

**MINUTES OF THE MEETING OF  
THE INDIANA STATE ETHICS COMMISSION  
September 12, 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; Elaine Vullmahn, Staff Attorney; Hope Blankenberger, Staff Attorney; Mike Lepper, Special Agent; Jason Fajt, Special Agent; and Nathan Baker, Legal Assistant.

Others present were Kate Shelby, Deputy Commissioner, Indiana Department of Transportation; Michele Steele, Ethics Officer, Indiana Department of Transportation; Sarah Rubin, Program Director, Indiana Department of Transportation; Nicole Gardner, Environmental Specialist, Indiana Department of Environmental Management; James French, Ethics Officer, Indiana Department of Environmental Management; Mattheus Mitchel, Compliance and Ethics Specialist, Indiana Department of Revenue; Dan Thomas, Senior Counsel, Indiana Department of Revenue; Sean Evans, Legal Analyst, Indiana Department of Revenue; Dan Mathis, IT Governance Program Manager, Indiana Office of Technology, Jennfier Thuma, General Counsel, Indiana State Comptroller; and Tammera Glickman, Deputy General Counsel, Indiana Department of Administration.

**II. Adoption of Agenda and Approval of Minutes**

Commissioner Krauss moved to adopt the agenda. Commissioner Sanchez seconded the motion, and the Commission passed the agenda (5-0).

Commissioner Finnerty moved to approve the Minutes of the August 8, 2024, Commission Meeting, and Commissioner Sanchez seconded the motion, which passed (5-0).

**III. Consideration of Waiver of Post-Employment Restrictions for Nicole Gardner**

James French, Ethics Officer for the Indiana Department of Environmental Management, presented the proposed Waiver of Post-Employment Restrictions in this matter to the Commission for their approval.

Commissioner Gilroy moved to approve the Waiver subject to requesting party submission and Commission review of an Amended Post-Employment Waiver to include attachment of previously filed Conflicts of Interest Disclosure, and Commissioner Finnerty seconded the motion, which passed (5-0).

**IV. Consideration of Waiver of Post-Employment Restrictions for Sarah Rubin**

Kate Shelby, Deputy Commissioner and Chief Legal Counsel for the Indiana Department of Transportation, presented the proposed Waiver of Post-Employment Restrictions in this matter to the Commission for their approval.

Commissioner Sanchez moved to approve the Waiver, and Commissioner Gilroy seconded the motion, which passed (5-0).

**V. Request for Formal Advisory Opinion**

2023-FAO-005

Dan Mathis, IT Governance Program Manager  
Indiana Office of Technology

Dan Mathis is the Information Technology (IT) Governance Program Manager with the Indiana Office of Technology (IOT) and is requesting the Commission's FAO. Specifically, Mr. Mathis is requesting an opinion from the Commission regarding proposed post-state employment opportunities with two potential employers, an App Firm and a Consulting Firm.

The Commission declined to issue a Formal Advisory Opinion due to lack of a specific set of facts in the circumstances presented by the individual who requested the Formal Advisory Opinion.

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

**VI. State Ethics Director's Report**

Regan Perrodin, State Ethics Commission Director, provided the following information to the State Ethics Commission:

OIG recently took on a Legal Intern for the next few months. Shelby Stouder is in her third year at the McKinney School of Law. Shelby will be learning many of the processes the OIG uses in day-to-day operations, and we hope to provide plenty of real-world experience to help assist in her future endeavors.

The OIG has issued 24 Informal Advisory Opinions (IAOs) since the August Ethics Commission meeting, mostly relating to issues on post-employment, conflicts of interests, and outside employment. Additionally, there seems to have been an uptick in IAO requests since the ethics training launched last week.

OIG continues to work on promulgating the civil penalties rule and on readopting title 42 of the Indiana Administrative Code. We are currently in our public comment period for our readoption of title 42. This period goes through September 20, 2024. Also, we have submitted our new civil penalties rule for review with the Office of Management and Budget. We need their approval to move on to the next steps of beginning our public comment period and scheduling our public hearing for those new rules.

This year's biennial ethics training launched on September 6. OIG's Ethics Officer, Tiffany Mulligan, has contacted the Commissioners with information on how to complete the training. As mentioned last month, the training released it a little bit earlier this year given the upcoming election. All state employees, officers, and special state employees have until October 18 to take it. As new people are onboarded, they will also have 6 weeks to complete the training.

In August the OIG sent out our first newsletter, which I also sent to the Commissioners. This is something we'll send out quarterly, so the next one will be in November.

