



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

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October 31, 2017

Tammy L. Dunn Vanover
Doctor of Audiology
500 South University Ave., Ste A13
Doctor's Building
Little Rock, AR 72205

RE: Advisory Opinion No. 2017-12

Dear Ms. Vanover,

This letter is in response to your request for an advisory opinion, pursuant to Ark. Code Ann. §19-11-715(b), or a waiver, of an Ark. Code Ann § 19-11-715(c), regarding a potential conflict of interest in your contracting with the Arkansas School for the Deaf ("ASD") while being a state employee with the Arkansas Department of Health ("ADH").

This opinion is based upon the following facts presented to me in your letter of October 23, 2017, as well as a letter sent to me by the ASD dated October 10, 2017. It should be noted that if one or more of these facts are later shown to be incorrect, it could result in a revised opinion.

1. In October 2016, Ms. Vanover, through A Plus Hearing Service, entered into a contract with the Arkansas School for the Deaf ("ASD") to provide diagnostic audiology testing for newborns who have failed newborn hearing screening, as well as testing for children who were otherwise unable to undergo audiology testing due to a lack of insurance coverage or lack of services in their area of the state;
2. In this role, Ms. Vanover's scope of work is to provide diagnostic services to children in need by traveling to areas of the state lacking in audiology services for testing, assessing the situation, diagnosing the newborn or child, and making appropriate referrals in the event the newborn or child requires intensive hearing, speech and language evaluations, parent advisor intervention, or early intervention services;
3. The contract between Ms. Vanover and the ASD was for a one (1) year term with the contract amount being \$49,900.00, and the ASD is now seeking to renew the contract for a six month term, during which time the ASD will competitively bid a contract for the position;
4. On March 27, 2017, Ms. Vanover was hired by the ADH to an extra help position for a total of no more than eight (8) hours per month;
5. The hiring by ADH of Ms. Vanover occurred after Kim Scott, Section Chief for Child and Adolescent Health, approached Ms. Vanover about filling the recently vacant position;
6. The position with ADH allows the ADH to remain in compliance with the Early Hearing Detection and Intervention Law by staffing an audiologist. As of the writing of Ms. Vanover's October 23, 2017 letter, Ms. Vanover had earned \$803.00 for this position.

7. In this position with ADH, Ms. Vanover's scope of work includes providing input and feedback in determining next steps for follow-up care of newborns diagnosed with hearing loss, assisting in strengthening the program's evaluation plan, delivering provider education, presenting recommendations to the Advisory Board along with proposed actions, educating parents and other professionals, and reviewing state level reports to identify babies who failed the newborn hearing screening but have not done follow up testing;

Ark. Code Ann. § 19-11-705, prohibits state agencies 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 any individual drawing a salary from a state agency, and any nonsalaried individual performing personal services for any state agency. 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.

Based on the information you provided, and reviewing the matter under the above cited statutes, Ms. Vanover's work for ADH clearly classifies her as a state employee. However, it does not appear Ms. Vanover participated directly or indirectly in the procurement process of the contract with ASD. To the contrary, this is a renewal of a contract with ASD that pre-dates the employment with ADH. Accordingly, I find no conflict of interest exists with the procurement of this contract, and thus no violations under Ark. Code Ann. §19-11-701 et seq.

As Ms. Vanover expressed in her letter, the roles currently are quite distinct and thus do not overlap in a manner as to cause conflicts of interest. It is Ms. Vanover's responsibility to ensure the mutual duties owed to ADH and ASD do not evolve so as to create a conflict of interest in scope or in the time allocated to fulfill the duties.

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