



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

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December 5, 2017

Mr. Corey Kimbrough
1410 W. Daisy Bates
Little Rock, AR 72202

RE: Advisory Opinion Regarding a Conflict of Interest

2017-16 MKW

Dear Mr. Corey Kimbrough:

This letter is in response to your request for an advisory opinion or alternatively a waiver of a conflict of interest, sent in a letter dated September 27, 2017, and received on or about November 15, 2017, pursuant to Ark. Code Ann. §19-11-715(b) and Ark. Code Ann. §19-11-715(c), respectively, regarding Arkansas Quality Therapy Co. ("AQTC") contracting with the Department of Human Services ("DHS"), Division of Developmental Disabilities ("DDS"), and a potential conflict of interest regarding the aforementioned contract under Ark. Code Ann. §19-11-701 et. seq., and Executive Order 98-04 ("EO 98-04"). This opinion is based upon the facts that have been presented to me, which I have enumerated below. It should be noted that if one or more of these facts are later shown to be incorrect or materially incomplete, that could result in a revised opinion.

1. AQTC responded to a multi-vendor award request for qualifications solicitation issued by DHS for providing specialized foster care placement services for children with developmental disabilities;
2. AQTC and DHS seek to contract with each other for the above referenced services for a contract valued at \$222,222.00 (the "AQTC Contract").
3. AQTC is co-owned by Mr. Kimbrough and Mr. Trooper Tolbert;
4. Mr. Kimbrough is a former state employee as a Supported Housing Program Manager with the Department of Career Education - Arkansas Rehabilitation Services, with a start date of September 30, 2012, in which his job scope consisted of evaluating homes for assistive technology such as ramps or bathroom remodeling on behalf of individuals with disabilities;
5. Mr. Tolbert is a former state employee, having worked as extra help for the Department of Career Education - Arkansas Rehabilitation Services, having been a state employee from January 2014 until June 2016;
6. Danielle Kimbrough, the spouse of AQTC co-owner Mr. Kimbrough, is a current state employee with DHS – Division of Child and Family Services as a Family Services Worker Supervisor, in which her job scope consists of providing consultation, conducting case reviews, assisting with daily activities such as home visits and court proceedings, and intervening during crisis or hostile situations;

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7. In a letter dated June 28, 2017, Mr. Kimbrough requested “a waiver to perform a state contract”, assumedly requesting a waiver of conflict of interest pursuant to Ark. Code Ann. §19-11-715(c);
 8. On or about August 14, 2017, the Department of Finance and Administration (“DFA”) issued a determination letter stating that, based on the facts known to DFA at that time, a conflict of interest was indeed found, and the waiver was denied. However, DFA stated its willingness to re-evaluate the situation should AQTC and Mr. Kimbrough provide further information for consideration;
 9. On August 18, 2017, Mr. Kimbrough terminated his employment with the Department of Career Education - Arkansas Rehabilitation Services;
 10. On or about November 15, 2017, via email delivery, Mr. Kimbrough sent five letters:
 - a. a letter dated September 27, 2017 from AQTC requesting an advisory opinion, pursuant to Ark. Code Ann. §19-11-715(b);
 - b. a letter dated September 27, 2017 from Mr. Kimbrough providing information on Mr. Kimbrough’s former employment with the State, explaining he had no direct or indirect participation in the procurement process of the AQTC Contract, and requesting an advisory opinion or alternatively a waiver, pursuant to Ark. Code Ann. §19-11-715(b) and Ark. Code Ann. §19-11-715(c);
 - c. a letter dated September 27, 2017 from Mr. Tolbert providing information on Mr. Tolbert’s former employment with the State, and explaining he had no direct or indirect participation in the procurement process of the AQTC Contract;
 - d. a letter dated October 6, 2017 from Ms. Kimbrough providing information on Ms. Kimbrough’s current employment with the DHS, and explaining she had no direct or indirect participation in the procurement process of the AQTC Contract; and
 - e. a letter dated October 6, 2017 from Diane Smithson, Chief Financial Officer of DHS-Division of Children & Family Services, stating that Ms. Kimbrough had no direct or indirect participation in the request for qualifications procurement process of the AQTC, and explaining that Ms. Kimbrough’s job function has no conflict of interest with the AQTC Contract.

