



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

OFFICE OF THE DIRECTOR
1509 West Seventh Street, Suite 401
Post Office Box 3278
Little Rock, Arkansas 72203-3278
Phone: (501) 682-2242
Fax: (501) 682-1029
www.dfa.arkansas.gov

December 5, 2018

Mr. Steven W. Little
Office of Finance
P.O. Box 1437, Slot W401
Little Rock, AR 72203

RE: Advisory Opinion No. 2018-10

Dear Mr. Little:

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 December 4, 2018, pursuant to Ark. Code Ann. §19-11-715(b) and Ark. Code Ann. §19-11-715(c), respectively, regarding Arkansas Foundation for Medical Care (“AFMC”) contracting with the Department of Human Services (“DHS”), and a potential conflict of interest regarding the aforementioned contracts under Ark. Code Ann. §19-11-701 et. seq., due to your employment with DHS and your spouse’s employment with AFMC. 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. AFMC has several active contracts with DHS, with contract 4600040375, originally executed in July 2017 and currently being amended to add performance indicators and funding, and contract 4600033676, originally executed in January 2015 and currently being amended to extend for time;
2. Contract 4600040375 has a total projected cost of \$52,204,040.00 and contract 4600033676 has a total projected cost of \$8,040,000.00;
3. DHS Director of Budget is Steven Little, and AFMC Chief Operating Officer is Marilyn Little, spouse of Mr. Little;
4. In a letter dated December 4, 2018, Mr. Little stated he “did not participate directly or indirectly in any matter pertaining to this contract, nor do I anticipate having involvement with the contract in the future”;
5. Via email dated December 4, 2018, Mr. Little answered “No” to each question in the following series of questions:
 - Did Mr. Little have any direct or indirect participation with developing the specifications for this contract?
 - Did Mr. Little have any direct or indirect participation or contact with the evaluation team regarding the evaluations for this contract?
 - Does Mr. Little have any direct or indirect participation with VPRs concerning AFMC?
 - Does Mr. Little have any influence concerning renewals of contracts between DHS and AFMC?

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- Does Mr. Little have any direct or indirect influence on DHS' utilization of this contract or other DHS contracts with AFMC? In other words, does Mr. Little have influence on the volume of business DHS gives AFMC?
 - Do any of Mr. Little's subordinates directly or indirectly participate in any matter pertaining to this contract or other contracts between DHS and AFMC, including these matters raised above?

I. Relevant Law

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. §19-11-715(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.

II. Analysis

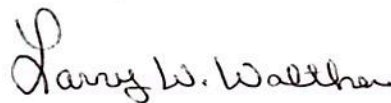
Based on the applicable law, the spousal relationship would result in a conflict of interest if Mr. Little had any direct or indirect participation in the procurement of the AFMC contract. However, based on the facts provided and assumed for purposes of this opinion, there is not a conflict of interest in point of fact based on your not having any participation in the procurement of the contract. You have represented that you did not participate directly or indirectly in any matter pertaining to contract 4600033676, and more broadly, that neither you nor any subordinate had direct or indirect participation or influence in any of the AFMC contracts with DHS, including vendor appraisal reports, contract renewals, or contract utilization. Additionally, you have stated you do not anticipate having any such involvement with the contracts in the future.

Accordingly, assuming your statements to be accurate, I am persuaded that no conflict of interest exists under Ark. Code Ann. §19-11-701 et seq. As stated above, "participation" is examined on a case-by-case basis. It is imaginable that in smaller agencies or departments, it would be virtually impossible for anyone with Mr. Little's senior status to avoid indirect participation in circumstances similar to the present matter. However, DHS is a large and sprawling department. Seniority in one office does not inherently carry sufficient weight in another office to influence procurements or contract management.

That being said, it is incumbent upon you, and DHS by extension, to ensure that you maintain this separation from the various contracts AFMC has with DHS and not have direct or indirect participation in them, as such is defined in the law. Indeed, seniority carries seemingly disproportional influence, so even a casual or careless hint of influence upon the AFMC contracts or related procurement processes could be deemed "indirect participation." This should be carefully avoided.

This advisory opinion and written approval is issued in accordance with Ark. Code Ann. § 19-11-715(b), and obviates the need for the waiver requested under Ark. Code Ann. §19-11-715 (c) due to the lack of any apparent conflict of interest. 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.

Sincerely,


Larry W. Walther *hyc#*
Director

cc: Edward Armstrong, Office of State Procurement