



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

June 27, 2022

Dr. Dawn Tirado Hamby
4 Lisawood Court
Little Rock, Arkansas 72227

RE: Advisory Opinion No. 2022-10

Dear Dr. Hamby:

This letter is in response to your email that was sent to me electronically on May 4, 2022, requesting reconsideration of your request for an advisory opinion regarding concurrent employment. *See* Attachments 1 and 2. My initial response was delivered to you electronically on May 4, 2022, and contained the following salient points:

1. First, express identification of, and quotation from, Arkansas Code Annotated §19-4-1604 addressing salary from two agencies;
2. Since you neither identified a state agency that had selected you as a candidate for concurrent employment nor provided the appropriate certifications from the head of another state agency, your request for approval of concurrent employment was not ripe for consideration;
3. Second, express reference to Arkansas Code Annotated §19-11-705 (a)(1)(A) as the ethical stricture prohibiting state employees from participating directly or indirectly in any particular matter pertaining to any state agency contracts in which an employee has a financial interest;
4. Since the statute contemplates a particular matter pertaining to a state agency contract, and you did not provide one for review, this request was also not ripe for consideration; and
5. I advised you that, “[i]f circumstances change and there is a validated need for services that you may provide to the state, please do not hesitate to submit the information to me for review and approval.”

See Attachment 3.

I. Relevant Law

Arkansas Code Annotated §19-4-1604 addresses salary from two agencies and provides in pertinent part as follows:

- (a) Except as provided in subsections (b) and (c) of this section, no person drawing a salary or other compensation from one state agency shall be paid salary or compensation, other than actual expenses, from any other state agency except upon written certification to and approval by the Secretary of the Department of Transformation and Shared Services and by the head of each state agency, stating that:

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- (1) The work performed for the other state agency does not interfere with the proper and required performance of the person's duties; and
- (2) The combined salary payments from the state agencies do not exceed the larger maximum annual salary of the line-item position authorized for either state agency from which the employee is being paid.

For purposes of interpreting Arkansas Code Annotated §19-11-701 *et seq.*, 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) 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 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. *See Ark. Code Annotated §19-11-705.* 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.”

II. ANALYSIS

Within seven minutes of receiving my response to your initial request for an advisory opinion, you communicated that, “Another state agency has reached out to me for a series of workshops, but I didn’t think to include that information in my request. With that said, I do apologize, and would like to add that information to my request to be reconsidered. I am hoping that is possible? If so, I can add that information right now and send it back to you.” *See Attachment 2.*

Mitch Rouse, Director of the Office of State Procurement, then advised you that your request was not ripe for consideration until you entered into an official solicitation where you are selected as a potential vendor. *See Attachment 2.*

You then coordinated with your colleagues at the Arkansas Department of Higher Education, *see Attachment 4,* to forward a communication to me that stated, “The Arkansas Division of Higher Education’s federal grant programs are in the process of budget and activity planning for program year 2022-23. We plan to offer a contract to a vendor, Dr. Dawn Shop Talk, for special population and/or non-traditional student training services and materials. The presenter, Dr. Dawn Hamby, is a state employee in a separate

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and unrelated capacity. The dates of trainings and a formal contract cannot be offered until the grant year, July 1, begins. We understand Dr. Hamby's role in her state agency position and hope to confirm her availability for this training(s) in a different area of her subject matter expertise." This letter was written on May 5, 2022, by Brinda Berry, Federal Program Manager, Perkins Grant at the Division of Higher Education. *See Attachment 5.*

On the basis of this information that you provided, Anthony Black, Legal Counsel at the Department of Transformation and Shared Services, communicated with Ms. Berry and learned that you had already been employed by the Division of Higher Education (DHE) since February 7, 2022, for a term ending on June 30, 2022, and had been paid two invoices totaling \$7,566.12 for the provision of materials, a workshop, and follow-up consultations.

The independent development of these revelations, specifically that you have been employed by a state agency that is not your primary state employer for a period of several months prior to your request for an advisory opinion and that you have received significant monetary compensation for this secondary state employment, is not a credit to you as you have had the benefit of my initial response and numerous subsequent opportunities to reveal these facts, and you have not done so. Indeed, while you have ultimately disclosed that DHE "... has reached out to me for a series of workshops, but I didn't think to include that information in my request," you tellingly do not reveal the fact that you are currently employed at DHE.