Ark. Code Ann. §19-11-705(a)(1)(A) prohibits state employees from participating directly or indirectly in any particular matter pertaining to any contract with a state agency in which the employee or an employee's immediate family member has a financial interest. "Direct or indirect participation" is defined at Ark. Code Ann. § 19-11-705(a)(2), and includes, but is not limited to, "involvement through decision, approval, disapproval, recommendation, preparation of any part of a procurement request, influencing the content or 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, is examined on a case-by-case basis.

Ark. Code Ann. §19-11-709(b)(1) and Ark. Code Ann. §19-11-709(c)(1) prohibits former employees, or business partners of current state employees, from acting as a principal or agent for anyone other than the state in connection with any contract in which the former employee or the business partner current state 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. §19-11-715(b) gives the Director of Department of Finance and Administration 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. Ark. Code Ann. §19-11-715 (c) gives the Director of Department of Finance and Administration authority to issue a written waiver from the application of Ark. Code Ann. §19-11-705, and discretion to grant permission to proceed with the contract transaction, when the interests of the state so require or when the ethical conflict is insubstantial or remote.

Furthermore, EO 98-04 (II) states that agencies are prohibited from entering into contracts with current or former state employees, or the spouses thereof, or with an entity in which such person holds any position of control or any ownership interest of 10% or greater. With contracts that were not subject to competitive sealed bids or requests for proposals, and which total consideration is \$10,000.00 or greater, the prior written approval of the Chief Fiscal Officer of the State must be obtained, and notice of which must be given to the Governor and Legislative Council.

Based on the above facts and law, although there is an apparent conflict of interest, upon being provided further information, it is my opinion that there is not a conflict of interest in point of fact, a finding consistent with my authority under Ark. Code Ann. §19-11-715(b). Accordingly, the waiver requested under Ark. Code Ann. §19-11-715 (c) is unnecessary due to the finding of there being no conflict of interest.

First, as to Mr. Kimbrough, he had no direct or indirect participation in the procurement process of the AQTC Contract in his former position with Arkansas Rehabilitation Services. Although his former job scope and the scope of the AQTC Contract appear to have some overlap, given that each are in the area of evaluating homes on behalf of youth with disabilities, the fact that Mr. Kimbrough had no direct or indirect participation in the procurement process for the AQTC Contract, and the fact that his former state employer was not DHS, the contracting agency on the AQTC Contract, indicates that a conflict of interest does not exist.

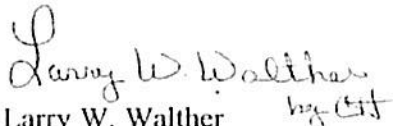
Second, Ms. Kimbrough has explained that as a Unit Supervisor for the DHS Division of Child and Family Services, she did not have direct or indirect involvement with the procurement process of the AQTC Contract, and further, her job scope does not include placement referrals for youth with disabilities, as placement referrals for youth with disabilities comes from the Specialized Placement Unit. Furthermore, Ms. Kimbrough does not even share offices with the Specialized Placement Unit, thus mitigating any influence Ms. Kimbrough could wield over future utilization of the AQTC Contract. Confirming Ms. Kimbrough's assertions is Ms. Smithson, writing on behalf of DHS. Ms. Smithson stated that Ms. Kimbrough did not directly or indirectly participate in the procurement process of the AQTC Contract, and would have no influence on the utilization of the AQTC Contract in the future, given her job function does not provide opportunity to do so.

Finally, Mr. Tolbert provided information explaining that he did not directly or indirectly participate in the procurement process of the AQTC Contract, explaining that to his belief, the procurement process ensued following his departure from state employment.

Accordingly, I am now 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