



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

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September 25, 2020

Dr. Wesley K. Cox
Section Chief
UAMS Health Orthopaedics & Sports Medicine
201 West Van Asche Loop
Fayetteville, Arkansas 72703

Re: Advisory Opinion No. 2020-11

Dear Dr. Cox:

This letter is in response to a written request for an advisory opinion pursuant to Arkansas Code Annotated § 19-11-715(c), which was sent to my office in a letter dated February 24, 2020 and received on March 16, 2020, regarding the circumstances described below involving your state employment with the University of Arkansas for Medical Science and a proposed lease agreement for property that you own via WKC Real Estate, LLC located at 201 West Van Asche Loop, Fayetteville, Arkansas.

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, then that could result in a revised opinion.

1. You are employed as an Assistant Professor in the Department of Orthopaedic Surgery at the University of Arkansas for Medical Sciences (UAMS);
2. Your employment at UAMS began on January 1, 2020;
3. In December 2019, prior to your employment at UAMS, WKC Real Estate, LLC (WKC Real Estate) and NWA Orthopedic Consultants, PA (NWA Orthopedic Consultants) executed Facility Use Agreements with UAMS for clinic space in Northwest Arkansas to establish UAMS Orthopedic Clinics to provide (1) orthopedic care and services, and (2) physical therapy services to orthopedic patients in that region. UAMS intends to replace these agreements with Arkansas Building Authority leases before July 2020;
4. Also in December 2019, NWA Orthopedic Consultants executed an Operating Agreement with UAMS to assume the management, operation and expenses of NWA Orthopedic Consultants's clinic in Northwest Arkansas;
5. You are the President of both WKC Real Estate, LLC and NWA Orthopedic Consultants. You are also part owner of Xtreme Orthopedics, a company that is listed as a vendor for UAMS;

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6. You also own a 0.92% share of Physicians Specialty Hospital (PSH), a Fayetteville hospital where you perform surgery. You disclose this interest in PSH to patients that you treat at that hospital. You have not received within the past year, nor do you expect to receive, either presently or in the future, more than \$1,000 or its equivalent from this share of PSH. You are in the process of divesting this interest;
7. In your role at UAMS, you practice medicine as a surgery faculty member at the new UAMS NWA Orthopedic Clinic (i.e., the clinic formerly operated by NWA Orthopedic Consultants). Your prime responsibility includes patient care (clinic visits and surgical procedures);
8. In this role, you do not participate directly or indirectly in any procurement decisions on behalf of the Department of Orthopaedics or UAMS;
9. To the extent that you may participate in the future in any procurement decisions, you will recuse yourself from any participation involving services or items provided by your companies, specifically the purchase or lease of clinic space, and Dr. C. Lowry Barnes, Professor and Chair of the Department of Orthopaedic Surgery, will make all decisions relative to the aforementioned matters.;
10. Dr. Barnes has no financial interest in WKC Real Estate or NWA Orthopedic Consultants;
11. To the extent that you may prescribe a product in which Xtreme Orthopedics has a financial interest, you will disclose your financial interest in that company and product to the patient as part of the informed consent process, in accordance with the management plan required by the UAMS Conflict of Interest Committee; and
12. You have disclosed these interests to the appropriate UAMS Conflict of Interest Committee. The Committee required that you continue to disclose your financial interest in PSH to patients that you treat at that hospital. The Committee has found no conflict of interest as to WKC Real Estate and NWA Orthopedic Consultants under the facts as you have stated above, since you have no input on any procurement matters related to those entities in your role at UAMS. The Committee has required a management plan to the extent you may prescribe a product in which Xtreme Orthopedics has a financial interest.

I. Relevant Law

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. 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 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.”

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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 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; ...

II. Analysis

Based on the above facts, your current employment as an Assistant Professor in the Department of Orthopaedic Surgery at UAMS, which began on January 1, 2020, clearly classifies you as a state employee, and your ownership, via WKC Real Estate, of the property located at 201 West Van Asche Loop, Fayetteville, Arkansas, which is subject to a Facility Use Agreement with UAMS, certainly classifies you as having a financial interest in a state agency contract.

At the time that you, via WKC Real Estate and NWA Orthopedic Consultants, entered into Facility Use Agreements with UAMS in December 2019, you were not employed by the state. As a result, no conflict existed at that time. However, upon your employment at UAMS on January 1, 2020, these Facility Use Agreements and the proposed State of Arkansas Lease Agreement serve as the basis for this review.

While I do not opine on the details of the facility use transactions occurring prior to your state employment beginning on January 1, 2020, I do note that the Facility Use Agreements were entered into the month before you began state employment. The timing of these transactions raises concerns.

Additionally, an advisory opinion was not sought until the end of February, approximately two months after you began employment with the state and three months after the transactions that occurred in close proximity to your hiring. Advisory opinions are meant to precede a course of conduct to determine an ethical path forward or to provide a waiver for a conflict of interest under certain conditions. At the very least, opinions and waivers are sought as soon as the conflict is discovered. This conflict would have been known at your hiring. In the future, I would suggest that parties seek opinions and waivers at the appropriate time so that our opinions can help avoid any ethical problems or provide appropriate conditions.

Despite the troubling timing, the transactions for the property occurred prior to your employment with the State. Moreover, Mr. Cox has stated that he does not participate directly or indirectly in any procurement decisions on behalf of his Department or UAMS in his role with the State. He has also stated that he will recuse from any procurement decisions that involve his company. As a result, I find that a conflict does not exist.


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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 UAMS and WKC Real Estate and any other contract in which you 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 a renewal of the agreement with WKC Real Estate is pursued, 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