



STATE OF ARKANSAS
**Department of Finance
and Administration**

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November 3, 2015

Mr. Billy Robinson
213 Marwinette Place
Hot Springs, AR 71913

RE: Advisory Opinion No. 2016-01

Dear Mr. Robinson:

This letter is in response to your request for an advisory opinion, pursuant to Ark. Code Ann. §19-11-715(b), concerning your ability, under Ark. Code Ann. §19-11-705, to contract with the Arkansas Department of Human Services, Aging and Adult Services Division as a caregiver. This opinion is based upon the following facts that have been presented to me. It should be noted that if one or more of these facts are later shown to be incorrect, that could result in a revised opinion.

- (1) You are currently employed by the Arkansas Career Training Institute as a Recreational Supervisor.
- (2) You are a caregiver under the DHS Division of Aging Adult Services Adults with Physical Disabilities program.
- (3) You have no participation in procurement decisions for DHS.

Act 483 of 1979, codified in part at Ark. Code Ann. §19-11-701 et seq. ("the Act"), prohibits state agency contracts with a business in which an employee or an employee's immediate family member has a financial interest where the employee participates either directly or indirectly in the procurement of such contracts. See Ark. Code Ann. §19-11-705(n)(1). "Direct or indirect participation" is defined at Ark. Code Ann. § 19-11-705(a)(2), and includes, but is not limited to, "involvement through decision, approval, disapproval, recommendation, preparation of any part of a procurement request, influencing the content or any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity." The position of employment and/or an employee's "participation" in the procurement process both directly and indirectly are examined on a case-by-case basis.

Under the facts as stated above, I can find no conflict under the Act in this instance. Your contract is with DHS, an agency for which you do not work. As such, you could not participate either directly or indirectly in the procurement of such a contract for DHS. In

addition, your contract with DHS as a caregiver would not be considered a professional or consulting services (PCS) contract, so the prohibition on state employees obtaining PCS contracts contained in Ark. Code Ann § 19-11-1004 does not apply. Accordingly, you may proceed with the transaction.

This advisory opinion is issued in accordance with Ark. Code Ann. §19-11-715(b). Compliance with the above course of conduct is deemed to constitute compliance with the ethical standards of the Act and Executive Order 98-04.

Sincerely,



Larry W. Walther
Director

cc: Camber Thompson, Office of State Procurement