



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

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December 4, 2017

Candace Franks
Commissioner, Arkansas State Bank Department
400 Hardin Road, Suite 100
Little Rock, AR 72211-3502

Re: Advisory Opinion No. 2017-14

Dear Commissioner Franks:

This letter is in response to your request for a waiver which will allow for an assignment of the State Lease Agreement referenced below. While your letter did not specifically request a waiver of the state employee conflict of interests laws, this response is based upon Ark. Code Ann. §19-11-715(c). Your request for the waiver is based upon the following facts:

1. You are the Commissioner of the Arkansas State Bank Department.
2. The State Bank Department leases office space for a satellite office in Jonesboro, Arkansas.
3. The State Bank has leased this office space continually since July 1, 1993 with the present lease set to expire on June 30, 2019.
4. The Leased Premises was owned by James W. Webb Testamentary Trust with your mother, Barbara E. Webb, as the trustee of the Trust.
5. Proper Contract Disclosures were completed throughout the lease term.
6. You requested and were granted a waiver pursuant to the above referenced law by the Director of the Department of Finance and Administration in 2011.
7. Barbara Webb passed away in September, 2017.
8. You and your brother, James P. Webb, were appointed successor Trustees and were compelled by the Trust to distribute the assets of the Trust to the beneficiaries which included both you and your brother.
9. You and your brother formed JWCF Enterprises, LLC for the purpose of holding title to the leased property, with each having 50% ownership.
10. You are seeking to assign the State Lease from the Trust to JWCF Enterprises, LLC due to the changed circumstances.
11. The DFA - Division of Building Authority (DBA) determined it was prudent that due to the changed circumstances of ownership of the Leased Premises that you seek a waiver pursuant to the above referenced law prior to DBA approval of any amendment reflecting the limited liability corporation as the Lessor.

Under the current conflicts of interest laws (Ark. Code Ann. §19-11-701 et seq.), state contracts with a business in which an employee has a financial interest where the employee participates, directly or indirectly in the procurement process is prohibited. Under the conflict of interest laws, "Direct or

indirect participation” is defined as including but not 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.” The position of employment and/or an employee’s “participation” in the procurement process, both directly and indirectly, are examined on a case-by-case basis.

Under the provisions of the law, as the agency director, you would be in a position of influence or other advisory capacity in your agency’s lease decisions. Moreover, Ark. Code Ann. §19-11-705(a)(1) law states:

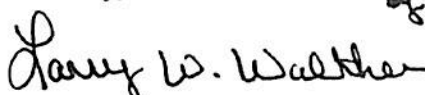

“It shall be a breach of ethical standards for any employee to participate directly or indirectly in any proceeding or application, . . ., or in any other particular matter pertaining to any contract or subcontract and any solicitation or proposal therefor, in which to the employee’s knowledge:

- (A) The employee or any member of the employee’s immediate family has a financial interest;
- (B) A business or organization has financial interest, in which business or organization the employee, or any member of the employee’s immediate family, has a financial interest; or
- (C) Any other person, business, or organization with whom the employee or any member of the employee’s immediate family is negotiating or has an arrangement concerning prospective employment is a party.”

Reviewing the facts and the laws, there clearly is a conflict of interest. However, Ark. Code Ann. §19-11-715(c) allows the director of the Department of Finance and Administration to confer a waiver when the interest of the State so require or when the ethical conflict is insubstantial or remote. I have determined that due to the long-term nature of the landlord-tenant relationship, which predated your appointment as Commissioner, the ethical conflict presented here should be waived as being in the best interests of the State; therefore, the waiver is hereby granted. DBA has informed me that upon the assignment from the Trust to the LLC, it will move forward with the amendment (the name of the Lessor) to the Lease, which I understand is set to expire June 30, 2019.

This opinion is issued in accordance with 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 laws and Executive Order 98-04.

Sincerely,

 by 

Larry W. Walther, Director

Cc: Ed Armstrong, Administrator, Office of State Procurement
Anne Laidlaw, Director, Division of Building Authority