



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

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

February 1, 2017

Mark Mansell
Northwest Technical Institute – Welding Faculty
PO Box 2000
Springdale, AR 72765-2000

RE: Advisory Opinion No. 2017-05

Dear Mr. Mansell,

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, an employee of Northwest Technical Institute (NTI), and Wittenberg, Delony and Davidson (WDD), where your brother-in-law is employed. With the help of the Department of Finance and Administration, Division of Building Authority (DFA-DBA), NTI solicited for a design professional for a Welding Technology Center on the campus of NTI, using a Request for Qualifications (RFQ), as permitted by law. 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 NTI.
2. Your brother-in-law, David Scarbrough, is employed with WDD as a Project Manager for Northwest Arkansas.
3. Mr. Scarbrough has no ownership interest in WDD
4. WDD was selected using a competitive RFQ process.
5. A Panel determined that of three qualified firms that responded to the RFQ, WDD was the most qualified.
6. As a member of the welding faculty at NTI, you participated in the review panel that reviewed each of the responses from bidders, as well as 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." "Immediate family" means a spouse, children, parents, brothers and sisters, and grandparents; Ark. Code Ann. § 19-11-701(11).

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 that a conflict of interest may exist, owing to your assertion that you are employed with NTI and you directly participated in the procurement of the proposed contract, and your sibling (who is a member of your "immediate family" as that term is defined in the law), may have an indirect financial interest in the transaction as a result of your brother-in-law's employment by WDD.

According to Ark. Code Ann. § 19-11-715(c), the Director may grant a waiver or permission to proceed with the transaction that may otherwise involve an ethical conflict when interests of the state so require or when the ethical conflict is insubstantial or remote. The waiver may contain terms and conditions upon which such waiver is based. In your request for an advisory opinion, you requested a waiver should a conflict of interest be found.

A waiver is appropriate in this instance because this solicitation was procured in an appropriate and lawful way, and your expertise was necessary on the review panel to ensure that the most qualified design professional was secured for the Welding Technology Center on the campus of NTI. Additionally, Mr. Scarbrough has no ownership interest in the company he works for, WDD. For those reasons, I find that it is in the best interest of the state to grant a waiver and allow NTI to finalize a contract with WDD.

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
Chief Fiscal Officer of the State

cc: Edward Armstrong, DFA Office of State Procurement Director
Dr. Blake Robertson, President NTI