STATE OF INDIANA

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CURTIS T. HILL, JR.
ATTORNEY GENERAL

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OFFICIAL OPINION 2020-7

James Ehrenberg, General Counsel
Indiana Office of Technology
100 N Senate Ave. N551
Indianapolis, Indiana 46204

RE: Licensure of internally created software application

Dear Mr. Ehrenberg:

This letter responds to your request for an official opinion of the Attorney General regarding whether the Indiana Office of Technology may license other states to use their internally created software application.

QUESTION PRESENTED

Does Ind. Code § 4-13.1-2-2(a)(13) permit IOT to license an internally created software application ("app") to other states?

BRIEF ANSWER

Yes. In order to fulfill the requirement of Ind. Code § 4-13.1-2-2(a)(13) to "seek funding for technology services"—and based on the plain language of the statute—IOT is permitted to license an internally created app to other states.

BACKGROUND

Recently, IOT's Application Development Team was commissioned to create an app for the Indiana Horse Racing Commission. The app has both a public function and a staff function. The public function allows people to register and manage licenses for racing horses, to upload photos, and to change horse ownership, among other things. The staff function provides tracking and history for all horses, jockeys, and owners. Staff are able to perform investigations, track breeding and racing facilities, and even to issue suspensions. The app has streamlined the Commission's regulatory processes, and brought more transparency to horse racing. Other states have expressed an interest in licensing the app from IOT. IOT has expressed an interest in licensing this internally created app to other states.

ANALYSIS

IOT was created by the Indiana Legislature in 2005. Ind. Code § 4-13.1-2-1. Its purposes include establishing standards for Indiana's technology infrastructure, focusing information technology services to improve service levels to citizens while lowering costs, finding the best technology solutions, improving and expanding electronic government services, and providing the most secure technology possible. *Id.* IOT has a long list of duties, including the mandate to:

> Seek funding for technology services from the following:
> (A) Grants.
> (B) Federal sources.
> (C) Gifts, donations, and bequests.
> (D) Partnerships with other governmental entities or the private sector.
> (E) Appropriations.
> (F) Any other source of funds.

Ind. Code § 4-13.1-2-2(a)(13).

There are no cases construing this subdivision of the Indiana Code, and although IOT is empowered to adopt rules necessary to carry out its duties, it has not done so. Ind. Code § 4-13.1-2-2(b). Instead, we must look to the plain language of the statute to interpret it "unless a different purpose is clearly manifest by the statute itself." *Ind. State Department of Revenue v. Colpaert Realty Corp.,* 109 N.E.2d 415, 418-19 (Ind. 1952).

When interpreting a statute, we must first "determine whether the Legislature has spoken clearly and unambiguously on the point in question." *City of Carmel v. Steele*, 865 N.E.2d 612, 618 (Ind. 2007) (citing *City of N. Vernon v. Jennings Nw. Reg'l Util.*, 829 N.E.2d 1, 4 (Ind. 2005)). "When a statute is clear and unambiguous, we need not apply rules of construction other than to require that words and phrases be taken in their plain, ordinary, and usual sense." *Id.* (citing *Poehlman v. Feferman*, 717 N.E.2d 578, 581 (Ind. 1999)). This avoids constructions that are "plainly repugnant to the intent of the legislature or of the context of the statute." Ind. Code § 1-1-4-1(1). The "primary goal of statutory construction is to determine, give effect to, and implement the intent of the Legislature." *Steele*, 865 N.E.2d at 618 (citing *Ind. Civil Rights Comm'n v. Alder*, 714 N.E.2d 632, 637 (Ind. 1999)). To do this, "we read the sections of an act together in order that no part is rendered meaningless if it can be harmonized with the remainder of the statute." *Id.* (citing *Ind. Dep't of Pub. Welfare v. Payne*, 622 N.E.2d 461, 466 (Ind. 1993)). Furthermore, "[i]f the legislature has not defined a word, it is afforded its plain and ordinary meaning." *Naugle v. Beech Grove City Schools*, 864 N.E.2d 1058, 1068 (Ind. 2007) (citing *Ind. Office of Envtl. Adjudication v. Kunz*, 714 N.E.2d 1190, 1193 (Ind. Ct. App. 1999)). Finally, "we do not presume that the Legislature intended language used in a statute to be applied illogically or to bring about an unjust or absurd result." *Steele*, 865 N.E.2d at 618 (citing *State ex rel. Hatcher v. Lake Super. Ct., Room Three*, 500 N.E.2d 737, 739 (Ind. 1986)).

