



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

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March 23, 2016

Mr. William C. Byrd
7405 Pontiac Drive
North Little Rock, AR 72116

Re: Advisory Opinion No. 2016-04

Dear Mr. Byrd:

This letter responds to your request for a waiver, pursuant to Ark. Code Ann. §19-11-715(c), from the application of Ark. Code Ann. §19-11-705, which refers to employee conflicts of interest. 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.

In your request for a waiver, you disclosed that you and your wife are co-owners of a company that designed a database for the Arkansas State Board of Barber Examiners (the “Board”), “some 18 years ago.” You identified the service at issue as updating this database. You represented that “the Barber Board has been unable to find anyone, including DIS, who will touch this system due to fear of losing all data.”

Based on the information you have disclosed, you, your wife, and your company clearly have a financial interest in the procurement of a contract for updating the database at issue. Accordingly, in my opinion it would be a breach of ethical standards under Ark. Code Ann. §19-11-705(a)(1) for you to participate, directly or indirectly, in the procurement of such a contract. However, pursuant to Ark. Code Ann. §19-11-715(c), upon the written request of a state employee, I may grant a written waiver from the application of Ark. Code Ann. § 19-11-705, and grant permission to proceed with a proposed transaction to such extent and upon such terms and conditions as may

be specified when the interests of the state so require or when the ethical conflict is insubstantial or remote.

In reliance and conditioned upon your representation that the Board has been unable to find anyone to update the database that your company designed for the Board 18 years ago, I am willing to waive the conflict presented by your company offering to provide this service to the Board. This is not a waiver of any applicable procurement law that governs the method of procurement that the Board may be required to use to procure such services, but assuming the contract is lawfully procured, this waiver will permit your company to contract with the Board to update its database despite your financial interest in the contract. Be advised that if your representation proves to be untrue in any material respect, you and your company may be subject to civil and administrative penalties pursuant to Ark. Code Ann. §19-11-712 and/or Ark. Code Ann. §19-11-713 for breach of ethical standards, in addition to any other applicable penalties at law.

This waiver is issued in accordance with Ark. Code Ann. § 19-11-715(c).

Sincerely,


Larry W. Weather
Director

cc: Edward R. Armstrong, Office of State Procurement