated in the matter as a state employee: 1) an application, 2) a business transaction, 3) a claim, 4) a contract, 5) a determination, 6) an enforcement proceeding, 7) an investigation, 8) a judicial proceeding, 9) a lawsuit, 10) a license, 11) an economic development project, or 12) a public works project. The particular matter restriction is not limited to 365 days but instead extends for the entire life of the matter at issue, which may be indefinite.

In this instance, Mr. Atwell would be prohibited from representing or assisting The Villages, or any other person in a particular matter in which he personally and substantially participated as a state employee.

Mr. Atwell represents that he is familiar with the twelve matters, and he verifies that he has not personally and substantially participated in any particular matters while at DCS on which he plans to represent or assist others in his post-state employment at The Villages.

The Commission finds that Mr. Atwell's prospective scope of employment, as described, is not prohibited by the particular matter restriction under IC 4-2-6-11.

C. Confidential information

Mr. Atwell 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 Mr. Atwell 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 an organization, such as The Villages. In addition, the definition of “information of a confidential nature” is set forth in IC 4-2-6-1(a)(12).

To the extent Mr. Atwell has acquired or maintains access to such confidential information obtained in his role at DCS, he would be prohibited not only from divulging that information but from ever using it to benefit any person, including The Villages or its clients, in any manner.

Commissioner Gilroy moved to approve the Commission’s findings, and Commissioner Krauss seconded the motion, which passed (3-0).

V. State Ethics Director’s Report

Tiffany Mulligan, OIG Chief of Staff, provided the following information to the State Ethics Commission:

Ms. Mulligan introduced Regan Perrodin as the new State Ethics Director. Director Perrodin previously worked at the Indiana Attorney General’s Office. She began on July 8, 2024, so she will take over reporting at the next Commission meeting.

Also, OIG hired a new staff attorney, Elaine Vullmahn, and a new Special Agent, Mark Day, who started two weeks ago. As mentioned at the last meeting, they both bring a great deal of experience and skill to our office. We are very excited to have all three of these staff members on board – and to be fully staffed for the first time in a long time.

The OIG has issued 15 Informal Advisory Opinions (IAOs) since the June Ethics Commission meeting, mostly relating to issues on outside employment, post-employment, conflicts of interests, and the gifts rule. We also received several requests regarding the nepotism rule.

Now that Director Perrodin is on board, OIG will begin the process of promulgating the civil penalties rule that I mentioned to you last month. We will keep you posted as this process moves forward. Also, we will begin working on the biennial online ethics training. We plan to have the new training rolled out in the fall of this year. We will provide an update to you and to agency ethics officers as soon as we have more information.

Finally, OIG continues with outreach activities. Later in July, Hope Blankenberger, Doreen Clark and I are scheduled to speak on the Indiana Code of Ethics at the annual Contracts Seminar for state government attorneys put on by the Office of Attorney General. Hope and I also are speaking to the new recruit class at the Indiana State Police next week. Finally, we continue to provide regular trainings to DCS’s new supervisors.

VI. Adjournment

Commissioner Krauss moved to adjourn the public meeting of the State Ethics Commission. Commissioner Gilroy seconded the motion, which passed (3-0).

The public meeting adjourned at 10:24 a.m.