



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

August 1, 2017

Stanley M. "Jack" Bell
Hearing Examiner/Attorney at Law
111 Center Street, Ste 1200
Little Rock, AR 72201

RE: Advisory Opinion No. 2017-08

Dear Mr. Bell:

This letter is in response to your request for an advisory opinion, pursuant to Ark. Code Ann. §19-11-715(b), regarding whether the circumstances described below involving your dual employment with the Arkansas Development Finance Authority ("ADFA") and the Department of Human Services ("DHS") violates ethical standards under Ark. Code Ann. §19-11-701 et seq., and Executive Order 98-04 ("EO 98-04"). This opinion is based upon the following facts that have been presented to me in the attached and which I am relying upon. 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. Mr. Bell began working for ADFA in 2011 managing the Farmer/Creditor Mediation Program, primarily working on issues related to farmers and creditor banks;
2. Mr. Bell signed a contract with DHS in 2016 to serve as an administrative law judge hearing officer, conducting administrative hearings and appeals related to nursing home facilities;
3. The DHS contract was awarded to Mr. Bell as a result of a request for qualifications, and Mr. Bell had no direct or indirect participation on the procurement;
4. Mr. Bell and DHS now seek to renew the contract, for consideration in the amount of \$19,850.
5. Mr. Bell controls the scheduling of the administrative hearings for DHS, and only holds them on private and leave time.

Ark. Code Ann. §19-11-705 (a)(1)(A) prohibits state employees from participating directly or indirectly in any particular matter pertaining to any state agency contracts in which an employee or an employee's immediate family member has a financial interest. See Ark. Code Ann. §19-11-705. EO 98-04 (II)(iii) prohibits contracts between agencies and state employees which are not the result of competitive bidding and for which total consideration is \$10,000 or greater, unless the prior written approval of the Chief Fiscal Officer of the State is obtained, notice of such approval being given to the Governor and Legislative Council.

Based on the above facts, and reviewing the matter under Ark. Code Ann. §19-11-705 (a)(1)(A), Mr. Bell's work for ADFA clearly classifies him as a state employee. However, it does not appear Mr. Bell participated directly or indirectly in the procurement process of the contract

with DHS, as he played no role in the evaluation of solicitation respondents by DHS, thus demonstrating no violations under Ark. Code Ann. §19-11-701 et seq.

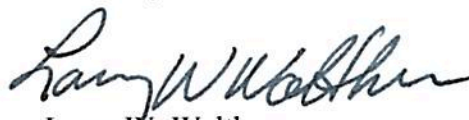
In reviewing the matter under EO 98-04, given that the DHS contract was not the result of a competitive sealed bid or request for proposal and has a value of \$10,000 or greater, my prior written approval is required for this contract to be permitted.

Mr. Bell has taken steps to ensure the duties under each contract do not overlap or conflict in scope or time used to fulfill the duties. The ADFA scope is limited to mediating services related to creditor banks and farmers, while the DHS scope is limited to hearings regarding nursing home facilities, two areas unlikely to overlap or cause conflicts of interest. Furthermore, Mr. Bell has the ability to schedule the DHS hearings as needed, doing so only on personal or leave time, thus avoiding conflicts in his time allocations.

Accordingly, I am persuaded that no conflict of interest exists under Ark. Code Ann. §19-11-701 et seq., and that under EO 98-04, it is in the best interest of the state to grant this prior written approval for the DHS contract to be executed.

This advisory opinion and written approval is issued in accordance with Ark. Code Ann. § 19-11-715(b) and EO 98-04 (II)(iii). Compliance with the above course of conduct is deemed to constitute compliance with the ethical standards of the Ark. Code Ann. §19-11-701 et seq., and Executive Order 98-04.

Sincerely,


Larry W. Walther
Director

cc: Edward Armstrong, Office of State Procurement