



Department of Transformation and Shared Services

Governor Sarah Huckabee Sanders

Secretary Joseph Wood

March 31, 2023

Mr. Gary Harpole
Halsey, Thrasher, Harpole Real Estate Group
Century Center
301 West Washington Avenue
Suite 200
Jonesboro, Arkansas 72401

RE: Advisory Opinion No. 2023-04

Dear Mr. Harpole:

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), which was sent to me in a letter received on March 2, 2023, and updated on March 31, 2023, regarding your anticipated service as a newly appointed member of the Arkansas State University System Board of Trustees (Board) and your partial ownership and job scope with Halsey Thrasher Harpole Real Estate Group (HTHREG), a contractor with Arkansas State University (ASU).

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. HTHREG is a full-service real estate brokerage and development company with commercial and residential brokerage, leasing, property management and development services;
2. You are a part owner of HTHREG with a 33.33% ownership stake;
3. The scope of your role is as one of the Managing Partners and Director of Development;
4. In 2020, ASU issued a request for proposal, RFP #21-02, which led to HTHREG being awarded a residential real estate services contract on October 27, 2020;
5. You were a part of the original response submission to RFP #21-02 as one of the team of licensed agents available to service the ASU account;
6. The contract was subsequently extended in 2021, and again in 2022;
7. To date, no transactions have taken place under the contract;
8. On February 14, 2023, you were appointed to the Board by Governor Sarah Huckabee Sanders to a seven-year term;
9. As a result of the appointment, and in addition to this request for an advisory opinion, you will also be notifying the ASU Finance and Administration that you should be removed as a member of the HTHREG team servicing the contract;

10. In your role with HTHREG, you will fully recuse yourself from any direct or indirect participation with the ASU account and the contract and, accordingly, will not perform any real estate services on behalf of HTHREG for ASU;
11. In your role on the Board, you will recuse yourself from any discussion or voting on any matter involving the engagement or potential engagement of HTHREG on behalf of ASU;
12. You will not participate in any discussion or vote involving the sale of any residential property in which ASU is represented by HTHREG through the contract nor participate in any discussion or vote that could foreseeably impact the contract;
13. You will also not participate in any discussion or vote involving the sale, leasing, management or development of any properties in which HTHREG represents any party in a transaction involving any of the campuses within the ASU System; and
14. In both your role on the Board and your role with HTHREG, you will not participate directly or indirectly in any proceeding, determination, claim or controversy, or in any particular matter pertaining to the contract, any solicitation, or any subsequent contract or solicitation between HTHREG and any campus in the ASU System.

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 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 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.”

In addition, Executive Order 98-04 Section II addresses approval of contracts and grants and provides in pertinent part as follows:

Agencies shall be prohibited from entering into or renewing any contract ... with any current or former: ... board or commission member ... or with any entity in which any such person holds (1) any position of control, or (ii) any ownership interest of 10% or greater. The prohibition provided in the previous sentence shall not apply to: (i) contracts ... that are the result of competitive sealed bidding or a request for proposal, which requires public notice and public opening of bids or proposals; provided, however, agencies shall be required to disclose any such contract ... entered into with any of the persons described in the previous paragraph, notice of which is given to the Governor and the Legislative Council; ...

II. Analysis

Based on the above representations, your appointment to the ASU Board classifies you as a state employee, and your role as a part owner of HTHREG, with a 33.33% ownership stake, in which the scope of your role is that of one of the Managing Partners and Director of Development establishes that you have a financial interest in a state agency contract.

Your role at HTHREG and HTHREG's award of a contract by ASU in 2020 precedes your recent Board appointment, a service for which you are to be commended. In preparation for your impending Board service, you have affirmed that: a) you will fully recuse yourself from any direct or indirect participation with the ASU account and the contract and, accordingly, will not perform any real estate services on behalf of HTHREG for ASU; b) you will recuse yourself from any discussion or voting on any matter involving the engagement or potential engagement of HTHREG on behalf of ASU, c) you will not participate in any discussion or vote involving the sale of any residential property in which ASU is represented by HTHREG through the contract nor participate in any discussion or vote that could foreseeably impact the contract; d) you will also not participate in any discussion or vote involving the sale, leasing, management or development of any properties in which HTHREG represents any party in a transaction involving any of the campuses within the ASU System; and e) in both your role on the Board and your role with HTHREG, you will not participate directly or indirectly in any proceeding, determination, claim or controversy, or in any particular matter pertaining to the contract, any solicitation, or any subsequent contract or solicitation between HTHREG and any campus in the ASU System.

In addition, it is significant that, to date, no transactions have taken place under the contract. As a result, I am persuaded that the circumstances demonstrate that a conflict is insubstantial or remote so as not to taint the current or future procurement processes.

I also find that the prohibition contained in Executive Order 98-04 Section II is inapplicable due to the request for proposal procurement process utilized by ASU in the underlying contract.

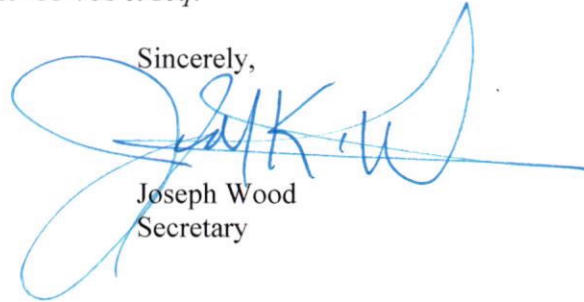
III. Decision

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 on the basis of your affirmation that, in both your role on the Board and your role with HTHREG, you will recuse and not participate directly or indirectly in any proceeding, determination, claim or controversy, or in any particular matter pertaining to the contract, any solicitation, or matter or any subsequent contract, any solicitation or matter between HTHREG and any campus in the ASU System. Therefore, I grant permission

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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 the Arkansas Code Annotated § 19-11-701 *et seq.*

Sincerely,

A handwritten signature in blue ink, appearing to read 'J. Wood', with a long horizontal flourish extending to the right.

Joseph Wood
Secretary