



Department of Transformation and Shared Services

Governor Asa Hutchinson
Secretary Amy Fecher

October 14, 2021

Ms. Brittney Stone
619 Bowers Drive
Benton, Arkansas 72015

Re: Advisory Opinion No. 2021-12

Dear Ms. Stone:

This letter is in response to a written request for an advisory opinion pursuant to Arkansas Code Annotated § 19-11-715(b), which was sent to my office in a letter dated October 4, 2021 and received via e-mail on that date, regarding the circumstances described below relating to an employment position for which you have applied at NTT Data.

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. Since September 8, 2020, you have been employed by Arkansas Department of Human Services (DHS) Division of Medical Services (DMS);
2. Your current DMS role is serving as a Program Manager;
3. Your DMS responsibilities include the following:
 - a. Communicate and collaborate with customers to analyze and transform needs and goals into functional requirements and deliver the appropriate artifacts as needed;
 - b. Create required documents to track and keep detailed data of agency EVV status;
 - c. Provide technical assistance to personnel on EFF in audit methodology and procedures;
 - d. Conduct audits, review system reports or critical findings, and investigate reasons for problems, errors, or lack of quality of services;
 - e. Attend various meetings regarding EFF and serve as a liaison with other state, regional, and national agencies and groups concerning related programs;
 - f. Compile information and recommendations into various program reports and present to Leadership and Payment Integrity for review;
 - g. Review, analyze, trend and forecast complex data;
 - h. Mine and prepare data analysis for review at all levels of leadership;
 - i. Analyze, identify trends, and provide reports as necessary;
 - j. Create, maintain, and track reports in relation to provider performance;
 - k. Responsible for high level audit reporting and analysis;
 - l. Prepare insightful analysis on trends and extract the effects of those trends;
 - m. Analyze, identify trends for fraud, waste, and abuse;
 - n. Prepare reports of providers that are a concern to share with inter-agency divisions during meetings; and
 - o. Assist in the oversight and certification requirements for EVV vendors;
4. You have applied for an employment position as a Senior Business Analyst at NTT Data;

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5. NTT Data is a contractor of DHS and serves as the Business Operations Support (BOS) for DMS;
6. The NTT Data job posting reflects:
 - a. The successful candidate will work as part of a team providing BOS for a state Medicaid program;
 - b. Working under the direction of a team manager or business area lead, you will actively participate in the delivery of tasks, activities, and associated deliverables;
 - c. You will formulate and document objectives and outcomes based on client needs and industry requirements;
 - d. You will function as a liaison between business and technical stakeholders;
 - e. You will ensure state staff and system vendors share a common understanding of business requirements and desired outcomes;
 - f. You will serve as a subject matter expert and consulting resource for the organization;
 - g. You will collaborate internally and with state and customer staff to test new functionality within the MMIS;
 - h. You will communicate business rules and technical changes to external stakeholders; and
 - i. In collaboration with other NTT DATA consultants, you will work directly with state business staff and vendors to support the analysis, planning, design, implementation and evaluation of key system changes, projects, and processes to help the client achieve organizational goals;
7. In addition, your NTT DATA responsibilities will include:
 - a. Create and update business requirements;
 - b. Review and validate requirements deliverables;
 - c. Create and update business processes;
 - d. Lead business process analysis and reengineer processes for multiple business areas;
 - e. Assist with administration of Requirements Management tool;
 - f. Facilitate requirement definition for various program areas;
 - g. Configure, administer, and develop automated workflow tools;
 - h. Identify and resolve risks and issues impacting the progress and outcome of the project;
 - i. Research and provide recommendations on critical business decisions;
 - j. Create and update required deliverables; and
 - k. Validate that all report metrics have been implemented and satisfy the project requirements;
8. You recognize the employment restrictions outlined in Ark. Code Ann. § 19-11-709 and feel that it is entirely appropriate for you to proceed further with seeking employment with NTT DATA;
9. In your current role at DMS, you have never been responsible for the awarding of the NTT Data contract, amendments to the NTT Data contract, or scoring of anything related to the NTT Data contract;
10. Your current job responsibility is only to work with the NTT Data/BOS team to ensure projects and issues are researched and corrected within the system;
11. In your opinion, nothing that you currently do impacts the existing BOS contract with the state; and
12. Your intent in seeking this advisory opinion is to ensure that there is no conflict with you applying for, and potentially becoming employed by, NTT Data.

In addition, Sharon Donovan, DHS DMS Business Operations Manager, who is currently your supervisor, reviewed the submitted information and confirmed that you do not have any responsibilities or authority that impacts the NTT Data contract.

