



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

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September 22, 2016

Timothy Wallace
Owner, Wow! Wallace Flowers and Gifts
2201 East Harding Ave.
Pine Bluff, Arkansas 71603

RE: Advisory Opinion No. 2016-12

Dear Mr. Wallace,

This letter is in response to your request for an advisory opinion, pursuant to Ark. Code Ann. § 19-11-715(b), regarding whether the circumstance involving a possible contact between the University of Arkansas at Pine Bluff (UAPB) and a current employee of the University of Arkansas at Fayetteville (UAF), as described below, would violate ethical standards under Ark. Code Ann. § 19-11-701, et. seq. This opinion is based upon the following facts as they 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 employed at the UAF, making a salary that exceeds \$15,500 annually;
2. You do not have familial relations working at UAPB or any other state agency;
3. You are the owner of Wow! Wallace Flowers and Gifts;
4. UAPB has asked your company to provide fresh florals and green plant rentals for events on campus.

Act 483 of 1979, codified in part at Ark. Code Ann. § 19-11-701 et seq. ("the Act"), sets a general ethical standard prohibiting state employees from realizing personal gain through public employment by means of conduct inconsistent with the proper discharge of their duties. *See* Ark. Code Ann. § 19-11-704(a)(1). In order to satisfy this general standard, state employees must meet the specific standards set forth in Ark. Code Ann. § 19-11-705, which refers to employee conflict of interest; Ark. Code Ann. § 19-11-706, which refers to employee disclosure requirements; Ark. Code Ann. § 19-11-707, which refers to gratuities and kickbacks; Ark. Code Ann. § 19-11-708, which refers to prohibition against contingent fees; Ark. Code Ann. § 19-11-709, which refers to restrictions on employment of present and former employees; and Ark. Code Ann. § 19-11-710, which refers to use of confidential information. *See* Ark. Code Ann. § 19-11-704(a)(2).

Under Ark. Code Ann. § 19-11-705, it is a breach of ethical standards for any employee to participate, either directly or indirectly, in any matter pertaining to any contract or subcontract in which the employee or any member of the employee's immediate family member has a financial interest. *See* Ark. Code Ann. § 19-11-705. "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.” Because it speaks in terms of an employee’s “participation” in a “procurement request,” this suggests that the intent is to prohibit a financially interested employee’s participation in the decision-making process concerning the purchase. *See id.* The position of employment and/or an employee’s “participation” in the procurement process, both directly and indirectly, is examined on a case-by-case basis.

Based on the above facts, the proposed sale would not present a conflict of interest based merely on your ownership interest in the company because you are an employee of UAF and will not be participating, directly or indirectly, in UAPB’s procurement of commodities from Wow! Wallace Flowers and Gifts. However, as the owner of the entity that UAPB intends to purchase from, you will receive a direct benefit as a result of the contract. Act 483 of 1979, Section 5, codified at Ark. Code Ann. § 19-11-706, requires that any employee who has or obtains any benefit from any state contract with a business in which the employee has a financial interest to report such benefit to the Director of the Department of Finance and Administration. Based on the facts you recited, you have already complied with this section by submitting the required disclosure.

None of the facts you have provided establish that either Ark. Code Ann. § 19-11-707, which refers to gratuities and kickbacks, or Ark. Code Ann. § 19-11-708, which refers to prohibition against contingent fees, apply to prohibit the transaction you have outlined.

Please note that it is a breach of ethical standards for a former state employee to sell or attempt to sell commodities or services, including technical or professional consultant services, to the state for one (1) year following the date employment ceased unless the former employee’s last annual salary based on the state fiscal year did not exceed fifteen thousand dollars (\$15,000). Ark. Code Ann. § 19-11-709(d). Giving the words of Ark. Code Ann. § 19-11-709(d) their ordinary meaning and applying the statute as it reads, this prohibition would not apply to you under the facts you have provided because you are not a former employee.¹

Sincerely,



Larry W. Walther
Director

This advisory opinion is issued in accordance with Ark. Code Ann. § 19-11-715(b).

¹ But *c.f.* Op. Att’y Gen. No. 2009-028, opining that the negative implication of Ark. Code Ann. § 19-11-709(d) is that such sales are also prohibited during the employment period.