



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

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March 31, 2020

Dr. Howard Flippin  
404 Vine St.  
Searcy, AR 72143

RE: Advisory Opinion No. 2020-02

Dear Dr. Flippin:

This letter is in response to a written request for a waiver dated January 28, 2020, regarding your service on the Arkansas State Board of Optometry (the Board) and your daughter's sole ownership of PRW Properties, LLC (PRW), who has made an offer to purchase the building leased by the Board. This opinion is based upon the following facts that have been presented to me and on which I am relying.

1. Dr. Flippin is the executive director of the Board;
2. Dr. Flippin plans to retire in the fall of 2020;
3. The Board leases a property at 404 Vine Street in Searcy, Arkansas with a lease expiring on September 30, 2020;
4. The Board wishes to renew the lease;
5. Ms. Patricia Flippin-Westfall is the sole owner of PRW;
6. PRW has made an offer to purchase the property, which would make PRW the landlord of the Board; and
7. Ms. Flippin-Westfall is the daughter of Dr. Flippin.

If one or more of these facts are later shown to be incorrect, then it could result in a revised opinion.

**I. Relevant Law**

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 nonsalaried individual performing personal services for any state agency." "Immediate family" means "a spouse, children, parents, brothers and sisters, and grandparents." Ark. Code Ann. § 19-11-701(11). "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 Ark. Code Ann. §19-11-701 (9) (C) as meaning:

- (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.

Ark. Code Ann. § 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* Ark. Code Ann. §19-11-705. Arkansas Code Annotated § 19-11-705(a)(2) defines “direct or indirect participation” as including, but not 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 membership on the Board certainly classifies you as a state employee, and though you do not possess an ownership interest in PRW, your daughter being the sole owner of PRW certainly classifies your immediate family as having a financial interest in a state agency contract.

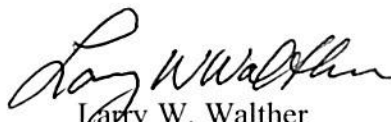
The lease, however, has been in place for several years prior to PRW potentially obtaining ownership of the property. Therefore, at the time the lease was entered into, this potential conflict did not exist. Accordingly, you could not have used your state employee position to taint the procurement process or otherwise have direct or indirect participation in any particular matter pertaining to a contract in which your daughter had a financial interest. While the analysis does not raise an issue of potential conflict, any decision to renew the lease at the property must be requested by the Secretary of the Department of Health to the Department of Transformation and Shared Services, Division of Building Authority for Approval.

Public service is a position of trust. It is, therefore, paramount that state employees strive to avoid even the appearance of a conflict of interest. In the future, abstain or recuse yourself from personal involvement, direct or indirect, with any present or future contracts between the Board and PRW, and any other contract in which you or an immediate family member may have an interest.

### III. Decision

Thank you for seeking my counsel and approaching the issue with transparency. I am persuaded that under the facts as stated above, any ethical conflict that might exist is insubstantial or remote. This decision grants a waiver in accordance with Arkansas Code Annotated § 19-11-715(c) if the Board seeks a lease renewal or extension and if PRW purchases the property. This letter does not grant permission to proceed with the lease; as stated above, a decision to proceed with the renewal of the lease at the property in Searcy lies with the Secretary of the Department of Health. 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  
Secretary

cc:Edward Armstrong, Office of State Procurement