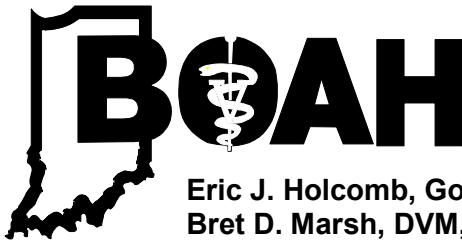
OIG also continues to provide in-person outreach and training.

Finally, the OIG's Legal and Ethics Conference is scheduled for the afternoon of November 19, 2024. The Conference has been approved for three hours of attorney ethics CLE credit, and we have confirmed all of our participating speakers. The program will have Adrienne Meiring, the Executive Director of the Office of Judicial and Attorney Regulation, speak on the rules of professional responsibility. Cari Sheehan, Assistant General Counsel at Taft Stettinius & Hollister, LLP, will speak on ethics and AI. The OIG will have a panel of ethics officers to discuss creating a culture of ethics in state agencies. And Justice Mark Massa of the Indiana Supreme Court will conclude with a presentation on public integrity and trust.

## **VII. Adjournment**

Commissioner Sanchez moved to adjourn the public meeting of the State Ethics Commission. Commissioner Krauss seconded the motion, which passed (5-0).

The public meeting adjourned at 10:51 a.m.



Eric J. Holcomb, Governor  
Bret D. Marsh, DVM, State Veterinarian

## INDIANA STATE BOARD OF ANIMAL HEALTH

Office of the State Veterinarian  
Discovery Hall, Suite 100  
1202 East 38<sup>th</sup> Street  
Indianapolis, IN 46205-2898  
Phone: 317/544-2400

### IC 4-2-6-11

#### Post-employment waiver

As the Appointing Authority of the Indiana State Board of Animal Health, I am filing this waiver of the application of the Code of Ethics' post-employment restriction as it applies to Gillian Oliver in her post-employment with the Blue Kingfisher, LLC dairy plant.

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 Indiana State Board of Animal Health (BOAH) operates the State's dairy inspection program. Dairy farms and dairy processing establishments must apply for and receive a license from BOAH to produce and sell milk and dairy products in commerce. BOAH employs dairy inspectors to conduct inspections of dairy farms and dairy plants to determine compliance with state and federal food safety rules. A dairy inspector is trained to recognize potential food safety issues and is authorized to write notices of violations, suspend permits and take other regulatory actions when problems are noted. An inspector may detain products with potential issues preventing them from entering the food supply.

Gillian Oliver worked for BOAH as a dairy inspector for 16 years. Gillian would like to leave state employment to work for Blue Kingfisher, LLC as a quality control specialist. Blue Kingfisher, LLC operates a dairy plant in Gillian's inspection area. Gillian has completed BOAH inspections at the Blue Kingfisher dairy plant.

Gillian's position as a dairy inspector implements rules and policy but he has no authority to create rules or policy.

Gillian has no authority to negotiate or administer any contracts as a dairy inspector. BOAH has no contracts with Blue Kingfisher, LLC.

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

Gillian Oliver's prospective position with Blue Kingfisher would be a member of the quality control team. While working in the plant, she will be involved with overseeing the development and implementation of quality control processes, including food safety programs.

**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 product of the employee:**

Gillian's position with Blue Kingfisher will involve quality control operations, including food safety programs. BOAH will continue to inspect Blue Kingfisher's processes from a food safety perspective. BOAH's inspections include evaluating cleanliness of facilities and equipment and reviewing operations in relation to state rules governing food safety. Currently BOAH is in the Blue Kingfisher facility at least once every three months, the frequency is determined by BOAH. BOAH employees will interact with plant employees and management when addressing regulatory issues, including the quality control staff.

**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:**

During her term at BOAH Gillian has received extensive training in food safety concepts, rules and policies. The knowledge and skills Gillian obtained during her training and experience at BOAH could benefit Blue Kingfisher by helping the business comply with food safety requirements and avoid or appropriately address food safety issues. Having personnel in dairy plants with food safety knowledge

and skills reduces the risk of food safety issues which benefits consumers. This is all consistent with BOAH's food safety mission.

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

Without a waiver, Gillian will be severely limited in her ability to resume work in her trade in Indiana other than continuing to work for the Board of Animal Health. She is unable to wait 365 days after leaving BOAH because she has a family to support and would be unable to pay for basic living necessities for an extended period of time. Perhaps she could find work in another field for 365 days, but her experience and training, and therefore best prospects for employment, are in the dairy industry.

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 or special state appointee who obtains the waiver before engaging in the conduct that would give rise to a violation.

**Bret D. Marsh, DVM**

Signature

Bret D. Marsh, DVM, State Veterinarian

Digitally signed by Bret D. Marsh, DVM  
Date: 2024.10.02 07:46:55 -04'00'

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).

