



STATE OF ARKANSAS
**Department of Finance
and Administration**

OFFICE OF THE SECRETARY
1509 West Seventh Street, Suite 401
Post Office Box 3278
Little Rock, Arkansas 72203-3278
Phone: (501) 682-2242
Fax: (501) 682-1029
www.arkansas.gov/dfa

January 14, 2021

Ms. Keandra McFee
412 Division Street
North Little Rock, Arkansas 72114

RE: Advisory Opinion No. 2021-01

Dear Ms. McFee:

This letter is in response to a written request for an advisory opinion pursuant to Arkansas Code Annotated § 19-11-715(b) that is dated October 29, 2020 and was sent to me in an email correspondence that I received on November 2, 2020, regarding your current status as a Department of Human Services (DHS) Division of Medical Services (DMS) Medical Assistance Manager and your application for employment with NTT Data, which is a DHS contractor providing services as the Project Management Office.

This opinion is based upon the following facts that have been presented to me and upon which I am relying. It should be noted that if one or more of these facts are later shown to be incorrect, that could result in a revised opinion.

1. Your employment at DHS began on June 4, 2018;
2. You are a DHS DMS Medical Assistance Manager with the following responsibilities:
 - A. Overseeing the provider-led Arkansas Shared Savings Entity (PASSE) Ombudsman office and call center for escalated beneficiary needs;
 - B. Handling Medicaid beneficiary and provider escalated issues;
 - C. Directing the day-to-day operations for the Enrollment and Reconciliation of cases through a combination of resource management and deliverable management;
 - D. Providing deliverable management services, including a phased approach for backlog of cases by working with the project management team and customers to ensure target dates are met;
 - E. Serving as a subject matter expert on linking issues within interchange and enrollment file issues with MMIS VENDOR and MCO carriers;
 - F. Managing on-site DMS research analysts and ensuring that they are meeting contract deliverables in assisting DMS with escalated issues
 - G. Assisting with project management and development of the Jira tracking system for PASSE;
 - H. Working with AAPC, DCO, and E-Systems to ensure that duplicate profiles in Interchange/MMIS are merged; and

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- I. Overseeing the contract deliverables for the AFMC contract beneficiary support and provider complaints;
- J. Providing AFMC with training and reviewing reports and performance measures with call center staff.
3. You have recently applied for a position with NTT Data as a Senior Business Analyst;
4. The description of this position is as follows:
 - A. Work as part of a team providing Business Operations Support for a state Medicaid Program;
 - B. Work under the direction of team manager of business area lead;
 - C. Actively participate in the delivery of tasks/activities and associated deliverables;
 - D. Formulate and document objectives and outcomes based on client needs and industry requirements;
 - E. Function as a liaison between business and technical stakeholders;
 - F. Ensure state staff and system vendors share a common understanding of business requirements and desired outcomes;
 - G. Serve as subject matter expert and consulting resource for the organization;
 - H. Collaborate internally and with state/customer staff to test new functionality with the MMIS;
 - I. Communicate business rules and technical changes to external stakeholders; and
 - J. Work, in collaboration with other NTT Data SHC consultants, directly with state business staff and vendors to support the analysis, planning, design, implementation, and evaluation of key system changes, projects and procedures to help the client achieve organization.
5. The responsibilities for this position are as follows:
 - A. Develop and present formal presentation to business leaders, vendors, and team members, making applicable recommendations;
 - B. Participate and/or lead in the creation of presentations and other materials for end user training interface with state business users and vendors;
 - C. Attend project and status meetings;
 - D. Identify and report project issues and risks;
 - E. Research and provide recommendations to the client on business problems/decisions;
 - F. Collaborate with team members to provide subject matter expertise and assistance as applicable;
 - G. Ensure that project-identified processes and methodologies are executed and followed as applicable;
 - H. Analyze business and user needs developing requirement documentation;
 - I. Translate stated needs into change requirements; and
 - J. Develop and execute test cases.
6. You recognize the employment restrictions contained in Arkansas Code Annotated § 19-11-709;
7. In your current role at DHS, you have never been responsible for 1) awarding the NTT contract, 2) amendments to the NTT contract, or 3) scoring of anything related to the NTT contract.
8. Your current job responsibility is to work with the NTT/BOS team to ensure projects/issues are researched and corrected within the system;
9. Nothing you currently do impacts the existing NTT contract with the state;

10. Your intent in seeking this advisory opinion is to ensure that there is no conflict with you applying for, and potentially becoming employed by, NTT.

I. Relevant Law

In regard to former state employees and matters connected with their former duties, Arkansas Code Annotated § 19-11-709(b)(1) permanently disqualifies former employees from knowingly acting as a principal or as an agent for anyone other than the state in connection with any contract in which the former employee participated personally and substantially through decision, approval, disapproval, recommendation, rendering of advice, investigation, or otherwise while an employee, where the state is a party or has a direct and substantial interest. *See* Arkansas Code Annotated § 19-11-709(b)(1).

