



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

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June 11, 2019

Hannah Ray  
Government Affairs Executive  
Arkansas Foundation for Medical Care  
1020 West 4<sup>th</sup> Street, Suite 300  
Little Rock, AR 72201

RE: Advisory Opinion No. 2019-10

Dear Ms. Hannah Ray:

This letter is in response to a written request for an advisory opinion pursuant to Ark. Code Ann. §19-11-715 (b), or alternatively, a waiver pursuant to Ark. Code Ann. §19-11-715 (c), which was sent to my office in a letter dated June 7, 2019 (“the Request Letter”), regarding the circumstances described below involving your current employment with the Arkansas Foundation for Medical Care (“AFMC”), a contractor with the state of Arkansas with certain proposed contracts pending, and your former employment as a Legislative and Agency Liaison in Governor Asa Hutchinson’s office.

This opinion is based upon the following facts that have been presented to me in the attached documents, which I am relying upon. It should be noted that if one or more of these facts are later shown to be incorrect, that could result in a revised opinion.

1. Hannah Ray is the Government Affairs Executive for AFMC, the hiring being announced by AFMC January 4, 2019<sup>1</sup>;
2. According to AFMC’s website, in her position as Government Affairs Executive for AFMC, “Ms. Ray is responsible for government and stakeholder relations at the state and federal level. During legislative sessions she oversees the organization’s public policy efforts, monitors bills and conducts policy analyses.”<sup>2</sup>
3. Prior to her position with AFMC, Ms. Ray was employed in Governor Hutchinson’s office as a Legislative and Agency Liaison, such employment having ended October 2018, where she had a portfolio consisting primarily of public health, workers’ compensation and the opioid epidemic<sup>3</sup>.
4. According to the Request Letter, Ms. Ray’s “job duties consisted of maintaining communication between the Governor and my portfolio agencies which included the Arkansas Department of Health, Office of the State Drug Director, and other agencies with whom my current employer does no business. I had only incidental communication in a liaison capacity with the Department of Human Services. None of

<sup>1</sup> “AFMC Announces New Management Hires and Promotions.” AFMC Webteam, 4 Jan. 2019  
<https://afmc.org/newsroom/afmc-announces-new-management-hires-and-promotions/> Accessed 10 June 2019

<sup>2</sup> “AFMC About Us – Leadership” <https://afmc.org/about-us/leadership/> Accessed June 10, 2019

<sup>3</sup> Idib.

- those interactions included work with which AFMC was or is involved.” Your prior role is further described on the AFMC website as being “responsible for the coordination of short-term and long-term public policy agendas, as well as outreach with legislators, advocacy groups and other key stakeholders.”<sup>4</sup>
5. You further stated in the Request Letter that during your public employment, you did not participate directly or indirectly in any matter or arrangement listed or defined in ACA §19-11-705, nor did your duties include any matter listed or defined in ACA §19-11-709 (b)(A)-(D);
  6. AFMC has the following contract renewals with the state of Arkansas pending at this time: contract number 4600033676 and contract number 4600040375 with the Arkansas Department of Human Services; contract number 4600039555 with the Arkansas Department of Health; and RA17145248 with the University of Arkansas – Little Rock (“the Contracts”);
  7. As the Contracts are being renewed, the Request Letter was sent to me, which you concluded with a request for an advisory opinion pursuant to Ark. Code Ann. §19-11-715 (b), or alternatively, a waiver pursuant to Ark. Code Ann. §19-11-715 (c) of any perceived violation of the restrictions under Ark. Code Ann. §19-11-705.

## I. Relevant Law

Regarding former state employees in matters connected with their former duties, Ark. Code Ann. §19-11-709 (b)(1) permanently disqualifies former employees of state agencies from knowingly acting as a principal or as an agent for anyone other than the state in connection with any contract in which the former employee participated personally and substantially through decision, approval, disapproval, recommendation, rendering of advice, investigation, or otherwise while an employee, where the state is a party or has a direct and substantial interest. *See* Ark. Code Ann. §19-11-709 (b)(1).

Another ethical restriction on the involvement of former state employees regarding matters for which a former employee was officially responsible resides at Ark. Code Ann. §19-11-709 (b)(2), which provides that it is a breach of ethical standards for any former state employee knowingly to act as a principal or as an agent for anyone other than the state in matters which were within the former employee’s official responsibility, where the state is a party or has a direct or substantial interest. *See id.* The latter restriction only applies for one year after cessation of the former employee’s official responsibility in connection with any contract at issue. *Id.*

For purposes of interpreting Ark. Code Ann. §19-11-701 *et seq.*, 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. “Official responsibility,” is defined in Ark. Code Ann. §19-11-701 (12) as direct administrative or operating authority, whether immediate or final, either exercisable alone or with others, either personally or through subordinates, to approve, disapprove, or otherwise direct state action. Finally, “state agency” in Ark. Code Ann. §19-11-701 (16) means any office, department, commission, council,

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<sup>4</sup> *Ibid.*



board, bureau, committee, institution, legislative body, agency, government corporation, or other establishment or official of the executive, judicial, or legislative branch of this state.