**Gary L Haynes**

Signature

Gary L. Haynes, Ethics Officer

Digitally signed by Gary L Haynes  
Date: 2024.10.02 10:55:47 -04'00'

DATE

D. Approval by State Ethics Commission

**FOR OFFICE USE ONLY**

Approved by State Ethics Commission

James Clevenger, Chair, State Ethics Commission

Date

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.*



**ETHICS DISCLOSURE STATEMENT**  
**CONFLICTS OF INTEREST - DECISIONS AND VOTING**  
 State Form 65060 (R / 10-16)  
 OFFICE OF THE INSPECTOR GENERAL  
 IC 4-2-6-9

FILED

OCT 1 2024

INDIANA STATE  
 ETHICS COMMISSION

In accordance with IC 4-2-6-9, you must file your disclosure with the State Ethics Commission no later than seven (7) days after the conduct that gives rise to the conflict. You must also include a copy of the notification provided to your agency appointing authority and ethics officer when filing this disclosure. This disclosure will be posted on the Inspector General's website.

|   |                                |  |
|---|--------------------------------|--|
| Name (last)<br><i>Oliver</i>  | Name (first)<br><i>Gillian</i> | Name (middle)<br><i>Rae</i>                |
| Name of office or agency<br><i>Indiana State Board of Animal Health</i>               |                                | Job title<br><i>Dairy Plant Specialist</i> |
| Address of office (number and street)<br><i>Discovery Hall Ste 100 1202 E 38th St</i> |                                | City<br><i>Indianapolis</i>                |
| Office telephone number<br><i>(317) 544-2400</i>                                      |                                | ZIP code<br><i>46205</i>                   |
| Office e-mail address (required)<br><i>goliver@boah.in.gov</i>                        |                                |  |

Describe the conflict of interest:

*I, Gillian Oliver, am filing this conflict of interest disclosure form because I have been offered a position with the quality team at the Blue Kingfisher, LLC dairy plant. The Board of Animal Health inspects the Blue Kingfisher, LLC dairy plant*



Describe the screen established by your ethics officer. (Attach additional pages as needed.)

I will not participate in any inspection or other regulatory activity associated with the Blue Kingfisher, LLC dairy plant. I am resigning from employment with the State of Indiana Board of Animal Health prior to starting work for Blue Kingfisher, LLC

**AFFIRMATION**

Your signature below affirms that your disclosures on this form are true, complete, and correct to the best of your knowledge and belief. In addition to this form, you have attached a copy of your written disclosure to your agency appointing authority and ethics officer.

|   |   |
|---|---|
| Signature of state officer, employee or special state appointee<br><i>Gillian Oliver</i>  | Date signed (month, day, year)<br>10/1/24 |
| Printed full name of state officer, employee or special state appointee<br>Gillian Oliver |   |

**FOR ETHICS OFFICER USE ONLY**

Your signature below affirms that you have reviewed this disclosure form and that it is true, complete, and correct to the best of your knowledge and belief. You also attest that your agency has implemented the screen described above.

|   |                                      |                                      |
|---|--------------------------------------|--------------------------------------|
| Signature of ethics officer<br>Gary L<br>Haynes | Digitally signed by Gary<br>L Haynes | Date signed (month, day, year)       |
| Printed full name of ethics officer<br>Haynes   |                                      | Date: 2024.10.01<br>12:26:31 -04'00' |

**From:** [Haynes, Gary](#)  
**To:** [Marsh, Bret](#)  
**Subject:** FW: Gillian resignation  
**Date:** Tuesday, October 1, 2024 1:42:00 PM  
**Attachments:** [Gillian Oliver conflict disclosure form\(F\).pdf](#)

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Dr. Marsh,

FYI, Gillian Oliver notice below.

And see attached potential conflict of interest disclosure form for Gillian Oliver.

Sincerely,

Gary L Haynes  
Chief of Staff  
Indiana State Board of Animal Health  
Discovery Hall, Suite 100  
1202 E. 38<sup>th</sup> Street  
Indianapolis, IN 46205-2898  
317-695-0100  
[ghaynes@boah.in.gov](mailto:ghaynes@boah.in.gov)  
[www.boah.in.gov](http://www.boah.in.gov)

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**From:** Hash, Patrick A <[PHash@boah.IN.gov](mailto:PHash@boah.IN.gov)>  
**Sent:** Friday, September 27, 2024 8:05 AM  
**To:** Haynes, Gary <[ghaynes@boah.IN.gov](mailto:ghaynes@boah.IN.gov)>  
**Subject:** Gillian resignation

Gary,

Please see the email below. We would like to move forward with posting this position as plant specialist. I will talk with Matt Hauschild to see what counties he would like to list as available locations for the station of this person.

