



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

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July 12, 2021

Mr. Robert H. Adcock, Jr.
1107 Oak Street
Conway, Arkansas 72032

Re: Advisory Opinion No. 2021-05

Dear Mr. Adcock:

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 an emailed letter dated June 9, 2021 and received on that date, regarding the renewal of a property lease from First Real Estate Limited Partnership, LLLP (First Real Estate), to the University of Central Arkansas (UCA). The property is owned by First Real Estate and is located at 1105 Oak Street, Conway, 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 a partner in First Real Estate and own fifty percent (50%) of the business;
2. You are currently a member of the UCA Board of Trustees;
3. The original property lease was executed in 2015, at which time you were not serving on the UCA Board of Trustees;
4. In 2018, when the property lease was renewed, you were serving on the UCA Board of Trustees and completed the Contract and Grant Disclosure and Certification Form that was submitted to the Department of Finance and Administration (DF&A) for approval;
5. UCA desires to renew the lease for an additional three-year term;
6. In your role as a member of the UCA Board of Trustees, you do not vote on the renewal of the lease;
7. The Arkansas Department of Transformation and Shared Services Division of Building Authority (DBA) prepared the lease;
8. On June 12, 2021, you supplemented your initial request for an advisory opinion with the following information and documentation:
 - a. Your initial term as a member of the UCA Board of Trustees began on May 17, 2012 and expired on January 14, 2015;
 - b. You were reappointed to the UCA Board of Trustees on January 15, 2016, which term will expire on January 14, 2023;
 - c. You provided a copy of the original lease agreement that reflects: 1) a lease term of December 1, 2015 to November 30, 2018; 2) annual rent in the amount of \$30,000.00; and 3) execution on November 16, 2015, at which time you were not serving on the UCA Board of Trustees. *See Attachment A;*

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- d. You provided a copy of the UCA Conflict of Interest statement dated January 20, 2016, that disclosed the following: “I have leased a commercial building located at 1105 Oak St., Conway, Ark. to U.C.A.” *See* Attachment B;
- e. You provided a copy of the Contract and Grant Disclosure and Certification Form that was approved by DF&A on July 6, 2018, and associated correspondence. *See* Attachment C; and
- f. You provided a copy of the minutes of the UCA Board of Trustees’ meeting held on October 18, 2018, that reflected: 1) the board unanimously adopted a resolution authorizing the administration to enter into a contract renewing its lease with First Real Estate Limited Partnership LLLP, in which you were identified as a partner, 2) the amount of the three year lease is \$95,521.20, 3) the term of the lease is December 1, 2018 to November 30, 2021, and 4) you recused from the vote. *See* Attachment D.

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, 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 roles as both a member of the UCA Board of Trustees and a partner in First Real Estate establish the application of the statutory provisions to you on the basis of being a state employee having a financial interest in a state agency contract. It is important to note, though, that no ethical conflict existed at the time of the initial execution of the lease agreement in 2015 as you were not a state employee at that time; your initial appointment to the UCA Board of Trustees had expired on January 14, 2015, and the property lease was executed on November 16, 2015. However, upon your reappointment to the UCA Board of Trustees on January 15, 2016, the proposed lease renewal will serve as the basis for this review.

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After your reappointment to the UCA Board of Trustees, you disclosed in the UCA Conflict of Interest Statement dated January 20, 2016, that, "I have leased a commercial building located at 1105 Oak St., Conway, Ark. to U.C.A." When the property lease was renewed in 2018, you completed the Contract and Grant Disclosure and Certification Form, which identified your service on the UCA Board of Trustees, and the form was submitted to the Department of Finance and Administration (DF&A) for approval, which was granted on July 6, 2018.

You also state that, in your role as a member of the UCA Board of Trustees, you do not vote on the renewal of the property lease, and the Arkansas Department of Transformation and Shared Services Division of Building Authority prepared the lease. The minutes of the UCA Board of Trustees' meeting held on October 18, 2018, expressly reflects your identification as a partner in First Real Estate and that you recused from the vote authorizing the first renewal of the property lease.


All of these factors are persuasive in my review of the submitted information and documentation and support my decision that, while there is a prohibition identified by statute, any ethical conflict that might exist is insubstantial or remote. Both you and UCA representatives, including contemporaneously serving members of the UCA Board of Trustees and UCA General Counsel Warren Readnour, have demonstrated knowledge of, and compliance with, your respective responsibilities and transparent action in furtherance of these ethical requirements.

III. Decision

Thank you for seeking my counsel and approaching the issue with evident transparency. I rely upon the stated representations with the utmost confidence and am persuaded that, under these stated facts, 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. The UCA Board of Trustees may proceed to consider and decide the second renewal of the First Real Estate property lease, in which case you shall not participate in any proceedings related to its discussion and shall continue to recuse from voting on the matter. This decision grants a waiver in accordance with Arkansas Code Ann. § 19-11-715(c) regarding UCA renewing the property lease with First Real Estate as prepared by DBA.

Compliance with the above course of conduct is deemed to constitute compliance with the ethical standards of the Ark. Code Ann. §19-11-701 *et seq.*

Sincerely,



Larry W. Walther
Secretary

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