



Department of Transformation and Shared Services
Governor Asa Hutchinson
Secretary Mitch Rouse

November 15, 2022

Mr. Randall Lee
216 Pine Rock Court
Alexander, Arkansas 72002

RE: Advisory Opinion No. 2022-12

Dear Mr. Lee:

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 November 10, 2022, regarding photography services for the Arkansas Governor's Mansion.

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 have been employed as the photographer for the Arkansas Governor's Office since January 2016;
2. In that capacity, you take photographs for the Governor during official activities;
3. The Arkansas Governor's Mansion asked you to provide photography services for two separate private events on the mansion property;
4. Both of these events were unrelated to duties the Governor performs in his official capacity and were outside of normal business hours;
5. Arkansas Governor's Mansion staff identified the dates and inquired as to your availability to perform the photography services, and you confirmed your availability;
6. The first event spanned two evenings: September 29 and 30, 2022, for a total of four (4) hours during which you took photographs;
7. The second event occurred on October 22, 2022, for a total of one and one-half hours (1 ½) during which you took photographs;
8. For both events, you were directed by Arkansas Governor's Mansion staff as to which photographs to take;
9. You were paid an hourly rate of \$100.00;
10. You have provided photography services at the Arkansas Governor's Mansion for many events including official and fundraising events sponsored by the Arkansas Governor's Mansion Association;
11. Arkansas Governor's Mansion staff indicated that you were the preferred photographer for these two private events due to security concerns and your familiarity with protocol; and
12. You did not request to be considered for services at these two private events and had no input on the Arkansas Governor's Mansion's selection of a service provider.

Office of State Procurement

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Mr. Randall Lee
Adv. Op. 2022-12
November 15, 2022

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.”

II. Analysis

Based on the above representations, your employment at the Arkansas Governor’s Office classifies you as a state employee, and your role in providing photography services for the Arkansas Governor’s Mansion establishes that you have a financial interest in a state agency contract.

As the services have been performed, your representations that 1) the two roles at the Arkansas Governor’s Office and the Arkansas Governor’s Mansion were maintained separately between official duties and private services, 2) there is no cross-over in time or responsibilities between the two roles, and 3) you had no input in the Arkansas Governor’s Mansion solicitation or selection of a service provider demonstrate that a conflict is insubstantial or remote so as not to taint the procurement process. It is noted, though, that any future provision of services for a state entity while you are employed at the Arkansas Governor’s Office must be reviewed and approved in the context of concurrent employment prior to engaging in the provision of the proposed additional services.

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

Mr. Randall Lee
Adv. Op. 2022-12
November 15, 2022

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

Sincerely,

A handwritten signature in black ink, appearing to read "MR" followed by a stylized flourish.

Mitch Rouse
Secretary