Thank you,

**Patrick A. Hash**  
*Division Director*  
*Dairy Division*  
*Indiana State Board of Animal Health*  
*Discovery Hall, Suite 100*  
*1202 East 38th Street*  
*Indianapolis, IN 46205*

*Central Office Phone: 317-544-2392*

*Central Office Fax: 317-974-2011*

*phash@boah.in.gov*

*Cell: 812-593-2971*

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**From:** Oliver, Gillian <GOliver@boah.IN.gov>

**Sent:** Thursday, September 26, 2024 7:38:20 PM

**To:** Hash, Patrick A <PHash@boah.IN.gov>

**Subject:** resignation

I am letting you know that I am resigning from employment with BOAH. My last day will be October 10<sup>th</sup>.

Thank you,

Gillian Oliver

Dairy Plant Specialist

Indiana State Board of Animal Health

(317) 407-5003



Eric J. Holcomb, Governor  
Bret D. Marsh, DVM, State Veterinarian

**INDIANA STATE BOARD OF ANIMAL HEALTH**

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Office of the State Veterinarian  
Discovery Hall, Suite 100  
1202 East 38<sup>th</sup> Street  
Indianapolis, IN 46205-2898  
Phone: 317/544-2400

October 1, 2024

Indiana State Ethics Commission  
Officer of Inspector General  
315 West Washington Street, Room 104  
Indianapolis, IN 46202

RE: Post-Employment Waiver for Gillian Oliver

Commission Members,

In my capacity as State Veterinarian for the Indiana State Board of Animal Health (BOAH), I hereby designate Gary Haynes, Chief of Staff and Ethics Officer for BOAH, as my designee to present the Post Employment Waiver for Gillian Oliver on my behalf.

Sincerely,

---

Bret D. Marsh, DVM  
Indiana State Veterinarian

---

Date

September 27, 2024

Indiana Ethics Commission  
315 West Ohio Street, Room 104  
Indianapolis, Indiana 46202

Dear Indiana Ethics Commission:

I would like to request a formal opinion, as instructed by Regan Perrodin, State Ethics Commission Director for the Office of the Inspector General, and Anne Valentine, Chief of Staff to Indiana Lt. Governor Suzanne Crouch who is also the Indiana Destination Development Corporation Ethics Officer.

I have received an informal opinion from the Office of the Inspector General, and it indicated that it is unclear whether Indiana Code would prohibit my on a business opportunity that has been presented to me. They did state that this project could raise a substantial appearance of impropriety. After clarification on this point, it is not something the agency would ever deal with, but the public could look at it in a negative light due to having learned about this opportunity during my official duties.

Therefore, I have included a summary below of the situation.

How the Indiana Destination Development Corporation (IDDC) Interacts with Stakeholders and David Holt's Job Functions –

IDDC is the marketing arm the state and promotes our state's destination assets (sports facilities/teams, music venues, museums, casinos, resorts, amusement parks, zoos, breweries/distilleries/wineries, etc.). We promote these venues (through different modes of communications) to drive people to visit Indiana spending their dollars which increases tax revenue. This year, I have met with every one of the categories above, and discussed how we can help them promote themselves to drive more visitors from out of state to their destination. We often offer them two things to assist them and that is our calendar of events which is all the things to do in Indiana on a given day and our ticket giveaways which drive people to their facilities. My interaction is limited. I first reach out from our office to schedule the meeting (I already had relationships with many of them, but some of them were new relationships), then go to their facility and have a meeting. I then do a follow up email where I connect them with our Vice President of Tourism, Marketing and Communications who helps guide them on how to utilize our services. I then hand over all interaction to our marketing team and have no further contact (unless they call me on who to talk with in our office). That is the extent of my contact.

During meetings with the distilleries, they often tell me about their operations, how many people visit their destinations each year, how many products they produce and distribute, the state legislative issues that affect them, how they do their own marketing, challenges to their company, how many brands they have, how many employees, and other general information on the business.