Given the proximity in time from your initial employment at DHE on February 7, 2022, to the date of your request to me on April 8, 2022, for an advisory opinion relating to concurrent employment, it seems highly unlikely that this important detail would be inadvertently omitted from your initial request or subsequent communications regarding concurrent employment. That being said, you clearly understood the rationale of my initial response to you on May 4, 2022, when I advised that your request was not ripe for consideration due to your not having identified a contract or solicitation for which you were being considered for employment. The clarity of your understanding is demonstrated by your continuing failure to identify the existing concurrent employment at DHE and instead coordinating with Ms. Berry to forward a letter to me outlining potential DHE employment through a grant after July 1, 2022; let's not minimize the fact that you had been employed by DHE for two months at this time and had been partially compensated for your services and yet you still did not disclose this information for consideration and analysis. One can only determine from this sequence of events that the failure to disclose this information to me was deliberate and an attempt to obfuscate your actions, which conduct I cannot condone. I have also confirmed that DHE management was unaware of your status as a state agency employee when you were paid for your services to DHE, and I have been assured by DHE management that had it known of your state employee status prior to engaging your services that it would have initiated and complied with the concurrent employment process and requirements prior to your employment.

Arkansas Code Annotated §19-11-247 addresses remedies for unlawful solicitation or award and provides as follows:

- (a) The provisions of this section apply where it is determined upon any review provided by law that a solicitation or award of a contract is in violation of law.
- (b) If prior to award it is determined that a solicitation or proposed award of a contract is in violation of law, then the solicitation or proposed award shall be:
 - (1) Cancelled; or
 - (2) Revised to comply with the law.
- (c) If after an award it is determined that a solicitation or award of a contract is in violation of law, then in addition to or in lieu of other remedies provided by law:
 - (1) If the person awarded the contract has not acted fraudulently or in bad faith:

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- (A) The contract may be ratified and affirmed if it is determined that doing so is in the best interests of the state; or
- (B) The contract may be terminated;
- (2) If the person awarded the contract has acted fraudulently or in bad faith:
 - (A) The contract may be declared null and void; or
 - (B) The person awarded the contract may be directed to proceed with performance of the contract and pay such damages, if any, as may be appropriate if such action shall be in the best interests of the state.
- (d) Before a contract is ratified and affirmed under subdivision (c)(1)(A) of this section, a contract shall be presented to the Legislative Council or, if the General Assembly is in session, to the Joint Budget Committee, for review if the contract is required to be submitted for review under § 19-11-265.

You state in your April 8, 2022, letter to me that you "... have worked for the State of Arkansas for 30+ years" This lengthy term of state service aside, the contract that you entered into with DHE in February 2022 post-dates your state employment since 2019 at the Office of Skills Development, a division of the Department of Commerce, where you currently serve as Director of Strategic Initiatives. This concurrent employment has neither been certified to me nor approved by me and therefore is subject to the provisions of section 19-11-247, and DHE shall be responsible for complying with its provisions in addressing the contract that it entered into with you in February 2022.

III. DECISION

You initially requested an advisory opinion from me regarding concurrent employment, which request I determined was not ripe for consideration because you had not identified a relevant contract for services or a state agency soliciting services for which you had been chosen as a proposed vendor. Despite having been employed by DHE for several months and receiving compensation from it for services performed, and even after you knew that this information was essential in performing an analysis, you failed to provide this information. Your deliberate conduct in concealing your existing circumstances is not acceptable and belies any semblance of transparency and fair dealing inherent in the state's procurement process. Your characterization of DHE employees as colleagues in producing its May 5, 2022, communication further demonstrates your influence in the procurement process, which equates to an appearance of impropriety.

The state's procurement processes reflect a level playing field for all potential vendors, and your conduct in this case, to the contrary, demonstrates continuing concealment of essential facts for an appropriate analysis and the appearance of impropriety in these processes. As a result, although I was not consulted and did not approve your existing concurrent employment with DHE, I cannot approve any proposed concurrent employment with that state agency.

Furthermore, Arkansas Code Annotated §19-11-247 addresses remedies for unlawful solicitation or award, and DHE will be provided a copy of this advisory opinion in order to address its February 2022 contract with you that was neither certified to me nor approved by me in accordance with statutory provisions.

Sincerely,

Amy Fecher
Secretary

Attachments

Dr. Dawn Tirado Hamby
June 27, 2022

cc: Mitch Rouse, Director, Office of State Procurement
Nick Fuller, Assistant Director of Finance, Division of Higher Education

Dr. Dawn Tirado Hamby
4 Lisawood Court
Little Rock, AR 72227
(501) 240-1137

Re: Advisory Opinion Regarding Concurrent Employment

ATTN: Secretary Amy Fecher,
Department of Transformation & Shared Services

Secretary Fecher,

I have worked for the State of Arkansas for 30+ years, beginning my career as a schoolteacher, and then moving into Career and Technical Education, where I served as the Director of Vocational Training. Since 2019, I have been working for the Office of Skills Development (OSD), a division of the Department of Commerce, and am currently serving as their Director of Strategic Initiatives.

