



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

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August 31, 2020

Ms. Katie L. Mehdizadegan
Associate General Counsel
Delta Dental of Arkansas
Post Office Box 15965
Little Rock, Arkansas 72231

RE: Advisory Opinion No. 2020-10

Dear Ms. Mehdizadegan:

This letter is in response to a written request for an advisory opinion pursuant to Arkansas Code Annotated § 19-11-715(b) or, alternatively, for a waiver pursuant to Arkansas Code Annotated § 19-11-715(c), which was sent to me in a letter dated August 13, 2020, that I received on August 17, 2020, regarding the circumstances described below involving Caleb Castleberry, a Delta Dental of Arkansas (Delta Dental) employee, and Delta Dental's contract with Arkansas State Police (ASP) to provide third-party administration services for dental and vision insurance. The initial correspondence was supplemented on August 20, 2020, with additional information.

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 Associate General Counsel for Delta Dental;
2. You are writing on behalf of Caleb Castleberry, Delta Dental's Manager of Business Intelligence in its Information Technology Department;
3. Mr. Castleberry has been employed at Delta Dental since September 30, 2019;
4. In his position, Mr. Castleberry is responsible for providing advanced technical skills and leadership in the design, control, and use of enterprise data analytics and reporting throughout the company. The business intelligence function is designed to compile, report, and analyze data for use by other business functions and leaders throughout the company to inform business decisions;
5. Mr. Castleberry does not participate, directly, or indirectly, in decisions regarding the ASP contract including, specifically, the procurement process or the administration of the ASP relationship;
6. Mr. Castleberry's role at Delta Dental is not involved in any of the following: sales, client development, pursuit of customer contracts or responding to Requests for Proposals, the

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- procurement process, management of customer accounts, financial matters, or decisions related to customers, rates, or underwriting;
7. Mr. Castleberry is not in a position of influence, control, or authority over account executives, underwriting, or any other decision-making related to customer contracts;
 8. Mr. Castleberry has no ownership interest in the company and none of the fees paid by ASP directly or personally benefit him;
 9. Delta Dental's relationship with ASP predates Mr. Castleberry's employment as reflected in the following:
 - a. Delta Dental's first contract with ASP to provide third-party administration began on March 1, 2004, with annual renewals;
 - b. In 2009, ASP added its vision plan to the third-party administration services, and Delta Dental was awarded the contract by competitive bid, which contract began on January 1, 2010, for the administration of dental and vision insurance;
 - c. ASP issued a new Invitation for Bid for the services in 2012 for the 2013 plan year, which contract was again awarded to Delta Dental and subsequently renewed by six one-year extensions pursuant to standard procurement processes;
 10. ASP issued an Invitation for Bid for the current contract on or about April 5, 2019, to which Delta Dental responded on or about April 25, 2019, and was notified of the awarded contract on or about May 23, 2019;
 11. Delta Dental signed its Technical and General Services Contract on May 31, 2019;
 12. The current contract term and plan year is September 1, 2019, to August 31, 2019; and
 13. Jenna Castleberry is Mr. Castleberry's wife, and she is ASP Assistant Controller with responsibility for administration of ASP's procurement and vendor contracting.

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 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."

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

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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, Ms. Castleberry's current employment at ASP as the Assistant Controller, for which she is responsible for administration of procurement and vendor contracting, classifies her as a state employee. Mr. Castleberry's employment by Delta Dental as Manager of Business Intelligence in its Information Technology Department and the contract between ASP and Delta Dental for third-party administration services for dental and vision insurance clearly establish Ms. Castleberry's direct participation in a particular matter pertaining to a state agency contract in which her immediate family member has a financial interest.

However, I am persuaded, in general, by the long-standing continuity of Delta Dental's provision of third-party administration services to ASP since 2004 and, in particular, by the fact that the current contract was completed prior to Mr. Castleberry's employment at Delta Dental in determining that there was no existing conflict at the time this contract was executed.

In addition, I am also persuaded by the information contained in your correspondence that "Mr. Castleberry does not participate, directly or indirectly, in decisions regarding the ASP contract including, specifically, the procurement process or the administration of the ASP relationship."

As a result, I find that these circumstances support a waiver of the ethical prohibition contained in the statute in regard to the existing contract. However, any new contract between the parties that involves the Castleberrys in their current employment capacities with the same or elevated positions of authority must be presented to me for review and approval prior to commencement of a new contract.

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 Delta Dental is considered for a renewal of its existing contract, in order to avoid even the appearance of impropriety, Ms. Castleberry shall recuse herself from the review committee and the review process. This guidance is also applicable to any other contractual opportunities through which Delta Dental may provide services to ASP while the Castleberrys are employed in their respective or elevated positions.

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 this contract is pursued by either party while Ms.

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Castleberry is ASP Assistant Controller, then she shall recuse herself from the review committee and the review process; this restriction also applies to her for any other funding opportunity that Delta Dental might pursue through ASP while she is employed at that state agency. In addition, any new contract between the parties while the Castleberrys are employed in their respective or elevated capacities shall be submitted to me for review and approval prior to commencement of the new contract. 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, Office of State Procurement
Amy Fecher, Cabinet Secretary