During these meetings, it came to my attention that the distilleries are struggling with purchasing reasonably priced whiskey barrels (it was not something I knew about or was even aware of, but it was consistent problem for all of them), because many larger distillers (in other states) buy them up, mostly in Kentucky & Tennessee. This is a private sector problem and not a government problem (and not something our agency would ever work on or be able to assist with. It was just general information provided during the meeting). Plus, we are not a programmatic agency, we are purely a marketing agency. I did not think much about it, until I was having a discussion with a family friend who is the Chief Financial Officer for a hardwood company in Indiana and told him about my visits to their facilities and how interesting the industry is – I then told him about the Indiana distillers struggles with the barrels. His company has a relationship with cooperage companies (which I was not aware of) that make barrels in Kentucky. He told the cooperage company about our conversation, and they felt that they could assist Indiana distillers by providing barrels on a regular basis at a market rate. The cooperage company then proposed to the hardwood company that working on my own time, not government time, that I help these distilleries with this problem. I am interested in pursuing this outside project – outside work hours but want to make sure there are no ethical issues involved. Obviously, if I met with any future distilleries, I would never discuss this opportunity with them.

The Office of the Inspector General asked the following questions –

Question 1 - Could I describe more specifically what I would be doing in relation to the barrels and the distilleries?

David Holt Answer - I would get the distilleries (company) or the distillery guild (trade association) a locked in price for each barrel. If they have enough volume (if they do not it will not work) for the barrels and then act as a middleman between them and the hardwood company who is picking up goods from the cooperage company in Kentucky already and they would bring them into Indiana and deliver them to the distilleries. Obviously, my friend works for the hardwood company that has a relationship with the Cooperage company in Kentucky.

Question 2 - For example, would you be selling to them?

David Holt Answer - I would act as a middleman wholesaler. Acting as a middleman between my friend's company and the distilleries?

Question 3 - Would you be paid for this work?

David Holt Answer - Yes.

Question 4 - If so, by who? Would it be from your friend's company, the distilleries, or some other mechanism?

David Holt Answer - I would be paid by the hardwood company.

Question 5 - Would you create a company, whether that would be a sole proprietorship or some other type of entity?

David Holt Answer - I did not plan to do so. As a wholesaler, I do not think I have to, but I would need to check with a tax expert to see what would make the most sense.

I then received the following response from the Office of the Inspector General.

Thank you for contacting the Indiana Office of Inspector General (OIG) for confidential ethics advice and for providing additional information. We understand that you are currently employed as the Chief Operating Officer and Chief of Staff (COO) of the Indiana Destination Development Corporation (IDDC).

IDDC is the marketing arm of the State and helps promote destination assets around the State (sports facilities/teams, music venues, museums, casinos, resorts, amusement parks, zoos, breweries/distilleries/wineries, etc.). IDDC promotes these venues to drive people to visit Indiana. In your role, you meet with these venues and discuss how IDDC can help them promote themselves to attract out-of-state visitors. IDDC often offers two methods of assistance to these venues: (1) IDDC's calendar of events and (2) IDDC's ticket giveaways. You state that your interaction with these vendors is limited. You first reach out to them to schedule the meeting. You then go to their facility for a meeting and later follow up via email connecting them with IDDC's VP of Tourism, Marketing and Communications. This VP helps guide the vendors in their use of IDDC's services. You hand over all interaction to the marketing team and have no further contact with the vendors unless they reach out to you for some other reason.

In meetings with distilleries, they have informed you that they are having trouble getting whiskey barrels at a great price as many larger distilleries in Tennessee and Kentucky buy them up. This is not an issue on which IDDC would ever work. In an out-of-work conversation with a family friend, you mentioned the problem that distilleries are facing. Your friend informed you that the hardwood company for which he serves as CFO has a relationship with cooperage companies that make barrels in Kentucky. He proposed that you could work on your own time to help the distilleries with this problem.

In this potential role, you would get the distilleries or the distillery guild a locked-in price for each barrel if they have enough volume for the barrels. You would act as a wholesaler and "middleman" between the distillery (or guild) and your friend's hardwood company. Your friend's company is already picking up goods from the cooperage company in Kentucky, so they would bring the barrels to Indiana and deliver them to the distilleries. This is a project that you would do for compensation. While you are not certain about how you would be paid, you anticipate that your friend's hardwood company would pay you (and the distilleries would pay the hardwood company). You would not discuss this project with any new distilleries that you visit as part of your IDDC role.

You indicate that you are interested in pursuing this outside project but would like to make sure there are no ethical issues involved. Your inquiry primarily invokes consideration of the following Code rules: IC 4-2-6-5.5, the outside employment/professional activity rule; IC 4-2-6-

9, the conflicts of interests related to decisions and votes rule; IC 4-2-6-17, the use of state property rule; 42 IAC 1-5-13, the ghost employment rule; and 42 IAC 1-5-10 and 42 IAC 1-5-11, the confidentiality rules. We have included the relevant definitions and rules at the end of this opinion.