I am the Founder/CEO of Dr. Dawn ShopTalk, a career consulting company that offers career coaching services and specializes in professional development and training opportunities on a variety of career-related topics. I also published *The Career Woman's Secret Playbook*, a book that is focused on a variety of career strategies to help women get joy from their work and upskill their career.

I am writing to request an Advisory Opinion regarding my concurrent employment. Although my primary focus for career coaching and professional development is either for individuals or businesses, I would also like the option of working with the State. My request is to be able to offer trainings and workshops to various state agencies, community colleges and other organizations who would be interested. Purchasing my book and/or my coaching and consulting services could also be an option.

The information listed below is why I believe that working in both capacities would not be a conflict of interest:

1. When I accepted the position with OSD in 2019, I had disclosed this information to my immediate supervisor.
2. Although a majority of my company's efforts have occurred in the evenings and on weekends, if/when an opportunity for my business was to be scheduled during my regular working hours, I would submit personal leave time for review/approval.
3. In my current role as Director of Strategic Initiatives, I do not conduct any type of professional development trainings or workshops. Instead, my primary responsibilities include the following:
 - a) Creating MOUs for manufacturing businesses who have applied for OSD workforce training grants.

ATTACHMENT 1

- b) Coordinating the requirements and collecting the documentation for industry-led sector reviews.
 - c) Managing the Fiber Broadband Working Group who are coming up with a plan to offer technical training for those interested in aerial lineman, underground and/or tower climbing occupations within the telecommunications industry.
4. Additionally, I have no procurement authority with OSD.
 5. As a result of the job duties mentioned above, I do not believe that conducting workshops, training, and/or offering any other career-related consulting services on behalf of Dr. Dawn ShopTalk would be a conflict of interest with regards to my current state position, so long as I was on approved leave if/when those events took place during my working hours, and no OSD resources were used.
 6. I also believe that having had 30+ years of experience in working for the State is actually an advantage to the various state agencies, community colleges and organizations that would potentially hire me because I would have a much better understanding of their current pain points, and as such, could offer the most relevant training to meet their needs.

Please reach out to me if you have any questions, and/or for further information about my consulting business, feel free to visit my website at www.drdownshoptalk.com

Respectfully,



Dr. Dawn Tirado Hamby

Anthony Black

From: Mitch Rouse
Sent: Wednesday, May 4, 2022 11:20 AM
To: Dawn Hamby; Rhoda Classen; Amy Fecher
Cc: Anthony Black
Subject: RE: Written Request for an Advisory Opinion

Dr. Hamby:

Please review the Advisory Opinion that Secretary Fecher provided. I believe your request is still not ripe. Until you enter into an official solicitation where you are selected as a potential vendor, there will be no need for an updated Advisory Opinion. I think you are free to respond to an agency that is reaching out and gauging the need for your services without seeking an Advisory Opinion beforehand.

If you feel the need to provide more information, then please send that to Anthony Black directly and he will do a legal review. If the additional information does not amount to you being selected as a potential vendor to provide services to an agency, then the current Advisory Opinion will remain unchanged.

I hope that was helpful. Please reach out to Anthony if you have any questions about the process.

Thanks,
Mitch

From: Dawn Hamby <Dawn.Hamby@arkansas.gov>
Sent: Wednesday, May 4, 2022 10:36 AM
To: Rhoda Classen <rhoda.classen@arkansas.gov>; Amy Fecher <amy.fecher@arkansas.gov>
Cc: Anthony Black <Anthony.Black@arkansas.gov>; Mitch Rouse <mitch.rouse@arkansas.gov>
Subject: RE: Written Request for an Advisory Opinion

Rhoda,
Another state agency has reached out to me for a series of workshops, but I didn't think to include that information in my request. With that said, I do apologize, and would like to add that information to my request to be reconsidered.

I am hoping that is possible? If so, I can add that information right now and send it back to you.



Dr. Dawn Trado Hamby
Director of Strategic Initiatives
Office of Skills Development (OSD)
Arkansas Department of Commerce
1 Commerce Way, Suite #604
Little Rock, AR 72202
Office Phone: 501-682-4215
Email: dawn.hamby@arkansas.gov
Website: ArkansasOSD.com





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

May 4, 2022

Dr. Dawn Tirado Hamby
4 Lisawood Court
Little Rock, Arkansas 72227

RE: Advisory Opinion Regarding Concurrent Employment

Dear Dr. Hamby:

This letter is in response to a written request for an advisory opinion regarding concurrent employment that was sent to me electronically in a letter received on April 8, 2022.