I. Relevant Law

In regard to former state employees and matters connected with their former duties, Ark. Code Ann. § 19-11-709(b)(1) permanently disqualifies former employees from knowingly acting as a principal or as an agent for anyone other than the state in connection with any contract in which the former employee participated personally and substantially through decision, approval, disapproval, recommendation, rendering of advice, investigation, or otherwise while an employee, where the state is a party or has a direct and substantial interest. See Ark. Code Ann. § 19-11-709(b)(1).

Another ethical restriction addresses a one-year representation restriction regarding matters for which a former employee was officially responsible. Ark. Code Ann. § 19-11-709(b)(2) provides that it is a breach of ethical standards for any former state employee, within one year after cessation of the former employee's official responsibility in connection with any contract to knowingly act as a principal or as an agent for anyone other than the state in matters which were within the former employee's official responsibility, where the state is a party or has a direct or substantial interest. *Id.* The latter restriction only applies for one year after cessation of the former employee's official responsibility in connection with any contract at issue. *Id.*

For purposes of interpreting Ark. Code Ann. §19-11-701 *et seq.*, section 19-11-701 (8) defines "employee" as "an individual drawing a salary from a state agency, whether elected or not, and any nonsalaried individual performing personal services for any state agency." "State agency" is defined in section 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."

The public policy underlying section 19-11-701 *et seq.* is to "... promote and balance the objective of protecting government integrity and the objective of facilitating the recruitment and retention of personnel needed by the state." See Ark. Code Ann. § 19-11-703(a). "The policy is implemented by prescribing essential restrictions against conflict of interest without creating unnecessary obstacles to entering public service." *Id.* The intent is to require state employees to "discharge their duties impartially so as to assure fair competitive access to governmental procurement by responsible contractors ...," and to "... conduct themselves in such a manner as to foster public confidence in the integrity of the state procurement organization." See Ark. Code Ann. § 19-11-703 (b). These statutes are a codification of, and can be understood against, the common law which forbade public officials from engaging in self-dealing in regard to contracts. See *Price v. Edmonds*, 232 Ark. 381, 337 S.W.2d 658 (1960). Taken together, then, these provisions make clear that the restrictions should not be construed in an overly broad manner that reaches beyond true conflicts of interest but should be balanced against the legislative intent to avoid unnecessary restrictions and construed pragmatically and with common sense so as to prevent actual conflicts of interest and self-dealing.

Arkansas Code Ann. § 19-11-715(b) gives the Secretary of the Department of Transformation and Shared Services (TSS) authority to, upon written request of an employee or contractor and in consultation with the Attorney General, render an advisory opinion regarding the appropriateness of the course of conduct to be followed in proposed transactions.

II. Analysis

As a threshold matter, I reiterate that I am relying upon the representations that you have presented to me and the confirmation of information submitted by Ms. Donovan. While statutory authority permits me

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to render an advisory opinion upon written request, it does not confer upon me the authority to subpoena documents, compel sworn statements, or utilize other investigative tools entrusted to judicial officers and law enforcement. Consequently, the employee or former employee, contractor and contracting agency are in superior positions to ascertain the relevant facts and, beyond doing basic due diligence in researching publicly available information, I rely upon the information provided to me in analyzing and formulating my opinions. This opinion is limited to the representations submitted to me and is withdrawn in the event that any of the material information presented to me proves to be false.

Based on the submitted information as applied to the above-cited statutory provisions, your current employment with DHS certainly classifies you as a state employee, as a result of which termination from that employment would subject you to the statutory provisions of Ark. Code Ann. § 19-11-709(b)(1) and (b)(2).

I am persuaded at this time by the information that you and Ms. Donovan have provided to me that you are not and have not been involved personally or substantially in the contract process relating to NTT Data. If this fact does not change during your state employment, then the permanent disqualification would not apply to you. See Ark. Code Ann. § 19-11-709(b)(1).

The remaining ethical restriction addresses a one-year representation restriction regarding matters for which a former employee was officially responsible. See Ark. Code Ann. § 19-11-709(b)(2). In reviewing the information that you have provided, as well as your functional DHS job description, it would appear that the proposed NTT Data position does not involve matters for which you are officially responsible in your DHS position. If this assessment remains accurate for the duration of your DHS employment, and any other state employment in which you may engage, then the one-year limitation period would not be applicable under the circumstances that you have presented.

Based on the documentation that you have submitted; I am persuaded at this time that the characterization of your DHS management role and responsibilities precludes the application of sections 19-11-709(b)(1) and (b)(2) to the proposed NTT Data position for which you have applied.

III. Decision

Thank you for seeking my counsel and approaching the issue with transparency. I am persuaded that, under the representations 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. 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