### **1. IC 4-2-6-5.5 – Outside Employment/Professional Activity**

The outside employment/professional activity rule prohibits state employees from:

- 1) accepting other employment that would involve compensation of substantial value if the responsibilities of that employment are inherently incompatible with the responsibilities of public office or would require them to recuse themselves from matters so central or critical to the performance of their official duties that their ability to perform them would be materially impaired;
- 2) accepting other employment or engaging in professional activity that would require them to disclose confidential information that was gained in the course of state employment; or
- 3) using their official position to secure unwarranted privileges or exemptions that are of substantial value and not properly available to similarly situated individuals outside state government.

Generally, this rule states that you may not engage in outside employment or professional activities if they trigger any of the above-listed situations. It does not appear that this potential opportunity would be inherently incompatible with your IDDC role; however, it may require you to recuse yourself from certain matters that are part of your official duties. If the outside activity would require you to recuse yourself from matters that are central or critical to your official duties, subsection (1) would prohibit you from taking this opportunity. Regarding subsection (2), so long as your work with distilleries will not require you to disclose confidential information gained during your employment with IDDC, this rule will not apply to you.

Subsection (3) prohibits you from using your official position to secure unwarranted privileges or exemptions that are of a substantial value and not properly available to similarly situated individuals outside of state government. In this situation, you are aware of the barrel issue that distilleries are facing because of your performance of your state duties and are proposing a business plan to financially benefit from this information. This, at the very least, raises an appearance of impropriety. For this reason, and considering your position within IDDC, we strongly recommend that you work with your Ethics Officer, Anne Valentine, and request a formal advisory opinion from the State Ethics Commission (Commission) if you decide to pursue this opportunity and once you have more information about the specifics. Only the Commission can provide a conclusive determination regarding application of the Code to this situation. If you would like such a statement, you can find instructions for submitting a request for a formal advisory opinion from the Commission on our website: [Request Advice](#). Ms. Valentine can assist you with a request for the Commission's formal advisory opinion. Please let us know if you have any further questions about the formal advisory opinion process.



Additionally, we strongly recommend that employees discuss outside employment or professional activity with their agency's Ethics Officer. In this case, Ms. Valentine would have a better sense of your role and responsibility within the agency. Ms. Valentine can also discuss any internal IDDC policies on outside employment with you.

## **2. IC 4-2-6-9 - Conflicts of Interests Related to Decisions and Votes**

You should be aware of IC 4-2-6-9, which pertains to conflicts of interests, decisions and voting. This rule prohibits state employees from participating in any decision or vote, or matter related to that decision or vote, if the state employee has knowledge that various persons may have a financial interest in the outcome of the matter, including (1) the state employee him/herself; (2) an immediate family member; (3) a business organization in which the state employee is serving as an officer, director, member, trustee, partner or employee or (4) an organization with whom the state employee is negotiating or has an arrangement concerning prospective employment. 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." 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. Please note that this prohibition extends beyond merely the decision or vote on the matter to encompass any participation in that decision or vote.

Although you indicate that you are not very advanced in your discussions, it does not appear that you; a family member; an organization in which you are an officer, director, member, trustee, partner or employee; or an organization with which you would be negotiating or have an arrangement concerning prospective employment would contract directly with the State. However, in your position with IDDC, you may be in a position to participate in decisions, votes or matters related to decisions or votes in which your potential outside business would have a financial interest. For example, you could be working with and helping to promote distilleries that have purchased barrels via a deal in which you were involved. At a minimum, this raises an appearance of impropriety.

Depending on the structure of this business plan, you may identify a potential conflict of interests. If you identify a potential conflict of interests, such as if it becomes likely that your position at IDDC would require you to participate in a decision, vote or matter related to a decision or vote in which you or your outside business would have a financial interest, please note that mere recusal from the matter is not enough. You would also need to notify your appointing authority and ethics officer, Ms. Valentine, in writing and either (1) seek a formal advisory opinion from the Commission or (2) file a written disclosure [form](#) with our office to comply with IC 4-2-6-9's notification requirements.

## **3. IC 4-2-6-10.5 – Conflicts of Interests Related to 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 Commission has interpreted this rule to apply when a state employee derives compensation from a contract between a state agency and a third party.

Based on the information provided, it does not appear that you or any business you would create would contract with the State or that you would be paid from funds from a state contract. Therefore, this rule would not apply in your situation.

**4. IC 4-2-6-17 and 42 IAC 1-5-13 - Use of State Property and Ghost Employment**

You should also be aware of the Use of State Property and Ghost Employment rules. Any activity related to your work with this project must be done outside of your normal state working hours to avoid violations of the ghost employment rule (42 IAC 1-5-13). In order to comply with the use of state property rule (IC 4-2-6-17), you cannot use state property, such as equipment or materials, while working on this project. Please be aware that you cannot use your state computer, state email account or state phone to work on matters related to this project, and you cannot engage in any activities related to the barrel project while working your state job. So long as this project does not interfere with your normal state working hours and you do not use state property to conduct this work, you will not be in violation of these rules.

