



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

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July 10, 2020

Mr. Ryan Howard  
Post Office Box 975  
Melbourne, Arkansas 72556

RE: Advisory Opinion No. 2020-08

Dear Mr. Howard:

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 6, 2020, involving your state employment with the Ozarka College Board of Trustees and a current billboard rental from your company, Ryan Howard Billboards, to Ozarka College. 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. Ryan Howard is a member of the Ozarka College Board of Trustees;
2. Mr. Howard is the owner of Ryan Howard Billboards;
3. Ozarka College has a current contract with Ryan Howard Billboards for the rental of a billboard located in Melbourne, Arkansas;
4. Ozarka College entered into this contract with Tom Smith, the previous owner of the billboard, who died after the commencement of the contract;
5. Mr. Howard purchased the billboard upon Mr. Smith's death;
6. Ozarka College has continued the rental agreement with Ryan Howard Billboards without a change in price or terms of the original agreement that it had with Mr. Smith;
7. Mr. Howard does not have any involvement through decision, approval, disapproval, recommendation, or preparation of any part of a procurement request for this type of service;
8. Dr. Richard L. Dawe, President of Ozarka College, confirms these facts as enumerated by Mr. Howard, and supports the ability of Ozarka College to use Ryan Howard Billboards as a vendor on the basis that Ozarka College entered into and paid for the advertisement on the billboard prior to Mr. Howard taking ownership;
9. Mr. Howard asserts that he will recuse himself from any discussion about the continuation of the billboard rental agreement should it ever be discussed at a meeting of the members of the Board of Trustees; and
10. In order to be compensated for the billboard rental, Mr. Howard seeks a waiver of Arkansas Code Annotated §19-11-715(c).

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## **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 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 membership on the Ozarka College Board of Trustees clearly classifies you as a state employee, and your ownership of Ryan Howard Billboards, which is being utilized by the State, certainly classifies you as having a financial interest in a state Department contract.

However, as Ozarka College and Tom Smith, the previous owner of the billboard, had coordinated the price and terms of the billboard rental prior to Mr. Smith's death and the subsequent ownership of the billboard by Mr. Howard, there is no apparent involvement in the rental negotiation by Mr. Howard. Therefore, at the time that the billboard rental was entered into, this conflict did not exist. Accordingly, you could not have used your state employee position to taint the initial procurement

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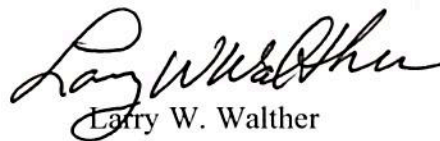
process. While the analysis does not raise an issue of potential conflict, any decision to renew the billboard rental while Ryan Howard Billboards owns the billboard and Mr. Howard is a member of the Ozarka College Board of Trustees must be submitted to me for further review at that time.

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. In the future, abstain or recuse yourself from personal involvement, direct or indirect, with any present or future contracts between Ozarka College and Ryan Howard Billboards and any other contract in which you may have an interest. In this case, the compensation for the billboard rental paid by the State must remain at reasonable market value, and you should not participate directly or indirectly in the state issuing payment.

### **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 Arkansas Code Annotated § 19-11-715(c). If a renewal of the billboard rental is pursued by Ryan Howard Billboards while Mr. Howard is subject to the state's ethical provisions, then a waiver must be submitted in accordance with the ethical provisions. Compliance with the above course of conduct is deemed to constitute compliance with the ethical standards of the Arkansas Code Annotated §19-11-701 *et seq.*

Sincerely,



Larry W. Walther  
Secretary

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