



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

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January 5, 2018

Mr. Ralph A. Downs, M.S., J.D., CHP
PFH General Counsel
1111 S. Glenstone Avenue
Suite 3-100
Springfield, MO 65804

RE: Advisory Opinion Regarding a Conflict of Interest/Advisory Opinion No. 2017-15

Dear Mr. Downs:

Pursuant to Ark. Code Ann. §19-11-715(b), and in consultation with the Attorney General, this written advisory opinion is being rendered in response to the written request for an advisory opinion (the "PFH Request") which you sent to me as the Director of the Department of Finance and Administration ("DFA") on behalf of Preferred Family Healthcare ("PFH"), in a letter dated December 7, 2017 (the "PFH Letter"), regarding contracting with the Department of Human Services ("DHS") and potential violations of ethical standards under Ark. Code Ann. §19-11-701, *et seq.*

My statutory authority to issue advisory opinions under Ark. Code Ann. §19-11-715(b) is limited to rendering written advisory opinions regarding the appropriateness of a course of conduct to be followed in a proposed transaction. Accordingly, I only opine prospectively about whether PFH's proposed course of conduct would violate the ethical standards set forth in Ark. Code Ann. § 19-11-701, *et seq.* At issue in this opinion are three contracts that PFH has with DHS. The facts that present a potential violation of the ethical standards set forth in Ark. Code Ann. § 19-11-701, *et seq.* are that PFH currently employs two former employees of DHS, Ms. Julie Meyer and Dr. Charlie Green.¹

I cannot confirm the accuracy of the facts presented by PFH and DHS in connection with PFH's request for an advisory opinion (the "PFH Request"), and the reliability of any advisory opinion depends, in large part, on the accuracy and completeness of all facts and assumptions material to the analysis and conclusion. In reviewing the documents that PFH and DHS have submitted to DFA in connection with the PFH Request, I have assumed that (i) all signatures on all documents reviewed by me in connection with the PFH Request are genuine, (ii) all documents submitted to me in connection with the PFH request are true and complete originals or are faithful and accurate copies of such originals, (iii) each natural person signing any document reviewed by me in connection with the PFH Request was actually said natural person and had the legal capacity to so sign, and (iv) each person signing, in a representative capacity, any document reviewed by me in connection with the PFH Request had authority to so sign. If one or more of these assumptions or the enumerated facts below are later shown to be materially incomplete or incorrect, this advisory opinion may not be relied upon.

1. On or about March 4, 2016, Ms. Julie Meyer severed her employment with the state as Division of Behavioral Health Services ("DBHS") Director of Policy, later taking a position as Vice President of Operations with PFH;

¹ I note that Executive Order 98-04 also restricts the ability of executive agencies to contract with current or former state employees. It, however, is not the subject of this advisory opinion.

2. On or about January 26, 2017, Dr. Charlie Green severed his employment with the state as Director of DBHS, taking a senior executive position with PFH, the precise title of his PFH position being a subject of significant inconsistencies²;
3. In a letter dated January 26, 2017, sent by David W. Sterling, Chief Counsel of DHS, to PFH (the “DHS Letter”), DHS advised PFH that potential conflicts of interest may exist under applicable Arkansas statutes, warning that “it naturally follows that there are many aspects of PFH’s current operations that are within Dr. Green’s former official responsibilities as Director of DBHS;”
4. PFH has two contracts with DBHS awaiting an amendment. Contract number 4600036870 was originally executed April 20, 2016, pursuant to a request for qualifications. Contract 4600036871 was originally executed April 21, 2016, pursuant to a request for qualifications;³
5. PFH has one contract with DHS, Division of Child and Family Services (“DCFS”) awaiting an amendment. Contract 4600040572 was originally executed June 27, 2017, pursuant to a request for qualifications;
6. In the PFH Letter, you represented that Dr. Green’s job scope does not put him in a position of having any responsibilities or duties regarding the PFH contracts with DHS, and that Dr. Green’s employment with PFH does not authorize or empower him to directly or indirectly participate in PFH’s dealings with the contractual relationships PFH has with the state;
7. With the PFH Letter, you supplied a job description, signed by Dr. Green and dated August 23, 2017, which you indicated corresponded to Dr. Green’s position as an Executive Vice President of PFH. That job description includes “working with the VPs/Directors/Other Leadership to ensure all contracts and legal requirement are met by each region and service line” and “participates in local community planning activities and in local, state and national programs and distributed information to VPs/Directors/Other Leadership;”
8. In an affidavit (the “Affidavit”) signed by Mr. Downs and Dr. Green as the affiants, and delivered to DFA through DHS, the affiants testified that Mr. Green’s job scope does not put him in a position of having any responsibilities or duties in regards to the PFH contracts with DHS, nor does Mr. Green’s employment with PFH authorize or empower him to directly or indirectly participate in PFH’s dealings with the contractual relationships PFH has with the state. The Affidavit listed the executives responsible for interactions with the State of Arkansas as Mr. Michael Schwent and Dr. Keith Noble, PhD.; and
9. In a subsequent Contract and Grant Disclosure Form issued by PFH on or about January 3, 2018, and pursuant to Contract 4600040196 (a contract not directly the subject of this advisory opinion), Dr. Green is again given the title of Chief Executive Officer, with his role being that he “provides executive oversight of the Arkansas operations, which does not include engagement in State activities, including contract negotiation and execution.”