**5. 42 IAC 1-5-10 and 42 IAC 1-5-11 - Confidential Information**

42 IAC 1-5-10 and 11 prohibit you from divulging or benefitting from, or permitting any other person to benefit from, confidential information learned as a result of your position with IDDC. To the extent that you possess information of a confidential nature by virtue of your position at IDDC that could be used to benefit any person, you would need to ensure you comply with these rules.

**IN CONCLUSION, it is unclear whether the Code would prohibit your proposed project at this time. It is clear, however, that this project would raise a substantial appearance of impropriety. If you would like to pursue this project, we strongly recommend seeking a Formal Advisory Opinion from the Commission once you have more details.**

Thank you again for submitting your question to our office. Please note that this response does not constitute an official advisory opinion. Only the Commission may issue an official advisory opinion. This informal advisory opinion allows us to give you quick, written advice. The Commission will consider that an employee or former employee acted in good faith if it is determined that the individual committed a violation after receiving advice and the alleged violation was directly related to the advice rendered. Also, remember that the advice given is based on the facts as we understand them. If this e-mail misstates facts in a material way, or omits important information, please bring those inaccuracies to our attention.

Sincerely,  
Regan Perrodin  
Office of Inspector General

**IC 4-2-6-1 Definitions**

Sec. 1. (a) As used in this chapter, and unless the context clearly denotes otherwise:

...

(7) "Compensation" means any money, thing of value, or financial benefit conferred on, or received by, any person in return for services rendered, or for services to be rendered, whether by that person or another.

...

(11) "Financial interest" means an interest:

- (A) in a purchase, sale, lease, contract, option, or other transaction between an agency and any person; or
- (B) involving property or services.

The term includes an interest arising from employment or prospective employment for which negotiations have begun. The term does not include an interest of a state officer or employee in the common stock of a corporation unless the combined holdings in the corporation of the state officer or the employee, that individual's spouse, and that individual's unemancipated children are more than one percent (1%) of the outstanding shares of the common stock of the corporation. 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.

...

(12) "Information of a confidential nature" means information:

- (A) obtained by reason of the position or office held; and
- (B) which:
  - (i) a public agency is prohibited from disclosing under IC 5-14-3-4(a);
  - (ii) a public agency has the discretion not to disclose under IC 5-14-3-4(b) and that the agency has not disclosed; or
  - (iii) is not in a public record, but if it were, would be confidential.

(13) "Person" means any individual, proprietorship, partnership, unincorporated association, trust, business trust, group, limited liability company, or corporation, whether or not operated for profit, or a governmental agency or political subdivision.

#### **IC 4-2-6-5.5 Conflict of interest; advisory opinion by commission**

Sec. 5.5. (a) A current state officer, employee, or special state appointee may not knowingly do any of the following:

- (1) Accept other employment involving compensation of substantial value if the responsibilities of that employment are inherently incompatible with the responsibilities of public office or require the individual's recusal from matters so central or critical to the performance of the individual's official duties that the individual's ability to perform those duties would be materially impaired.
- (2) Accept employment or engage in business or professional activity that would require the individual to disclose confidential information that was gained in the course of state employment.
- (3) Use or attempt to use the individual's official position to secure unwarranted privileges or exemptions that are:
  - (A) of substantial value; and
  - (B) not properly available to similarly situated individuals outside state government.

(b) 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).

**IC 4-2-6-9 Conflict of economic interests; commission advisory opinions; disclosure statement; written determinations**

Sec. 9. (a) A state officer, an employee, or a special state appointee may not participate in any decision or vote, or matter relating to that decision or vote, if the state officer, employee, or special state appointee has knowledge that any of the following has a financial interest in the outcome of the matter:

- (1) The state officer, employee, or special state appointee.
- (2) A member of the immediate family of the state officer, employee, or special state appointee.
- (3) A business organization in which the state officer, employee, or special state appointee is serving as an officer, a director, a member, a trustee, a partner, or an employee.
- (4) Any person or organization with whom the state officer, employee, or special state appointee is negotiating or has an arrangement concerning prospective employment.

