



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

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April 1, 2020

Deborah Oxley
1100 North Street
Little Rock, AR 72201

RE: Advisory Opinion No. 2020-03

Dear Ms. Oxley:

This letter is in response to a written request for an advisory opinion pursuant to Arkansas Code Annotated §19-11-715(b), or alternatively, a waiver pursuant to Arkansas Code Annotated §19-11-715 (c), which was sent to my office in a letter dated February 21, 2020 (“the Request Letter”), regarding the circumstances described below involving your employment with the Division of Arkansas Heritage (DAH) of the Arkansas Department of Parks, Heritage, and Tourism and the contract between the State and Oxley Art Graphic Design (“Oxley Art”), a business in which your spouse is the sole proprietor. This opinion is based upon the following facts that have been presented to me and upon which I am relying. 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. Ms. Oxley is the Business Operations Specialist for the Arkansas Arts Council, the Arkansas Historic Preservation, and the Old State House, three state agencies under DAH;
2. Ms. Oxley has been employed by DAH since September 2003;
3. Oxley Art has been doing business with the State since the 1980s, with the contract at issue in this opinion being pursuant to a request for qualifications solicitation issued in 2016 (Bid No. SP-16-0157);
4. Dennis Oxley is the sole proprietor of Oxley Art;
5. Ms. Oxley and Mr. Oxley married in December 2004; and
6. In support of Ms. Oxley’s Request Letter, DAH sent a letter to the Office of State Procurement February 19, 2020 (the “DAH Letter”).

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 nonsalaried individual performing personal services for any state agency.” “Immediate family” means “a spouse, children, parents, brothers and sisters, and grandparents.” Arkansas Code Annotated §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 Arkansas Code Annotated §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.

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 DAH certainly classifies you as a state employee, and your husband being the sole proprietor of Oxley Art certainly classifies your immediate family as having a financial interest in a state agency contract.

However, the relationship between the State and Oxley Art predates your employment with DAH and your marriage to Mr. Oxley, though the immediate solicitation was issued in 2016. Nonetheless, this lends credence to the notion that you did not use 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 husband has a financial interest.


Further to this point, in the DAH Letter, DAH has detailed your job scope and the invoicing and payment process involving Oxley Art, demonstrating why they won’t overlap in the future, before making an affirmative statement that Ms. Oxley will not process or handle invoicing or documents pertaining to Oxley Art, with those documents instead being sent to Ms. Oxley’s supervisor.

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 under Arkansas Code Annotated §19-11-701 *et seq.* In the future, if invoicing or other matters pertaining to Oxley Art come to you, then you should follow the process articulated in the DAH Letter of informing your supervisor and then

recusing yourself from the matter. Additionally, in subsequent solicitations in which Oxley Art is or is likely to be a bidder or respondent, you should have no direct or indirect participation. In short, abstain or recuse yourself from personal involvement, direct or indirect, with any present or future contracts between the State and Oxley Art, and any other contract in which you or an immediate family member may have an interest.

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 the transaction to proceed, to such extent and upon such terms and conditions as specified in this letter. This advisory opinion and waiver are issued in accordance with Arkansas Code Annotated § 19-11-715(b) and (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.*

Sincerely,


Larry W. Walther
Secretary

cc: Edward Armstrong, Department of Transformation and Shared Services, Office of State Procurement
Amy Fecher, Secretary, Department of Transformation and Shared Services