



Department of Transformation and Shared Services

Governor Sarah Huckabee Sanders

Secretary Joseph Wood

January 20, 2023

Mr. Mark D. Leverett
KRL Properties, LLC
Post Office Box 21051
Little Rock, Arkansas 72221

RE: Advisory Opinion No. 2023-01

Dear Mr. Leverett:

This letter is in response to a written request for an advisory opinion and a waiver pursuant to Arkansas Code Annotated § 19-11-715(b) and (c). The request was sent to me in a letter received on December 20, 2022, and supplemented on January 6, 2023, regarding Lease P9407 between KRL Properties LLC (KRL) and Arkansas Department of Commerce—Division of Workforce Services—Rehabilitation Services (Rehabilitation Services) for property located at 2807 Broad Street, Texarkana, Arkansas.

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, then that could result in a revised opinion.

1. Lease P9407 (Lease) was initially dated June 11, 2015;
2. First Lease Amendment was dated January 20, 2016;
3. Second Lease Amendment was dated November 3, 2016;
4. Third Lease Amendment was dated March 23, 2018;
5. Fourth Lease Amendment was dated November 26, 2019, in which the Lessor was modified from Robertson Holdings, LLC, to KRL Properties, LLC, reflecting your purchase and ownership of the leased property;
6. The Contract and Grant Disclosure and Certification Form submitted on February 21, 2020, and approved on February 25, 2020, disclosed information for individuals that you were a current state employee as a State District Judge from January 2016 to present;
7. Fifth Lease Amendment was dated April 19, 2021;
8. The Contract and Grant Disclosure and Certification Form, submitted and approved on April 19, 2021, disclosed information for individuals that you were a current state employee as a State District Judge from January 2016 to present and wherein you affirmatively represented that none of the business entity requests for disclosure applied;

9. The current Contract and Grant Disclosure and Certification, submitted on December 15, 2022, also reflects that you are a current state employee as a State District Judge from 2016 to present and discloses this information for business entities as well as disclosing that you have a 50% ownership interest in KRL and you are its President;
10. KRL has leased various properties to state agencies over the past 15 years;
11. You have always submitted a Contract and Grant Disclosure and Certification Form to initiate or renew lease agreements; and
12. During the entire time that you have served as a landlord, you have served as a local district judge in Pulaski County.

I. Relevant Law

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* Arkansas 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.”

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II. Analysis

Based on the above representations, your employment as a State District Judge classifies you as a state employee, and your role in leasing property to Rehabilitation Services establishes that you have a financial interest in a state agency contract.

In reviewing the documentation associated with your company's lease to Rehabilitation Services, I note that the three Contract and Grant Disclosure and Certification forms that you have submitted in coordination with the KRL lease amendments are distinctly different in content. The first disclosure form merely indicates that you are a current state employee in the section applicable to individuals; the second disclosure form contains the same information but also affirmatively states that no disclosures are applicable to a business entity; and the third disclosure form discloses in the section applicable to individuals that you are a current state employee and also, for the first time, discloses in the section applicable to a business that you are a current state employee, have a 50% ownership in KRL, and are President of KRL.

As you have stated, the roles of both you and KRL Properties, LLC, in leasing property to Rehabilitation Services have not changed, yet the information that you have disclosed has not been consistent. The disclosure form was developed pursuant to Executive Order 98-04, and it is clear and unambiguous on its face as to the information requested. As a State District Judge, you are in a unique position to appreciate the significance of accurately providing required information, and I trust that you will continue to do so in the future.

In reviewing the totality of circumstances, I am persuaded in this case that the disclosures demonstrate that a conflict 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 the interests of the state and in accordance with Arkansas Code Annotated § 19-11-715(c); 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,



Mitch Rouse
Director