



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

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January 3, 2017

Mr. Michael Myers  
Executive Vice President and Chief Financial Officer  
Union Bank of Mena  
303 Highway 71 North  
P.O. Box 898  
Mena, Arkansas 71953

RE: Advisory Opinion No. 2017-01

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Dear Mr. Myers,

This letter is in response to your request for an advisory opinion, in accordance with Ark. Code Ann. § 19-11-715(b), concerning a possible conflict of interest between yourself and Rich Mountain Community College (RMCC) regarding banking services at Union Bank of Mena (UBM), in Mena, Arkansas, where you are employed. This opinion is based upon the following facts that have been presented to me. 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. You are an elected member of the Board of Trustees of RMCC since January of 2015.
2. You are currently employed as the Vice President and Chief Financial Officer of UBM.
3. RMCC currently does business with UBM, including maintaining seven (7) checking accounts, three (3) of which were opened in or before October 1984, one (1) of which was opened in February of 2010, and three (3) of which were opened on June 29, 2016.
4. A majority of the RMCC's business with UBM began before you were elected to the Board of Trustees of RMCC.
5. The Board of Trustees plays no role in the day to day management of procurement activities, except for large scale construction projects.

Ark. Code Ann. § 19-11-705, prohibits state agencies, including state-supported institutions of higher education, from contracting with a business in which an employee or an employee's immediate family member has a financial interest if the employee participates, either directly or indirectly, in the procurement of such contracts. "Employee" is defined broadly to include volunteer members of state boards and commissions, Ark. Code Ann § 19-11-701(8). "Direct or indirect participation" is defined under Ark. Code Ann. § 19-11-705(a)(2), and includes without limitation, "involvement through decision, approval, disapproval, recommendation, preparation of any part of a procurement request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity." The position of employment and an employee's participation in the procurement process, both directly and indirectly, are examined on a case-by-case basis.

Public service is a position of trust. Thus, it is paramount that public employees strive to avoid the mere appearance of a conflict of interest under Ark. Code Ann. § 19-11-705 or a violation of the public services code of ethics under Ark. Code Ann. § 21-8-304. Under the facts as stated above, I can find no conflict of interest, owing to your assertion of nonparticipation in the procurement activities of RMCC.

As long as you play no role in procuring banking services for RMCC, UBM may continue to seek banking opportunities with RMCC. It is advisable for RMCC to follow all applicable competitive bidding requirements and procedures, with the clear understanding that you can play no role whatsoever in any aspect of the procurement process. Should any question or issue regarding a procurement arise where UMB could reasonably be expected to submit a bid solicitation before the Board of Trustees of RMCC, you should recuse yourself immediately and have no participation. Furthermore, you should play no role in UBM's preparation of a bid response to be submitted to RMCC in response to a solicitation.

This advisory opinion is issued in accordance with Ark. Code Ann § 19-11-715(b). Compliance with the above course of conduct is deemed to constitute compliance with Arkansas law and Executive Order 98-04.

Sincerely,



Larry W. Walther  
Director