



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

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March 12, 2020

Connie Melton, Center Director
Center for Health Advancement, Arkansas Department of Health
4815 West Markham
Little Rock, AR 72205

RE: Advisory Opinion No. 2020-01

Dear Ms. Melton:

This letter is in response to a written request for a waiver pursuant to Arkansas Code Annotated §19-11-715(c), which was sent to my office in a letter dated March 2, 2020, regarding the circumstances described below involving your state employment with the Arkansas Department of Health (ADH) and your personal rental property, which is being used to house a quarantined couple due to Coronavirus precautions. This opinion is based upon the following facts that have been presented to me and that I am relying upon. It should be noted that if one or more of these facts are later shown to be incorrect, then that could result in a revised opinion.

1. Connie Melton is the Center Director for the ADH Center for Health Advancement, and has been employed with ADH since September 24, 2006;
2. Ms. Melton owns rental property in Garland County, Arkansas;
3. Due to precautions being taken regarding the Coronavirus, Ms. Melton allowed a couple that had traveled from China to begin a voluntary quarantine on the Property;
4. In order to be compensated for this housing arrangement, Ms. Melton seeks a waiver under Arkansas Code Annotated §19-11-715(c).

I. Relevant Law

For purposes of interpreting Arkansas Code Annotated §19-11-701 *et seq.*, Arkansas Code Annotated §19-11-701 (8) defines “employee,” as “an individual drawing a salary from a state agency, whether elected or not, and any non-salaried individual performing personal services for any state agency.” “State agency” is defined in Arkansas Code Annotated §19-11-701 (16) as meaning “any office, department, commission, council, board, bureau, committee, institution, legislative body, agency, government corporation, or other establishment or official of the executive, judicial, or legislative branch of this state.”

Arkansas Code Annotated §19-11-701 (2) defines “business” to mean “any corporation, partnership, individual, sole proprietorship, joint-stock company, joint venture, or any other legal entity.” The term “financial interest” is defined in statute as meaning:

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- (A) Ownership of any interest or involvement in any relationship from which, or as a result of which, a person within the past year has received, or is presently or in the future entitled to receive, more than one thousand dollars (\$1,000) per year, or its equivalent;
 - (B) Ownership of more than a five percent (5%) interest in any business; or
 - (C) Holding a position in a business such as an officer, director, trustee, partner, employee, or the like, or holding any position of management;

Arkansas Code Annotated §19-11-701 (9)(C). The ethical strictures set forth in Arkansas Code Annotated §19-11-705(a)(1)(A) prohibit state employees from participating directly or indirectly in any particular matter pertaining to any state agency contracts in which an employee or an employee's immediate family member has a financial interest. *See* Arkansas Code Annotated §19-11-705. Arkansas Code Annotated §19-11-705(a)(2) defines "direct or indirect participation" as including, but not being 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.

II. Analysis

Based on the above facts, your employment with ADH clearly classifies you as a state employee, and your ownership of the Property, which is being utilized by the State, certainly classifies you as having a financial interest in a state agency contract. Additionally, while the Request Letter did not disclose how the Property came to be chosen as the quarantine site, your senior status at ADH makes it difficult to see how you did not have direct or indirect participation in the decision.


The threat to the public of a possible pandemic, however, is paramount, leading me to conclude that the interests of Arkansas require this transaction to proceed. Everyone at ADH and across Arkansas are being required to take quick decisive actions to manage this threat, and the quarantining of these individuals at the Property appears to be one of those actions.

With that being said, public service is a position of trust. Even in times of high stress, and perhaps even more so in times of high stress, the public must maintain its trust of public servants. The compensation for the Property paid by the State must remain at reasonable market value, and you should not participate directly or indirectly in the state issuing payment. Additionally, this waiver is applicable only to this quarantine. Over the long term, ADH should utilize properties that are not similarly conflicted.

Thank you for seeking my counsel and approaching the issue with transparency. I am persuaded that under the facts as stated above, the interests of the State require this transaction to proceed, and I grant permission to proceed to such extent and upon such terms and conditions as specified in this letter. This waiver is issued in accordance with Arkansas Code Annotated § 19-11-715(c). Compliance with the above course of conduct is deemed to constitute compliance with the ethical standards of Arkansas Code Annotated §19-11-701 *et seq.*

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Sincerely,


Larry W. Walther
Secretary

cc: Edward Armstrong, Office of State Procurement
Amy Fecher, Secretary