



Department of Transformation and Shared Services

Governor Asa Hutchinson

Secretary Amy Fecher

September 8, 2021

Dr. Janet Dickinson
Superintendent
Arkansas School for the Deaf
2400 W. Markham
Little Rock, Arkansas 72205

Re: Advisory Opinion No. 2021-09

Dear Dr. Dickinson:

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 August 9, 2021 and received via e-mail on August 11, 2021, regarding the circumstances described below in regard to Katie Northup and your request that she be permitted to work as an interpreter at the Arkansas School for the Deaf (ASD) campus.

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. Ms. Northup's father, Ernest Northup, is the custodial manager at the ASD campus;
2. Ms. Northup has been involved with the Deaf community for over 40 years and, because of her exposure to American Sign Language as well as Deaf Culture, she is able to proficiently interpret between hearing and Deaf individuals;
3. Ms. Northup possesses an interpreting license with the highest level of qualification for the Arkansas state test as well as many additional certifications;
4. Ms. Northup has been praised for her efforts as a sign language interpreter by many from the Deaf community because of her fluency and exceptional ethics;
5. Ms. Northup is qualified to interpret for multiple assignments at ASD;
6. For the past seven years, Ms. Northup has lived in Texas and worked at the Texas School for the Deaf as a staff interpreter;
7. ASD has between 20 and 50 interpreting assignments each week, and interpreting assignments are scheduled, without bias, through ASD's department of Student and Family Support Services. These assignments are scheduled according to availability and compatibility of the interpreter and the given topic; and
8. Mr. Northup does not participate in the assignment of interpreters.

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

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Dr. Janet Dickinson.
Adv. Op. 2021-09
September 8, 2021

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, Mr. Northup's ASD employment qualifies him as an employee subject to the ethics statutory provisions, and Ms. Northup's provision of interpreter services that would be paid by ASD serves as the basis for the application of the ethics statutory provisions.

In this case, although Mr. Northup's ASD employment as the Custodial Manager precedes Ms. Northup's proposed provision of paid interpreter services to ASD, I am persuaded by your representation that he does not participate in the decision-making process of scheduling interpreter assignments in concluding that Ms. Northup's proposed selection to provide interpreter services is not due to inappropriate influence or conduct. Of additional significance is the process by which interpreters are assigned and its reliance upon interpreter availability, project compatibility, and skill level. Finally, based on these factors, interpreter assignments are scheduled through ASD's department of Student and Family Support Services.

Consequently, as Mr. Northup has no apparent procurement authority or responsibility in selecting or scheduling interpreter services for ASD, I conclude that any conflict is insubstantial and remote.

III. Decision

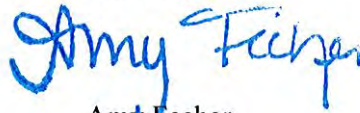
Thank you for seeking my counsel and approaching the issue with evident transparency. I am persuaded that, under the facts as stated above, any ethical conflict that might exist is insubstantial or remote, and I grant permission to proceed to such extent and upon such terms and conditions as specified in this letter. This decision grants a waiver in accordance with Arkansas Code Ann. § 19-11-715(c) regarding Ms.

Dr. Janet Dickinson.
Adv. Op. 2021-09
September 8, 2021

Northup working and providing interpreter services at ASD as long as Mr. Northup continues to have no procurement authority or responsibility at ASD and is not involved with the scheduling or selection of interpreter services.

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,



Amy Fecher

cc: Edward Armstrong, Office of State Procurement