



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

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April 21, 2016

Sara Oliver  
609 Rock Street  
Little Rock, Arkansas 72202

VIA Email at [SaraSPlato@att.net](mailto:SaraSPlato@att.net)

RE: Advisory Opinion No. 2016-05

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Dear Ms. Oliver,

You have requested that the Director of the Department of Finance and Administration provide a formal Ethics Opinion pursuant to Ark. Code Ann. § 19-11-715(b) regarding your future activities in light of your past public service. 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. Specifically, you have described the situation as:

I was employed by Arkansas Development Finance Authority (ADFA) from July, 1999 until September, 2015 as Vice President for Housing. In that capacity, one of my duties was to work with others in support of creation of an Arkansas Housing Trust Fund. The fund was approved by the Arkansas Legislature in 2009 and funded one time in 2013 with a \$500,000 allocation. ADFA is named as the administrator of the Trust Fund in the authorizing legislation. There were many organizations involved in efforts to create the Trust Fund including for-profit and non-profit housing organizations, homebuyer counseling organizations, and other individuals and organizations interested in securing State funding for increasing and improving affordable housing in Arkansas. This mission has become even more important with the recent severe cut backs in Federal funding for affordable housing experienced by the State.

One of the chief organizations is Housing Arkansas, a non-profit group composed of representatives from for-profit and non-profit housing organizations, homebuyer counseling organizations, financial institutions, Partners for Inclusive Communities, ACHANGE, AARP, and other individuals and organizations supportive of the Trust Fund. During my tenure at ADFA I worked with Housing Arkansas and other interested parties to create the Trust Fund and to advocate for funding for the Trust Fund. Now that I am retired from State service, I have been asked to resume my participation with Housing Arkansas. My knowledge of housing trust funds in general as well as my experience at ADFA would assist

Housing Arkansas to continue its efforts to secure a permanent funding source from the State of Arkansas for the Arkansas Housing Trust Fund.

Housing Arkansas has no staff, is comprised solely of volunteers, and sponsors various public information sessions around the State to both inform citizens of the importance of the Arkansas Housing Trust Fund and to garner support for permanent funding of the Trust Fund. Last fall Housing Arkansas brought a noted housing trust fund advocate from Texas to Little Rock to both provide more information on housing trust funds and to provide Housing Arkansas with suggestions to improve its efforts in securing permanent funding for the Arkansas Housing Trust Fund.

As you provided in the additional description of your duties, you worked with the creation of the original Requests for Proposals from the Housing Trust Fund and in drafting contracts for the initial allocation of the funding for the Housing Trust Fund thus far. Specifically,

I did have administrative responsibilities related to the HTF as ADFA is named as the administrator of the HTF in the HTF enabling legislation. I, along with Housing Arkansas, developed the Request for Proposals used to award the first allocations of HTF monies (\$500,000). I reviewed staff assessments of the proposals received. I was responsible for drafting the contracts for the first HTF allocations, although this task was delegated to other ADFA Housing staff, and I reviewed their work product. All of these actions were accomplished with the input and cooperation of Housing Arkansas.

To my knowledge, there were no claims, charges, or controversies related to the first HTF allocations, other than Senator Joyce Elliott's inquiry into the allocation process and ultimate recommendations for funding to the ADFA Board of Directors.

At the outset, I note that Arkansas Code Annotated § 19-11-715(b) only expressly authorizes the director to render written advisory opinions regarding the appropriateness of the course of conduct to be followed in proposed transactions on written request of employees<sup>1</sup> and contractors. However, because the prohibitions found in Ark. Code Ann. § 19-11-709 also apply to both current and former employees, the authority to render advisory opinions upon the request of former employees may be necessarily implied, otherwise my authority to render advisory opinions on the statutory prohibitions would not be co-extensive with the reach of the prohibitions in the ethics statutes. This would be inconsistent with the object and purpose of authorizing the director to give advisory guidance to those subject to the ethical restrictions of Ark. Code Ann. § 19-11-701, *et seq.*

The Arkansas Code provides for two kinds of representational limitations on former public employees – permanent disqualification for conflicts or issues directly handled by the former

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<sup>1</sup> As used in this statute, the term "employee" means "an individual drawing a salary from a state agency, whether elected or not, and any nonsalaried individual performing personal services for any state agency." Ark. Code Ann. § 19-11-701(8).

employee and a one year prohibition on representation for issues that were within the official duties of the former employee. These same prohibitions are imputed to an entire organization if the former employee is a partner in the organization. *See* Ark. Code Ann. § 19-11-709(c).

