



STATE OF ARKANSAS  
**Department of Finance  
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January 13, 2017

Marion Scott Foster, P.S.  
Arkansas Surveying and Consulting  
1926 Salem Road  
Benton, AR 72109

RE: Advisory Opinion No. 2017-04

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Dear Mr. Foster,

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 the Arkansas GIS Office (GIS), regarding Arkansas Surveying & Consulting (ASC), where you work. The Office of State Procurement notified Sanborn Map Company (Sanborn) of its intent to award contract SP-17-0048 to them and ASC subcontracts with Sanborn for some of its services. I appreciate your inquiry. Public service is a position of trust. Thus, it is paramount that public employees strive to avoid even 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.

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 currently employed with ASC.
2. You serve on the State GIS Board, which oversees the work of GIS.
3. You were appointed to the board on September 27, 2016.
4. The board voted on March 29, 2016 to pursue the orthoimagery project.
5. You did not participate in the review panel that reviewed each of the responses from bidders, nor did you participate in any portion of the decision making process in connection with this solicitation.

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.

Under the facts as stated above, I find no conflict of interest or breach of ethical standards, owing to your assertion that you are not employed with GIS and only serve on the board. Additionally, you did not have direct or indirect participation with the contract approval, disapproval, recommendation, preparation or any participating in any other advisory capacity. The solicitation process for this contract began before your term of service on the board commenced.

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 Walther  
Director and Chief Fiscal Officer of the State