



Department of Transformation and Shared Services

Governor Asa Hutchinson
Secretary Amy Fecher

December 3, 2021

Mr. Tanner McKnight
Vice President for Finance
East Arkansas Community College
1700 Newcastle Road
Forrest City, Arkansas 72335

Re: Advisory Opinion No. 2021-13

Dear Mr. McKnight:

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 November 2, 2021, and supplemented with additional information in an email received on November 15, 2021, regarding the circumstances described below involving the proposed purchase by East Arkansas Community College (College) of a utility golf cart to be used by the College's campus security team.

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 the Vice President for Finance at the College;
2. Due to the College's small size, each department head (as the resident expert in their respective field) is responsible for submitting their own purchasing requisitions to the College's business office;
3. Mark Wilson is the Director of Campus Security at the College;
4. Mr. Wilson used the following process to obtain price quotes for a utility golf cart:
 - a. He entered the specifications of the utility golf cart into the "build your cart" feature of the manufacturer's website;
 - b. Using the "find your nearest dealer" feature at the end of the cart-building process, he contacted four of the closest dealers (geographically to the College located at 1700 Newcastle Road, Forrest City, Arkansas 72335) to request their sales price for the utility golf cart;
 - c. He received four quotes as follows:
 - i. Sehorn Yamaha; Shawnee, Oklahoma; 394 miles away; \$9,366.00;

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- ii. Jim and Mel's Golf Cars; Hot Springs, Arkansas; 154 miles away; \$9,682.00;
 - iii. Ladd's Golf Cars; Memphis, Tennessee; 61 miles away; \$11,045.00; and
 - iv. SS Custom Cars; Jonesboro, Arkansas; 65 miles away; \$8,200.
5. The lowest quote obtained was from SS Custom Carts, which is co-owned by Dr. Heath Sanders, a faculty member of the College;
 6. Dr. Sanders has no involvement or input in any financial management of the College's funds, nor would any preferential treatment be given to Dr. Sanders regarding the purchase of an additional utility golf cart;
 7. Dr. Sanders sole duty for the College consists of classroom instruction for the College's sociology department;
 8. Dr. Sanders has been an employee of the College since August 18, 2008;
 9. In August 2021, Dr. Sanders submitted his employment resignation, effective December 2021 at the end of the fall semester, to work full-time at his growing golf cart business;
 10. All budgetary analyses are conducted personally by you in your capacity as Vice President for Finance/CFO;
 11. No supervisory, professional, or personal relationships exist among Mr. Wilson, Dr. Sanders, or you;
 12. Mr. Wilson reports to the Executive Director of Marketing, who reports directly to the President of the College;
 13. Dr. Sanders reports to the Vice President for Transfer Education, who also reports directly to the President of the College;
 14. Other than being co-workers of the same employer, no connections or relationships exist among any of the individuals involved and identified in this proposed transaction; and
 15. Due to the cost savings ranging from \$1,166.00 to \$2,845.00 that would be realized by purchasing through SS Custom Carts, the College is seeking a waiver to allow the College to purchase the utility golf cart from SS Custom Carts.

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."

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 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, Dr. Sanders’s employment as a College faculty member clearly classifies him as a state employee, and his co-ownership of SS Custom Carts, which has submitted a bid to supply a utility golf cart to the College, certainly classifies him as having a financial interest in the proposed state agency contract.

Relying on the information that you have submitted in support of your request for a waiver of the state’s ethical provisions, I am persuaded that Dr. Sanders had no direct or indirect participation in the solicitation process or specification of requirements for the utility golf cart. I also find it significant that there has been no inappropriate influence exerted upon the decision-makers of the proposed transaction as there is no supervisory, professional, or personal relationships existing among Mr. Wilson, Dr. Sanders, or you. Finally, the fact that SS Custom Carts has submitted the lowest bid for the utility golf cart inures to the benefit of the College’s and state’s financial resources, and its selection comports with those entities’ responsibility as fiscal stewards of public funds.

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) regarding the College’s selection of SS Custom Carts as the vendor for its proposed purchase of a utility golf cart to be used by the College’s campus security team.

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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,



Amy Fecher
Secretary

cc: Edward Armstrong, Office of State Procurement