(b) A state officer, an employee, or a special state appointee who identifies a potential conflict of interest shall notify the person's appointing authority and ethics officer in writing and do either of the following:

- (1) Seek an advisory opinion from the commission by filing a written description detailing the nature and circumstances of the particular matter and making full disclosure of any related financial interest in the matter. The commission shall:
  - (A) with the approval of the appointing authority, assign the particular matter to another person and implement all necessary procedures to screen the state officer, employee, or special state appointee seeking an advisory opinion from involvement in the matter; or
  - (B) make a written determination that the interest is not so substantial that the commission considers it likely to affect the integrity of the services that the state expects from the state officer, employee, or special state appointee.
- (2) File a written disclosure statement with the commission that:
  - (A) details the conflict of interest;
  - (B) describes and affirms the implementation of a screen established by the ethics officer;
  - (C) is signed by both:
    - (i) the state officer, employee, or special state appointee who identifies the potential conflict of interest; and
    - (ii) the agency ethics officer;
  - (D) includes a copy of the disclosure provided to the appointing authority; and
  - (E) is filed not later than seven (7) days after the conduct that gives rise to the conflict.

A written disclosure filed under this subdivision shall be posted on the inspector general's Internet web site.

(c) A written determination under subsection (b)(1)(B) constitutes conclusive proof that it is not a violation for the state officer, employee, or special state appointee who sought an advisory

opinion under this section to participate in the particular matter. A written determination under subsection (b)(1)(B) shall be filed with the appointing authority.

#### **IC 4-2-6-10.5 State officers and employees; financial interest in contract made by agency; exceptions**

Sec. 10.5. (a) Subject to subsection (b), a state officer, an employee, or a special state appointee may not knowingly have a financial interest in a contract made by an agency.

(b) The prohibition in subsection (a) does not apply to a state officer, an employee, or a special state appointee who:

(1) does not participate in or have contracting responsibility for the contracting agency; and

(2) files a written statement with the inspector general before the state officer, employee, or special state appointee executes the contract with the state agency.

(c) A statement filed under subsection (b)(2) must include the following for each contract:

(1) An affirmation that the state officer, employee, or special state appointee does not participate in or have contracting responsibility for the contracting agency.

(2) An affirmation that the contract:

(A) was made after public notice and, if applicable, through competitive bidding; or

(B) was not subject to notice and bidding requirements and the basis for that conclusion.

(3) A statement making full disclosure of all related financial interests in the contract.

(4) A statement indicating that the contract can be performed without compromising the performance of the official duties and responsibilities of the state officer, employee, or special state appointee.

(5) In the case of a contract for professional services, an affirmation by the appointing authority of the contracting agency that no other state officer, employee, or special state appointee of that agency is available to perform those services as part of the regular duties of the state officer, employee, or special state appointee.

A state officer, employee, or special state appointee may file an amended statement upon discovery of additional information required to be reported.

(d) A state officer, employee, or special state appointee who:

(1) fails to file a statement required by rule or this section; or

(2) files a deficient statement;

before the contract start date is, upon a majority vote of the commission, subject to a civil penalty of not more than ten dollars (\$10) for each day the statement remains delinquent or deficient. The maximum penalty under this subsection is one thousand dollars (\$1,000).

#### **IC 4-2-6-17 Use of state property for other than official business; exceptions; Violations**

Sec. 17. (a) Subject to IC 4-2-7-5, a state officer, an employee, or a special state appointee may not use state materials, funds, property, personnel, facilities, or equipment for purposes other than 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. The commission may withhold approval of a policy or rule that violates the intent of Indiana law or the code of ethics, even if Indiana law or the code of ethics does not explicitly prohibit that policy or rule.

(b) An individual who violates this section is subject to action under section 12 of this chapter.

**42 IAC 1-5-13 Ghost employment**

Authority: IC 4-2-7-3; IC 4-2-7-5

Affected: IC 4-2-7

Sec. 13. A state officer, employee, or special state appointee shall not engage in, or direct 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.

**42 IAC 1-5-10 Benefiting from confidential information**

Authority: IC 4-2-7-3; IC 4-2-7-5

Affected: IC 4-2-7

Sec. 10. A state officer, employee, or special state appointee shall not benefit from, or permit any other person to benefit from, information of a confidential nature except as permitted or required by law.

**42 IAC 1-5-11 Divulging confidential information**

Authority: IC 4-2-7-3; IC 4-2-7-5

Affected: IC 4-2-7

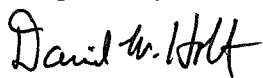
Sec. 11. A state officer, employee, or special state appointee shall not divulge information of a confidential nature except as permitted by law.

I would appreciate a formal opinion - so I can either move on this or shut it down. There might not be any real opportunity on this, because I have not talked to any of the distillers about a solution, because I did not want to run afoul of any potential conflict or questions of impropriety. I did not think it was proper.

Hope this is a good explanation and look forward to hearing back from you.

Hope you have a great day.

Respectfully,



David W. Holt

Chief Operating Officer and Chief of Staff

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