



Department of Transformation and Shared Services
Governor Sarah Huckabee Sanders
Secretary Leslie Fiskens

March 4, 2024

Seth Bradley
Seth.libertyellingtonlaw@gmail.com

RE: Advisory Opinion No. 2024-01

Dear Mr. Bradley,

This letter is in response to your written request for an advisory opinion pursuant to Arkansas Code Annotated § 19-11-715(b) regarding the appropriateness of a contract award for you to serve as court-appointed counsel for parents in Yell, Logan, and Scott counties. In your request you state that you are a former, part-time employee of the State of Arkansas. You previously worked in the Arkansas Public Defenders Commission.

I. Representations of Fact

In your request you write:

I was formerly a part-time state employee of the State of Arkansas with the Arkansas Public Defenders Commission. My previous part-time position was in Pope County, Arkansas, where I represented criminal defendants charged with crimes in Pope County.

I am seeking a contract as parent counsel in Yell, Logan, and Scott County.

My previous employment with the Arkansas Public Defenders Commission in no way had any involvement in the procurement of a contract as parent counsel. I can see no foreseeable conflicts regarding my previous employment with the Arkansas Public Defenders Commission and representation of parents pursuant to a parent counsel contract.

II. Relevant Law

Arkansas Code Annotated § 19-11-709(b) sets forth ethical standards that apply to former state employees. It provides:

(b) RESTRICTIONS ON FORMER EMPLOYEES IN MATTERS CONNECTED WITH THEIR FORMER DUTIES.

(1) **PERMANENT DISQUALIFICATION OF FORMER EMPLOYEE PERSONALLY INVOLVED IN A PARTICULAR MATTER.** It shall be a breach of ethical standards for any former employee knowingly to act as a principal or as an agent for anyone other than the state in connection with any:

- (A) Judicial or other proceeding, application, request for a ruling, or other determination;
- (B) Contract;
- (C) Claim; or
- (D) Charge or controversy,

in which the 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.

(2) **ONE-YEAR REPRESENTATION RESTRICTION REGARDING MATTERS FOR WHICH A FORMER EMPLOYEE WAS OFFICIALLY RESPONSIBLE.** It shall be a breach of ethical standards for any former employee, within one (1) year after cessation of the former employee's official responsibility in connection with any:

- (A) Judicial or other proceeding, application, request for a ruling, or other determination;
- (B) Contract;
- (C) Claim; or
- (D) Charge or controversy,

knowingly to 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.

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." The term "former" is not given any special statutory definition, so I understand it to have its usual and ordinary meaning. See *L.H. v. State*, 333 Ark. 613, 973 S.W.2d 477 (1998).

III. Analysis

Based on the law and representations of fact above, your prior employment as a part-time employee of the Arkansas Public Defenders Commission classifies you as a former state employee. However, nothing in the facts presented indicate that you were involved in any particular matter as a former employee of the Arkansas Public Defenders Commission that should temporarily or permanently prevent you from serving as parent counsel in Yell, Logan, and Scott counties. Instead, the facts indicate that, although you

will be representing the interests of parents, you will be doing so as an agent of the state to ensure that due process is afforded to its citizens.

IV. Opinion

Given the forgoing, it is my opinion that, despite your former part-time employment by the Arkansas Public Defenders Commission, your employment as parent counsel does not violate the ethical standards at Arkansas Code Annotated § 19-11-709(b). Please note that my opinion relies on the facts that you have presented to me. If these facts turn out to be materially incorrect or incomplete, then this opinion may not reasonably be relied upon as evidence of compliance with the ethical standards.

This opinion is issued in accordance with Ark. Code Ann. § 19-11-715(b). Compliance with its requirements is deemed to constitute compliance with the ethical standards of Arkansas Code Annotated § 19-11- 701, *et seq.*

Sincerely,

A handwritten signature in black ink, appearing to read "Leslie Fisk". The signature is fluid and cursive, with a long horizontal stroke at the end.

Leslie Fisk
Secretary

