



STATE OF ARKANSAS
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September 5, 2017

Erika Stolzer
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RE: Advisory Opinion No. 2017-09

Dear Ms. Stolzer:

This letter is in response to your request for an advisory opinion and/or waiver of a conflict of interest on behalf of your client, Mrs. Renetta G. Cheatham, pursuant to Ark. Code Ann. §19-11-715(b) and Ark. Code Ann. §19-11-715(c), regarding whether the circumstances involving her simultaneous employment with the University of Arkansas for Medical Science (“UAMS”) and her ownership and management of 10-08, LLC, doing business as Job Star, 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. Mrs. Cheatham began working for UAMS in mid-2016 as a human resources senior consultant.
2. Mrs. Cheatham’s job description with UAMS is to be responsible for (i) new employee orientation presentations; (ii) compiling new employee orientation packets; (iii) scheduling presenters; and (iv) contacting employees/departments for random drug screenings. Mrs. Cheatham additionally is assigned to assist with the catastrophic leave program and leave of absence program, to be a member of the HR Call Center, work the front desk, and respond to emails, answering questions and providing assistance to UAMS employees and staff, including answering questions about benefits, payroll, policy, and other questions, and responding to questions from ASKHR.
3. Mrs. Cheatham’s UAMS job scope does not include posting or otherwise advertising job vacancies, nor does her UAMS job scope include any direct or indirect influence on the manner in which UAMS job vacancies are advertised.
4. Mrs. Cheatham is co-owner of Job Star. For a fee, Job Star allows employers to list open positions they are seeking to fill, and job seekers are able to search the website database to view posted open positions, as well as obtain general information for career readiness through posted articles.

In your letter, you specifically requested two scenarios be addressed in my advisement. First, the scenario in which Mrs. Cheatham passively or unknowingly solicits or accepts state business, such as passing out business cards or brochures to state agents without knowing they were state agents or having a state agency paying for and posting job openings on the Job Star website without her knowledge. Second, the scenario in which Mrs. Cheatham intentionally or knowingly solicits or accepts state business, while being a current state employee or former state employee within one year after termination, as Mrs. Cheatham wishes to pursue state agencies advertising open positions on the Job Star website.

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. "Direct or indirect participation" is defined to include, but not be limited to, 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. See Ark. Code Ann. §19-11-705 (a)(2).

Based on the above facts, and reviewing the matter under Ark. Code Ann. §19-11-705 (a)(1)(A), Mrs. Cheatham's work for UAMS, on its face, would seem to create an apparent conflict of interest under the statute, prohibiting her from contracting with state agencies in her capacity with Job Star. However, statutes are presumed to make no changes in the common law, and in the common law, a conflict of interest simply exists when a personal interest conflicts with a public or fiduciary interest. Additionally, Ark. Code Ann. §19-11-703 (a) would seem to reflect a legislative intent to balance the intent to not create unnecessary obstacles for those in public service, and thereby facilitate better personnel retention, with the need to restrict conflicts of interest.

In the matter at hand then, Mrs. Cheatham's connections to state agencies other than UAMS appears to be tenuous and insubstantial. Furthermore, her job scope of working with new hires and existing UAMS employees creates very little risk of her personal interests with Job Star conflicting with her state employment duties of working with newly hired and existing UAMS personnel, particularly in the light of the fact that she does not advertise open positions or manage the hiring process.

Therefore, I find that there is no conflict of interest with Mrs. Cheatham contracting, on behalf of Job Star, with state agencies other than UAMS, including the solicitation-oriented efforts she inquired about of distributing business cards or brochures to state agencies other than UAMS.

However, with UAMS, there does exist a conflict of interest. Although Mrs. Cheatham does not herself handle or manage the hiring process for UAMS job openings, by not only working in UAMS but actually working in UAMS human resources, she is inevitably around those who do handle or manage the hiring process. Interactions she has with coworkers could easily be construed as exerting direct or indirect influence over their contractual decisions on how to seek qualified candidates, which would reasonably call into question Mrs. Cheatham's ability to discharge her duties impartially, as well as UAMS' ability to discharge its duties impartially. See Ark. Code Ann. §19-11-703 (b).

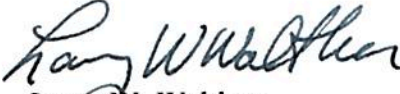
Furthermore, I do not see how the interests of the state so require granting a waiver for Job Star contracting with UAMS. Mrs. Cheatham will have the ability to post job openings for any state agency or private sector employer who seeks Job Star's services. As Ark. Code Ann. §19-11-703 (a) articulates, while there is an intent to balance objectives, the objectives of protecting government integrity and fostering public confidence are indeed essential objectives. Job Star's abilities to succeed will not be substantially restricted by not contracting with UAMS.

You additionally asked about passively or unknowingly soliciting business, which based on my opinion here would only be problematic if soliciting UAMS. Mrs. Cheatham would not be found to be putting her personal interests above the interests of her state employment if she did not have the intent to pass business cards or brochures to UAMS personnel. However, safeguards should be put in place whereby Job Star's website flags and rejects UAMS employer job postings, and Job Star personnel are instructed to do the same. Furthermore, Mrs. Cheatham should avoid using her position at UAMS to solicit business for Job Star, regardless of the employer.

Accordingly, I am persuaded that no conflict of interest exists under Ark. Code Ann. §19-11-701 et seq., for Mrs. Cheatham's business Job Star to contract with state agencies other than UAMS, but I do find a conflict of interest exists for Mrs. Cheatham's business Job Star to contract with UAMS, such conflict of interest not being in the best interest of the state to grant waiver.

This advisory opinion and written approval is issued in accordance with Ark. Code Ann. § 19-11-715(b) and Ark. Code Ann. § 19-11-715(c). 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