Although Article 13.1 includes the definitions of some terms used in other sections of the IOT statutes, it does not define any of the terms used in Ind. Code § 4-13.1-2-2(a)(13). Ind.

Code § 4-13.1-1-1 *et seq.* (defining "information technology," "office," "state agency," and "telecommunication"). And because IOT has never adopted any rules, the Indiana Administrative Code also fails to define any of the applicable terms. When "neither the Indiana Code nor the Indiana Administrative Code provides a definition, we look to an English dictionary for guidance[.]" *Killbuck Concerned Citizens Association v. J.M. Corporation,* 941 N.E.2d 1037, 1041 (Ind. 2011).

Clauses (A), (C), and (E) require IOT to seek funding for technology services from grants; gifts, donations, and bequests; and appropriations, respectively. Merriam-Webster's defines a grant as "a gift of money for a particular purpose." Merriam-Webster's Collegiate Dictionary 507 (10th ed. 2000). Gifts are "something voluntarily transferred from one person to another without compensation," *Id.* at 491, while donations are defined as "gifts." *Id.* at 344. A bequest is something given "by will." *Id.* at 107. And finally, an appropriation is "money set aside by formal action for a specific use." *Id.* at 57. There is no limitation on any of these clauses, so funding from these sources could come from anywhere, inside or outside the State of Indiana.

Clause (B) requires IOT to seek funding for technology services from federal sources. This language is very plain—any source of funds is permissible under this clause as long as it is federal monies.

Clause (D) requires IOT to seek funding for technology services from partnerships with other governmental entities or the private sector. Partnership has multiple definitions. It could mean simply "participation," or it could mean "a legal relationship existing between two or more persons contractually associated as joint principals in a business." *Id.* at 846. Given clause (D)'s options of partnering with either a governmental entity or the private sector, a partnership in the legal sense is more likely, one where both parties would have specified and joint rights and responsibilities. And again, there is no limitation on this clause, so funding from a partnership could come from anywhere, inside or outside the State of Indiana.

Clause (F) requires IOT to seek funding for technology services from any other source of funds. This clause does not limit the funds in any way. The funds may come from any source other than those listed in clauses (A) through (E), whatever and wherever that source may be.

When read in harmony, clauses (A) through (E) provide a non-exclusive list of funding sources that IOT is required to seek for technology services. Clauses (A), (C), (D), and (E) have no limitation on where the funds can come from, while clause (B) is limited to "Federal sources." Clause (F) provides an all-encompassing provision—funds may come from "any other source." If the legislature had intended a different understanding of these clauses, it could have included express language to that effect. Instead, the legislature has used plain, unambiguous language to relay its intent. "Nothing may be read into [a] statute which is not within the manifest intent of the legislature as gathered from the statute itself. An unambiguous statute must be held to mean what it plainly expresses, and its plain and obvious meaning may not be expanded or restricted." *George P. Todd Funeral Home, Inc. v. Estate of Beckner,* 663 N.E.2d 786, 787 (Ind. Ct. App. 1996) (citation omitted); *Sherrell v. Northern Comm. Sch. of Tipton Co.,* 801 N.E.2d 693, 704 (Ind. Ct. App. 2004). Since Ind. Code § 4-13.1-2-2(a)(13) is clear and unambiguous on its face, it

needs no further interpretation beyond the plain and ordinary meaning of its words. If IOT has identified other states that want to license its app, the licensing process can be viewed as IOT's attempt to seek funding for technology services as required by statute. The plain language of the legislature is clear, and "no argument can break the force of language of such plain intent." *State ex rel Fatzer v. Anderson,* 299 P.2d 1078, 1084 (Kan. 1956) (internal citation omitted).

CONCLUSION

In order to fulfill the requirement of Ind. Code § 4-13.1-2-2 to "seek funding for technology services"—and based on the plain language of the statute—IOT is permitted to license an internally created app to other states.

Sincerely,

Curtis T. Hill, Jr.
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