Arkansas Code Ann. §19-4-1604 addresses salary from two agencies and provides in pertinent part as follows:

(a) Except as provided in subsections (b) and (c) of this section, no person drawing a salary or other compensation from one state agency shall be paid salary or compensation, other than actual expenses, from any other state agency except upon written certification to and approval by the Secretary of the Department of Transformation and Shared Services and by the head of each state agency, stating that:

(1) The work performed for the other state agency does not interfere with the proper and required performance of the person's duties; and

(2) The combined salary payments from the state agencies do not exceed the larger maximum annual salary of the line-item position authorized for either state agency from which the employee is being paid.

While you state that you are the Director of Strategic Initiatives at the Arkansas Department of Commerce Office of Skills Development, thereby establishing state employment, you neither identify another state agency that has selected you as a candidate for concurrent employment nor do you provide the appropriate certifications from the head of another state agency.

As a result, your request for my approval of concurrent employment is not ripe for consideration.

Similarly, your communication cannot be considered a request for an advisory opinion as you have not identified a state agency that has solicited services for which 1) you might respond, or 2) you have been selected as the awardee.

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

Office of the Secretary
501 Woodlane, Suite 201 * Little Rock, AR 72201 * 501.319.6551

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ATTACHMENT 3

Dr. Dawn Tirado Hamby
May 4, 2022

an employee or an employee's immediate family member has a financial interest. *See Ark. Code Ann. §19-11-705.* Your communication reflects a general premise of offering your "... trainings and workshops to various state agencies, community colleges and other organization who would be interested" and selling your "... book and/or [your] coaching and consulting services could also be an option, if those organizations were interested." However, section 19-11-705 contemplates a particular matter pertaining to a state agency contract, and you have not provided one for review. Consequently, this request is also not ripe for review.

While I appreciate you seeking my counsel and approaching this matter with transparency, neither the matter of concurrent employment nor an advisory concerning ethical prohibitions for state employees is ripe for consideration. If circumstances change and there is a validated need for services that you may provide to the state, please do not hesitate to submit the information to me for review and approval.

Sincerely,

A handwritten signature in black ink that reads "Amy Fecher". The signature is written in a cursive, flowing style.

Amy Fecher
Secretary

cc: Mitch Rouse, Office of State Procurement

Anthony Black

From: Anthony Black
Sent: Thursday, May 5, 2022 11:12 AM
To: Dawn Hamby
Cc: Mitch Rouse
Subject: RE: Advisory Opinion Follow-up Question

Thank you for the note, Dr. Hamby. Secretary Fecher's response to your request for an advisory opinion and Director Rouse's email to you yesterday both reflect that after an agency prepares a solicitation for services to which you may wish to respond or an agency has selected you pursuant to a compliant solicitation process, then that information would be the subject for review in a request for an advisory opinion. Sincerely, AWB



Anthony W. Black

Legal Counsel

Transformation and Shared Services

o. 501.682.1011 | m. 501.425.3685

anthony.black@arkansas.gov

EPIC Service

From: Dawn Hamby <Dawn.Hamby@arkansas.gov>
Sent: Wednesday, May 4, 2022 11:56 AM
To: Anthony Black <Anthony.Black@arkansas.gov>
Subject: Advisory Opinion Follow-up Question

Anthony,

Is there any specific information that my colleagues at the Arkansas Department of Higher Education would have to provide with regards to the series of workshops they would like to consider me for? We will be scheduling a future meeting about this prospect and if approved, they were considering creating a line item in their budget to pay for this series of trainings, which might also include instructional materials, along with other products and services.



Dr. Dawn Trudo Hamby

Director of Strategic Initiatives

Office of Skills Development (OSD)

Arkansas Department of Commerce

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Little Rock, AR 72202

Office Phone: 501-682-4215

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Division of Higher Education

423 Main Street, Suite 400 • Little Rock, Arkansas • 72201-3818 • (501) 371-2000 • Fax (501) 371-2001

Johnny Key
Secretary

Maria Markham, Ph.D.
Director

Dear Secretary Fecher,

The Arkansas Division of Higher Education's federal grant programs are in the process of budget and activity planning for program year 2022-23. We plan to offer a contract to a vendor, Dr. Dawn Shop Talk, for special populations and/or non-traditional student training services and materials.

The presenter, Dr. Dawn Hamby, is a state employee in a separate and unrelated capacity. The dates of trainings and a formal contract cannot be offered until the grant year, July 1, begins.

We understand Dr. Hamby's role in her state agency position and hope to confirm her availability for this training(s) in a different area of her subject matter expertise.

Regards,

Brinda Berry

ATTACHMENT 5