I. Relevant Law

Ark. Code Ann. §19-11-709(b)(1) permanently restricts former employees from acting as a principal or agent for anyone other than the state in connection with any contract in which the former

² In the PFH Letter and the Affidavit (as defined above), Dr. Green is reported to be an “Executive Vice President.” However, in the Contract and Grant Disclosure Form issued by PFH, a subsequent Contract and Grant Disclosure Form submitted by PFH, the DHS Letter, and an Arkansas Times article dated January 13, 2017 titled “Director departs state Behavioral Health Services,” Dr. Green’s position with PFH is described as “Chief Executive Officer.” Regardless, for purposes of this advisory opinion, Dr. Green’s title is only relevant to the extent that it bears on whether his current office will require him to act as a principal or agent for PFH in matters which were formerly within his official responsibility as Director of DBHS.

³ In Contract and Grant Disclosure forms submitted pursuant to amendments for Contract number 4600036870 and Contract 4600036871, each amendment respectively signed by DHS on May 16, 2017 and signed by PFH on May 17, 2017, the potential conflicts of interest involving Dr. Green and Ms. Meyer were not disclosed to DFA.

employee participated personally and substantially through decisions, approvals, disapprovals, recommendations, rendering of advice, investigations, or otherwise, while an employee of the state. Ark. Code Ann. §19-11-709(b)(2) restricts former employees, for a period of one year from cessation of the former employee's official responsibilities, from acting as a principal or agent for anyone other than the state in connection with any contract which were within the former employee's official responsibility.

Ark. Code Ann. §19-11-701(8) defines "employee" as an individual drawing a salary from a state agency, whether elected or not, and any nonsalaried individual performing personal services for any state agency." "Former employee" is not defined in the statute, but giving "former" its commonly used definition in conjunction with the one year time period described in the statute, it is reasonable to define "former employee" as an individual who was an "employee" within one year from cessation of the former employee's official responsibilities.

Ark. Code Ann. §19-11-715(b) gives the Director of DFA authority to issue an advisory opinion, upon written request of employees or contractors and in consultation with the Attorney General, regarding the appropriateness of the course of conduct to be followed in a proposed transaction.

II. Analysis

As a threshold matter, I reiterate that I am relying upon the accuracy of the facts that have been presented to me by PFH. As stated above, Ark. Code Ann. § 19-11-715(b) gives me authority, as the Director of DFA, to issue an advisory opinion, upon written request of employees or contractors and in consultation with the Attorney General, as to whether the proposed transactions would comply with the ethical standards of Ark. Code Ann. § 19-11-701, *et seq.* It does not, however, confer upon me the authority to subpoena documents, compel sworn statements, or utilize other information collection mechanisms entrusted to judicial officers and law enforcement. Accordingly, the contractor and the contracting agency are in superior positions to ascertain the relevant facts, and beyond doing basic due diligence in researching publicly available information, I am left to rely largely upon the facts given to me in analyzing and formulating an advisory opinion.


Given the facts presented, Ms. Julie Meyer is a "former employee" of the state. On or about March 4, 2016, Ms. Meyer severed her employment with the state as DBHS Director of Policy, later taking a position as Vice President of Operations with PFH. Because more than a year has passed since the cessation of her employment by DBHS, it would not violate Ark. Code Ann. § 19-11-709(b)(2) for her to act as a principal or agent for PFH in matters which were within her former official responsibility as a DBHS Director of Policy.

On the facts presented to me, Dr. Green is also a "former employee" of the state under Ark. Code Ann. §19-11-701, *et seq.* Specifically, Dr. Green was the Director of DBHS, and in this role, had the authority and obligation to participate "personally and substantially through decisions, approval, disapproval, recommendation, rendering of advice, investigation, or otherwise while an employee" with DBHS contracts, thus potentially being permanently barred from dealing with any of the PFH contracts with DBHS executed during his employment there, under Ark. Code Ann. §19-11-709(b)(1). Considering the broad responsibilities given to directors, at a minimum, the restrictions provided in Ark. Code Ann. § 709(b)(2), would bar him from acting in connection with the DBHS contracts for PFH for a period of one year, pursuant to Ark. Code Ann. §19-11-709(b)(2).

I note that the PFH Letter and Affidavit state Dr. Green's job scope with PFH "does not put him in a position of having any responsibilities or duties with PFH's dealings with the State of Arkansas in regard to ... contracts ... and any other conflicts listed in Ark. Code Ann. 19-11-700, *et seq.*" Similarly, the Affidavit avers that Dr. Green is not authorized or empowered by PFH to directly or indirectly participate

in PFH's contractual relationships with the State of Arkansas. Essentially, PFH is representing and testifying (through the Affidavit) that Mr. Green is not acting as a principal or agent for PFH *in connection with* any of the contracts that could create conflicts, and thus there is no violation of the statutes. However, because of the apparent discrepancy between the Affidavit and the broad scope of Dr. Green's duties as set forth in the job description corresponding to Dr. Green's position as Executive Vice President (and the inconsistency in the facts before me as to what Dr. Green's position actually is), I am not confident enough in the accuracy of this representation to rely on it. As noted above, Dr. Green's precise title and role have been inconsistently reported to DFA while this advisory opinion was pending. While the PFH Letter and Affidavit report he is an Executive Vice President with absolutely no contact with DHS contracts, the Grant and Disclosure Forms, one of which was issued after the PFH Letter and Affidavit, report he is the Chief Executive Officer of PFH, and that he provides oversight for Arkansas operations, which would almost certainly create the appearance that he would likely have some connection with PFH's DHS contracts. Accordingly, I cannot opine with any confidence that an ethical violation, as defined in the relevant statutes, would not arise if the contracts at issue were to be continued while Dr. Green is employed at PFH in a position of executive leadership.

Sincerely,



Larry W. Walther
Director

cc: Edward Armstrong, Office of State Procurement
David Sterling, DHS General Counsel