



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

May 13, 2022

Dr. Kathryn A. King
7406 L Street
Little Rock, Arkansas 72207

RE: Advisory Opinion No. 2022-07

Dear Dr. King:

This letter is in response to a written request for a waiver pursuant to Ark. Code Ann. §19-11-715(b) and (c), which was sent to me electronically in a letter received on May 4, 2022, regarding your ability to serve as a contractor for the Arkansas State Crime Lab (Crime Lab) while you are employed as a faculty member at the University of Arkansas at Little Rock (UALR).

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 earned a Ph.D. in Anthropology at the University of Tennessee, Knoxville in 2007;
2. You developed a specialization in Forensic Anthropology, which is the analysis of human skeletal remains for identification, pathology, and trauma;
3. No one at the Crime Lab currently possesses a specialization in Forensic Anthropology;
4. Typically, Medical Examiner's offices throughout the country contract out this type of work to Ph.D. level specialists in this field;
5. You are currently employed at UALR as an Associate Professor of Anthropology, where you have been a faculty member since 2009;
6. Your role at UALR is a 9-month appointment (August 16, 2022, to May 15, 2023);
7. Your duties at UALR primarily consist of teaching, advising students, performing service activities, and conducting research;
8. You have no procurement or purchasing responsibilities at UALR;
9. Your UALR department chair and supervisor, Dr. Michael Norton, is aware of, and supportive of, your desire to pursue forensic anthropological casework in addition to your regular job duties;
10. The contract work for the Crime Lab would not conflict with your regularly scheduled work hours, which vary by academic term depending on course offerings;
11. The work for the Crime Lab would be on an as-needed basis and will not impact your ability to perform your primary job duties;

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12. Forensic anthropological casework will not conflict with regularly scheduled activities, especially classes;
13. The UALR mission statement as outlined in the faculty handbook supports this type of work as part of its goal of Service to Society: “The University has a responsibility to serve society through the application of knowledge and research skills. This responsibility includes applying the University’s resources to local, state, national, and international needs in order to improve the human condition”; and
14. You have also provided a document outlining available services, which services exclude exhumation and DNA analysis, specifying the equipment needed to perform the services, disclosing the time availability in conjunction with the UALR primary job functions, and establishing the fee structure for services performed. *See* Attachment 1.

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

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Based on the above representations, your employment at UALR classifies you as a state employee, and your proposed role as a Crime Lab contractor establishes that you have a financial interest in the proposed state agency contract.

Your role as an associate professor at UALR and your proposed role as a Crime Lab contractor providing forensic anthropological services, supported by your own representations that the two roles are separate and there is no cross-over in time or responsibilities, demonstrate that a conflict does not exist at this time so as 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 Ark. Code Ann. §19-11-701 *et seq.*

Sincerely,



Amy Fecher
Secretary

Attachment

cc: Mitch Rouse, Office of State Procurement

Kathryn King, Ph.D. - Forensic Anthropology Consulting

Services Available

For each case requested, the following areas will be assessed. Note that not all areas can be accurately assessed in every case, depending on the skeletal elements present and their condition.

For cases requiring reports, the specific methods used in each case may vary and appropriate scholarly references will be cited at the end of each report.

- Assessment of human vs. nonhuman
- Age estimate
- Biological sex
- Continental ancestry assessment (craniometric analysis with FORDISC will be provided for intact skulls)
- Stature estimate
- Postmortem dental chart (crania only)
- Trauma analysis (premortem, perimortem, and postmortem)
- Postmortem interval estimate
- Note of possible individualized features (medical implants, unique skeletal features)
- Comparison of antemortem and postmortem cranial and dental radiographs, if available

At this time, I cannot offer assistance with exhumation. Conducting surface survey and collection is negotiable, within a 50 mile of radius of Little Rock, and my primary job's schedule permitting. Any travel outside of Pulaski County will be billed at federal mileage and partial per diem reimbursement rates in addition to time spent working.

I do not have the facilities or expertise to conduct DNA analysis. I am happy to examine DNA reports from if needed.

Equipment

To properly conduct analyses, the following equipment must be made available and kept in good condition, if not already owned by the Crime Lab:

- | | |
|----------------------------|--|
| • Osteometric board | \$177.55, Carolina Biological |
| • Spreading calipers | \$1000-1500 estimated; various suppliers |
| • Digital Sliding calipers | 52.00, Carolina Biological |
| • FORDISC 3.1 USB | 395.00, University of Tennessee |

Time commitment

I currently serve as a full time employee on a 9 month contract (August 16-May 15) at UA Little Rock. During those 9 months, I can offer up to 8 hours of onsite availability per week, to be based on the

ATTACHMENT 1

Crime Lab's need and working around my primary job's schedule. Report writing and off-site analysis can be completed outside of regular office hours; my availability for on-site analysis will be between 9am and 4pm Monday-Friday, specific days/times to be determined as needed. Between May 16 and August 15 and during university breaks from instruction, I can be available more often if needed.

Fee structure

For a few simple services outlined below which will not require an official report, I will provide service pro bono. Any analysis that requires a written report will be charged at \$100 per hour, billed in 30 minute increments. The maximum fees for common types of cases are listed below. Costs for more complex cases, such as mass casualty events, will be negotiated as needed. The amount billed will be the smaller of the per hour rate or the maximum rate per case type.

Billable services include the hands-on skeletal analysis, off-site analysis, and the preparation of the report. Regular employees of the Crime Lab (i.e., Samantha Smith) with significant training and/or experience in the handling of skeletal materials are welcome to prepare specimens through cleaning, sorting, etc.

<u>Type of Service</u>	<u>Max Fee</u>
Email/photograph consultation	Pro Bono
Non-human, < 10 skeletal elements, no report	Pro Bono
Brief onsite questions, less than 30 minutes, no report	Pro Bono
Full examination, with report:	
Complete skeletal remains (>50% complete), 1 individual	1000
Partial skeletal remains (more than 10 bones but <50% complete), 1 individual	750
1-10 postcranial bones only	200
Skull only (50% to complete)	500
Partial skull (less than 50% complete)	350
Comingled skeletal remains, MNI = 2 to 5 (each >50% complete)	1500
Comingled skeletal remains, MNI = 2 to 5 (each <50% complete)	1200
Comingled remains, MNI > 5	Variable
<u>Other analyses as requested</u>	<u>Variable</u>

Fees will be assessed annually to consider market prices and inflation.