Former employees are permanently disqualified from representing a party, other than the State, in a controversy, claim, administrative proceeding, or lawsuit if the employee was “personally and substantially” involved in the decision making process with regard to a specific matter with a private party. Ark. Code Ann. § 19-11-709(b)(1). Similar to the permanent disqualification, but broader, a former employee is disqualified from representing a party, other than the State, in a controversy, claim, administrative proceeding or lawsuit if the matter is “within the former employee’s official responsibility.” *See* Ark. Code Ann. § 19-11-709(b)(2).

Your question is whether you may act as a volunteer for Housing Arkansas having, as part of your position with ADFA, worked in conjunction with Housing Arkansas to establish the described Housing Trust Fund and secure funding through legislative action. Initially, the Department must determine whether the permanent disqualification would be applicable in Ark. Code Ann. § 19-11-709(b)(1). The Arkansas Supreme Court has stated with regard to statutory interpretation, as follows:

The first rule in considering the meaning and effect of a statute is to construe it just as it reads, giving the words their ordinary meaning and usually accepted meaning in common language. *Weiss v. McFadden*, 353 Ark. 868, 120 S.W.3d 545 (2003). We construe the statute so that no word is left void, superfluous, or insignificant; and meaning and effect are given to every word in the statute if possible. *Ozark Gas Pipeline Corp. v. Arkansas Pub. Serv. Comm'n*, 342 Ark. 591, 29 S.W.3d 730 (2000). When the language of the statute is plain and unambiguous, there is no need to resort to rules of statutory construction. *Weiss v. McFadden, supra*. When the meaning is not clear, we look to the language of the statute, the subject matter, the object to be accomplished, the purpose to be served, the remedy provided, the legislative history, and other appropriate means that shed light on the subject. *Id.*

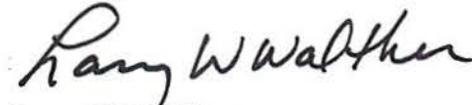
*Macsteel, Parnell Consultants v. Ar. Ok. Gas Corp.*, 363 Ark. 22, 210 S.W.3d 878 (2005); *see also* Ops. Att’y Gen. 2005-072 & 2004-339.

You had substantial involvement in creating the Housing Trust Fund program in Arkansas, however, the Department determines that you were not part of the decision making process with regard to Housing America from the facts you have presented. The process by which the Housing Trust Fund Program was established, which involved your public position, was not a judicial proceeding, contract, claim, or controversy within the meaning of Ark. Code Ann. § 19-11-709. The actions you described were from a policy standpoint in establishing a program but did not represent the state in an adversarial or investigatory role with regard to the Housing Trust Fund. Furthermore, to the extent that you were substantially involved in the RFP process and contracts from the original wave of funding, you are permanently disqualified from representing another party with respect to those matters. These contracts, however, appear to have been completed from your description of the factual background.

The prohibition of acting as principal or agent for an entity within one year of your separation from state service would apply in limited circumstances. Specifically, the administration and work with regard to the Housing Trust Fund would fall within your "official responsibility" when a public employee, but the limitation applies only to work in regard to a judicial proceeding, contract, claim, or controversy. For example, your official duties involved reviewing contracts relating to the Housing Trust Fund and until one-year has passed, you are prohibited from acting as a principal or agent with regard to similar contracts. The plain and ordinary language of Ark. Code Ann. § 19-11-709, however, does not prohibit or limit advocacy work by a former employee, especially in light of potential expertise gained through public employment. To the extent that your involvement with Housing Arkansas does not include acting as an agent or representative for Housing Arkansas with respect to any potential contracts, administrative hearings, or similar matters, there is no ethical prohibition in Ark. Code Ann. § 19-11-709. Additionally, the volunteer role you have described as being advisory and unpaid bolsters the Department's determination that your proposed representation would not violate the ethical standards on former public employees.

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: Edward Armstrong, Office of State Procurement