Another ethical restriction addresses a one-year representation restriction regarding matters for which a former employee was officially responsible. Arkansas Code Annotated § 19-11-709(b)(2) provides that it is a breach of ethical standards for any former state employee, within one year after cessation of the former employee's official responsibility in connection with any contract to knowingly act as a principal or as an agent for anyone other than the state in matters that were within the former employee's official responsibility, where the state is a party or has a direct or substantial interest. *Id.* The latter restriction only applies for one year after cessation of the former employee's official responsibility in connection with any contract at issue. *Id.*

For purposes of interpreting Arkansas Code Annotated §19-11-701 *et seq.*, section 19-11-701(8) defines "employee" as "an individual drawing a salary from a state agency, whether elected or not, and any nonsalaried individual performing personal services for any state agency." "State agency" is defined in section 19-11-701(16) as meaning "any office, department, commission, council, board, bureau, committee, institution, legislative body, agency, government corporation, or other establishment or official of the executive, judicial, or legislative branch of this state."

The public policy underlying section 19-11-701 *et seq.* is to "promote and balance the objective of protecting government integrity and the objective of facilitating the recruitment and retention of personnel needed by the state." *See* Arkansas Code Annotated § 19-11-703(a). "The policy is implemented by prescribing essential restrictions against conflict of interest without creating unnecessary obstacles to entering public service." *Id.* The intent is to require state employees to "discharge their duties impartially so as to assure fair competitive access to governmental procurement by responsible contractors," and to "conduct themselves in such a manner as to foster public confidence in the integrity of the state procurement organization." *See* Arkansas Code Annotated § 19-11-703(b). These statutes are a codification of, and can be understood against, the common law, which forbade public officials from engaging in self-dealing in regard to contracts. *See Price v. Edmonds*, 232 Ark. 381, 337 S.W.2d 658 (1960).

Arkansas Code Annotated § 19-11-715(b) gives the Secretary of the Department of Finance and Administration (DF&A) authority to, upon written request of an employee or contractor and in consultation with the Attorney General, render an advisory opinion regarding the appropriateness of the course of conduct to be followed in proposed transactions.

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II. Analysis

As a threshold matter, I reiterate that I am relying upon the representations that you have presented to me and those that have been relayed to me by Ms. Stone. As noted above, section 19-11-715(b) gives me authority, as the Secretary of DF&A, to issue an advisory opinion, upon written request of employees or contractors and in consultation with the Attorney General, regarding the appropriateness of the course of conduct to be followed. It does not, however, confer upon me the authority to subpoena documents, compel sworn statements, or utilize other investigative tools entrusted to judicial officers and law enforcement. Consequently, the employee or former employee, contractor, and contracting agency are in superior positions to ascertain the relevant facts and, beyond doing basic due diligence in researching publicly available information, I rely upon the information provided to me in analyzing and formulating my opinions. This opinion is limited to the representations submitted to me and is withdrawn in the event that any of the material information presented to me proves to be false.

Based on the submitted information as applied to the above-cited statutory provisions, your current employment with DHS certainly classifies you as a state employee, as a result of which termination from that employment would subject you to the statutory provisions of Arkansas Code Annotated § 19-11-709(b)(1) and (b)(2).

I am persuaded at this time by the information that you have provided to me, which is supported by Ms. Goldman's review, that you are not and have not been involved personally or substantially in the contract process relating to NTT Data. If this fact does not change during your state employment, then the permanent disqualification would not apply to you. *See* Arkansas Code Annotated § 19-11-709(b)(1).

The remaining ethical restriction addresses a one-year representation restriction regarding matters for which a former employee was officially responsible. *See* Arkansas Code Annotated § 19-11-709(b)(2). In reviewing the information that you, Ms. Goldman, and Mr. Dean have provided, as well as your functional DHS job description, it would appear that the proposed NTT Data position does not involve matters for which you are officially responsible in your DHS position. If this assessment remains accurate for the duration of your DHS employment, and any other state employment in which you may engage, then the one-year limitation period would not be applicable under the circumstances that you have presented.

Based on the documentation that you have submitted and the supporting information from DHS personnel, I am persuaded at this time that the characterization of your DHS management role and responsibilities precludes the application of sections 19-11-709(b)(1) and (b)(2) to the proposed NTT Data position for which you have applied.


III. Decision

Thank you for seeking my counsel and approaching the issue with transparency. I am persuaded that, under the representations as stated above, any ethical conflict that might exist is insubstantial or remote, and I grant permission to proceed to such extent and upon such terms and conditions as specified in this letter. Compliance with the above course of conduct is deemed

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to constitute compliance with the ethical standards of Arkansas Code Annotated §19-11-701 *et seq.*

Sincerely,



Larry W. Walther
Secretary

cc: Edward Armstrong, Office of State Procurement
Amy Fecher, Cabinet Secretary