



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

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July 30, 2020

Dr. Lindy Bollen, Jr.
Director
Office of Oral Health
Arkansas Department of Health
4815 West Markham Street
Little Rock, Arkansas 72205

RE: Advisory Opinion No. 2020-09

Dear Dr. Bollen:

This letter is in response to a written request for a waiver pursuant to Ark. Code Ann. §19-11-715 (c), which was sent to me in a letter dated July 14, 2020 and that I received on July 28, 2020, regarding the circumstances described below involving CDC-DP18-1810 funding for State Actions to Improve Oral Health Outcomes in Arkansas and the receipt of funding by your son-in-law, Dr. Keith Jones, who is the dentist/owner of Small Bites Pediatric Dentistry. Your initial request was supplemented by additional correspondence dated July 30, 2020.

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. You are the Director of the Office of Oral Health (OOH) at the Arkansas Department of Health (ADH) and have been employed in that role since May 2014;
2. In 2018, the OOH received CDC-DP18-1810 funding for State Actions to Improve Oral Health Outcomes in Arkansas;
3. In the spring of 2019, OOH released a Notice of Funds Availability (NOFA) through the ADH website seeking potential vendors to support efforts of expanding school-based sealant programs;
4. As the Director of OOH, you selected two other professionals to serve with you on a review committee to select the appropriate vendors to carry out this mission;
5. The two members that you selected were Dr. Mark Zoeller, DDS, who serves on the faculty at the UAMS Department of Dental Hygiene, and Ms. Rupa Sharma, who is an epidemiologist with the Department of Health;
6. In consultation with the ADH Procurement Office, you developed a rubric by which the committee members would rate the applicants to help determine the best candidates;

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7. At the conclusion of the open application period, from February 22 to March 5, 2019, two applicants had submitted responses to the NOFA: Small Bites Pediatric Dentistry and Smile Salvation;
8. In an attempt to facilitate more responses, the OOH posted the NOFA a second time from April 29 to May 14, 2019, which resulted in one additional responsive submission from Arkansas Children's Hospital;
9. The committee reviewed all three applications and awarded each a sub-grant award as follows:
 - a. Arkansas Children's Hospital \$48,640.00
 - b. Smile Salvation \$45,361.20
 - c. Small Bites Pediatric Dentistry \$26,044.82;
10. Each vendor's sub-grant contract may be extended for additional one-year periods contingent upon approval by the ADH, the Program, any required legislative reviews, and upon the appropriation of necessary funding;
11. The vendor's sub-grant contracts have been extended for a second year in the following amounts:
 - a. Arkansas Children's Hospital \$17,915.00
 - b. Smile Salvation \$17,415.00
 - c. Small Bites Pediatric Dentistry \$17,415.00;
12. At no time during the process of developing the NOFA did you or any member of your staff contact Dr. Jones to solicit interest in this program;
13. You assert that you have always kept your work relations separate from your personal relations to the point that you have never asked Dr. Jones any questions related to his business affairs;
14. When you discuss work issues with Dr. Jones, it is always from a clinical standpoint and never about the business end of the practice management;
15. You have never been involved in the day-to-day affairs of Small Bites Pediatric Dentistry nor do you share any ownership therein; and
16. Current public and private dental insurance reimbursement policies in Arkansas do not allow school sealant providers to earn any sort of revenue for this preventive treatment, and none of OOH's vendors are profiting from providing these services in the school setting.

I. Relevant Law

The ethical strictures set forth in Ark. Code Ann. § 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. Arkansas Code Ann. § 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."

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 non-salaried individual performing personal services for any state agency." "State agency" is defined in Ark. Code Ann. § 19-11-701 (16) as meaning "any office, department, commission, council, board, bureau, committee, institution, legislative body, agency,

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government corporation, or other establishment or official of the executive, judicial, or legislative branch of this state.”

Arkansas Code Ann. § 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; ...

II. Analysis

Based on the above facts, your current employment at the Arkansas Department of Health as the Director of the Office of Oral Health classifies you as a state employee, and your son-in-law’s ownership of a business that has been awarded sub-grant funding through a program overseen by your office and on which you participated as a review committee member clearly establishes your direct participation in a particular matter pertaining to a state agency contract in which your immediate family member has a financial interest.

However, I am persuaded by the OOH’s utilization of its website and the NOFA as the mode of communicating the availability of grant funding to the public and its posting the NOFA twice in order to obtain responsive submissions that the process by which potential vendors were notified of the grant opportunity was fair and impartial.

It is important to note that each of the three responsive vendors received funding through the grant process, and Small Bites Pediatric Dentistry received a significantly lower amount in the first year than did the other two vendors. The amounts awarded in the second year were the same for each vendor, except for a \$500.00 increase for Arkansas Children’s Hospital. It does not appear that your participation on the review committee inured to the benefit of Small Bites Pediatric Dentistry to the detriment of the other two vendors.

In addition, I am also persuaded by the information contained in your correspondence of your candor and integrity; specifically, that you have kept your professional and personal relations separate, that you did not discuss or solicit your son-in-law’s participation in the grant submission process, that you have never inquired about Dr. Jones’s business affairs, that you have never been involved in the day-to-day affairs of Small Bites Pediatric Dentistry, and that you do not have an ownership interest in Dr. Jones’s dentistry business. As a result, I find that these circumstances support a waiver of the ethical prohibition contained in the statute.

With that being said, public service is a position of trust, and the public must maintain its trust of public servants. It is, therefore, paramount that state employees strive to avoid even the appearance of a conflict of interest. As a result, in the event that Small Bites Pediatric Dentistry


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is considered for an additional annual extension of this sub-grant, in order to avoid even the appearance of impropriety, you shall recuse yourself from the review committee and the review process as it pertains to your son-in-law's funding renewal for this sub-grant. This guidance is also applicable to any other funding opportunities through OOH for which your son-in-law's business(es) might apply while you are employed as its Director.

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, and I grant permission to proceed to such extent and upon such terms and conditions as specified in this letter. This decision grants a waiver in accordance with Ark. Code Ann. § 19-11-715 (c). If a renewal of this sub-grant is pursued by Small Bites Pediatric Dentistry while you are Director of the OOH, then you shall recuse yourself from the review committee and the review process; this restriction also applies to you for any other funding opportunity that Small Bites Pediatric Dentistry might pursue through OOH while you are employed as its director. Compliance with the above course of conduct is deemed to constitute compliance with the ethical standards of Ark. Code Ann. §19-11-701, *et seq.*

Sincerely,



Larry W. Walther
Secretary

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