



**Department of Transformation and Shared Services**  
Governor Asa Hutchinson  
Secretary Amy Fecher

April 1, 2022

Ms. Tina A. Mankey  
Occupational Therapy of Conway  
1626 Greenwood Circle  
Conway, Arkansas 72034

RE: Advisory Opinion No. 2022-03

Dear Ms. Mankey:

This letter is in response to a written request for an advisory opinion and a waiver pursuant to Ark. Code Ann. §19-11-715(b) and (c), which was sent to me electronically in a letter received on March 30, 2022, regarding the circumstances described below involving Occupational Therapy of Conway (OTC) obtaining a contract from the Arkansas Department of Human Services (DHS) to provide occupational therapy services.

This opinion is based upon the following information that you have presented to me and upon which I am relying. It should be noted that if one or more of these information items are later shown to be incorrect, that could result in a revised opinion.

1. You are the President of OTC, in which role you provide oversight to ensure that appropriate licensed occupational therapy personnel provide services according to licensing requirements;
2. In addition, your OTC responsibilities include clinical utilization, policies and procedures compliance, contract management, and budgeting;
3. You are also a licensed occupational therapist and provide direct occupational therapy services on a limited basis;
4. OTC is a contract company that was incorporated in 1999 and has provided occupational therapy services using subcontractors and employees since that time;
5. The University of Central Arkansas (UCA) in Conway, Arkansas has been your primary employer since 1997;
6. Currently, you are the Chair and Program Director of the Department of Occupational Therapy, which role includes the overall management and implementation of the occupational therapy curriculum and supervision of faculty and students;
7. The UCA Faculty Handbook provides that faculty are allowed to have outside employment, and the university encourages "the participation of its faculty in consultation and other professionally related external employment that further these goals and do not delay, conflict, or interfere with the instructional, scholarly and/or other services expected by the university." See page 60;
8. While you do not work in the clinical environment that often, you do occasionally work less than 80 hours a year in providing occupational therapy services with OTC;
9. Your UCA supervisor is aware of your ownership and role with OTC; and

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10. Your work with OTC is completely separate from, and does not interfere with, your responsibilities at UCA, and no UCA resources are used for OTC purposes.

### **I. Relevant Law**

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.”

Ark. 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) 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;

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. *See* Ark. Code Ann. §19-11-705. Ark. 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.”

### **II. Analysis**

Based on the above representations, your employment at UCA classifies you as a state employee, and your role as President of OTC establishes that you have a financial interest in the proposed amendment to a state agency contract.

However, your representations that 1) the two roles are separate, 2) there is no cross-over in time or responsibilities, and 3) no UCA resources have been used for OTC purposes demonstrate that a conflict does not exist at this time or is insubstantial or remote so as not to taint the procurement process.

### **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. This decision grants a waiver in accordance with Ark. Code Ann. § 19-11-715 (c). 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.*

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Sincerely,



Amy Fecher  
Secretary

cc: Mitch Rouse, Office of State Procurement