The public policy undergirding Ark. Code Ann. §19-11-701 *et seq* is to “promote and balance the objective of protecting government integrity and the objective of facilitating the recruitment and retention of personnel needed by the state.” Ark. Code Ann. § 19-11-703 (a). “The policy is implemented by prescribing essential restrictions against conflict of interest without creating unnecessary obstacles to entering public service.” *Id.* The intent is to require state employees to “discharge their duties impartially so as to assure fair competitive access to governmental procurement by responsible contractors,” and to “conduct themselves in such a manner as to foster public confidence in the integrity of the state procurement organization.” Ark. Code Ann. § 19-11-703 (b). These statutes are a codification of, and can be understood against, the common law, which forbade public officials from engaging in self-dealing in regard to contracts. *See Price v. Edmonds*, 232 Ark. 381, 337 S.W.2d 658 (1960).

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

## **II. Analysis**

As a threshold matter, I reiterate that I am relying upon the facts that you have presented to me. As stated above, Ark. Code Ann. §19-11-715(b) gives me authority, as the Director of Department of Finance and Administration, 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. It does not, however, confer upon me the authority to subpoena documents, compel sworn statements, or utilize other investigative tools entrusted to judicial officers and law enforcement. Consequently, the employee or former employee, contractor and contracting agency are in superior positions to ascertain the relevant facts, and beyond doing basic due diligence in researching publicly available information. Accordingly, I rely upon the facts given to me in analyzing and formulating my opinions. This opinion is limited to the facts presented, and is withdrawn in the event that any of the material information presented to me proves to be false.

Based on the above recitation of facts as applied to the above cited law, your former employment with the Governor’s office certainly classifies you as a former state employee. Given that you ended your employment with the Governor’s office in October 2018, the one year statutory “cooling off” period has not yet expired.

The salient questions before me then are: (1) whether you participated personally and substantially in connection to any AFMC contract, in which case a permanent prohibition for you applies; and (2) whether the AFMC contract requires you to act as a principal or an agent in matters which were within your former official responsibility as a state employee, in which case you would be barred for one year.



In trying to illuminate the intent of the statute regarding former state employees, Ark. Code Ann. §19-11-709 (e)(1) clarifies that Ark. Code Ann. §19-11-709 is not intended to preclude a former employee from accepting employment with private industry solely because his or her employer is a contractor with this state. Additionally, Ark. Code Ann. §19-11-703 (a) reflects a legislative desire to avoid creating unreasonable obstacles for those in public service. Taken together, it becomes clear that the restrictions should not be construed in an overly broad and unthinking fashion that reaches beyond true conflicts of interest, but should be balanced against the legislative intent to avoid unnecessary restrictions and construed pragmatically and with common sense so as to prevent actual conflicts of interest and self-dealing.

A touchstone consideration for determining whether a former state employee has violated the one year prohibition is whether the former employee had authority to direct state action in such a way as to personally benefit from it upon entering the private sector employment. Merely having been employed by the state, without that state employment being potentially used for direct self-benefit, is not enough. This is a fact specific question that should be reviewed on a case by case basis.

Speaking to your former responsibilities, you stated in the Request Letter that contact with your portfolio agencies, some of which have contracts with AFMC, was limited to maintaining communications between the Governor and those agencies, and that you did not personally or substantially participate in agency contracts, nor did they fall under your official responsibilities. Looking at your former responsibilities, according to your AFMC biography, your former employment with the Governor's office is described as being responsible for the coordination of short-term and long-term public policy agendas, as well as outreach with legislators, advocacy groups and other key stakeholders. Coordinating policy is not necessarily the same as participating personally and substantially in a contract, rendering the permanent prohibition found in Ark. Code Ann. §19-11-709 (b)(2) inapplicable to you.

In considering Ark. Code Ann. §19-11-709 (b)(3) along with the statutory definition of "official responsibility," the former employee needs to have had direct or operating authority to approve or disapprove or otherwise direct state action. In other words, you would have needed the authority to direct the various agencies contracting with AFMC to enter into those contracts, even if you didn't have direct participation in those contracts, to trigger the statutory one year "cooling off" period. I find no evidence indicating you personally possessed such authority, assuming your role was indeed limited to coordinating policy rather than setting policy. To be sure, the Governor possesses the authority to approve or disapprove agency contracts, but your personal and specific role as a staff member at the Governor's office does not appear to have included exercising this authority on behalf of the Governor's office.

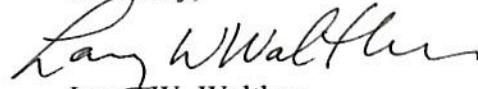
Public employment is a position of trust. Therefore, it is paramount that you strive to observe the ethical standards prescribed by law for former state employees. In the event a contract or other matter arises which does fall within the scope of your former "official responsibility" as a state employee, you should conduct yourself accordingly. Subject to this condition and under the facts you have presented, I opine that your employment by AFMC does not violate the ethical standards of Ark. Code Ann. §19-11-701 *et seq.* This advisory opinion is issued in accordance with Ark. Code Ann. § 19-11-715 (b). 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  
Director

cc: Edward Armstrong, Office of State Procurement

Sincerely,

A handwritten signature in black ink that reads "Larry W. Walther". The signature is written in a cursive style with a large initial "L".

Larry W. Walther  
Director

cc: Edward Armstrong, Office of State Procurement