



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

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November 13, 2017

Colonel Steve Eggensperger
500 Woodlane Street, Suite 120
Little Rock, AR 72201

RE: Advisory Opinion No. 2017-13

Dear Colonel Eggensperger:

This letter is in response to your request, dated October 12, 2017, for an advisory opinion and/or waiver of a conflict of interest pursuant to Ark. Code Ann. §19-11-715(b), concerning a possible conflict of interest between yourself and the Arkansas Department of Veteran Affairs ("ADVA"), regarding Peregrine Integrated Management Inc. ("Peregrine"), in which you have a 30% ownership interest.

This opinion is based upon the following facts that have been presented to me in the attached requests and which I am relying upon. It should be noted that if one or more of these facts are later shown to be incorrect, it could result in a revised opinion.

1. You are currently employed as a Military, Veteran, and Public Safety Liaison with the Office of Governor Hutchinson.
2. Your employment with Governor Hutchinson began in August of 2016.
3. You have a 30% ownership interest in Peregrine.
4. Mr. Christian Tafner, the President, CEO, and majority shareholder of Peregrine was approached by Director Nate Todd of the ADVA requesting Mr. Tafner perform personal consulting services under a consulting services agreement.
5. The scope of services outlined in the agreement includes: 1) identifying transition and business development services currently available to Arkansas' veterans and transitioning military personnel in Arkansas; 2) identifying desired outcomes related to these services and analyze effectiveness of current service delivery against targeted outcomes; 3) providing detailed written analysis of benchmarks, data metrics, and key performance indicators; and 4) making policy recommendations to improve outcomes for veterans and transitioning military personnel regarding employment and business development opportunities in Arkansas.
6. The contract pays a monthly rate of \$2,000.00 and expires in April of 2018.
7. There was no Request for Proposal or Request for Qualification done at the time of solicitation, so your employment with the Governor's Office and your ownership in Peregrine were not disclosed at that time.
8. ADVA serves Arkansas Veterans, and their eligible dependents, through advocacy and education to access federal and state benefits, high-quality long-term nursing care, and burial honors.

Ark. Code Ann. §19-11-705 (a)(1)(A) prohibits 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. "Direct or indirect participation" is defined to include, but not be 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. *See* Ark. Code Ann. §19-11-705 (a)(2). Financial interest is defined, in part, as "[o]wnership of more than a five percent interest in any business." *See* Ark. Code Ann. §19-11-701 (9)(B).

Based on the above facts, your 30% minority ownership of Peregrine creates a conflict of interest under Ark. Code Ann. §19-11-705 (a)(1)(A). Although I have the discretion to grant an employee a written waiver from the application of § 19-11-705, and grant permission to proceed with the transaction, such waiver and permission may only be granted when the interests of the state so require or when the ethical conflict is insubstantial or remote. In this case, I do not find that the best interests of the State require waiver.

In distinction to your prior request for an advisory opinion,¹ this contract would require Peregrine to assist ADVA in its work with Arkansas Veterans, who constitute a class of individuals who may already expect assistance from you by virtue of your current official position. While you have represented that there was no direct participation by yourself in the procurement process, your interest in Peregrine, Peregrine's contract with ADVA, as well as your position as Military, Veteran, and Public Safety Liaison with the Office of Governor Hutchinson puts ADVA within your sphere of professional influence and may present an appearance of impropriety. The Arkansas Legislature has clearly laid out its policy regarding the appearance of conflicts of interest and actual conflicts of interest in state contracting and employment:

- (a) Public employment is a public trust. It is the policy of the state to promote and balance the objective of protecting government integrity and the objective of facilitating the recruitment and retention of personnel needed by the state. The policy is implemented by prescribing essential restrictions against conflict of interest without creating unnecessary obstacles to entering public service.
- (b) Public employees must discharge their duties impartially so as to assure fair competitive access to governmental procurement by responsible contractors. Moreover, they should conduct themselves in such a manner as to foster public confidence in the integrity of the state procurement organization.

¹ You previously requested an advisory opinion regarding Peregrine contracting with the Arkansas Department of Finance and Administration ("DFA") to provide prices for a series of professional developmental courses for DFA staff. An advisory opinion was issued on January 11, 2017, finding that there was no conflict of interest owing to the fact that you are employed by the Office of Governor Hutchinson, not DFA, and from the facts provided it appeared that you had no direct or indirect participation with the contract's approval, disapproval, recommendation, preparation, etc. regarding the contract. Unlike the previous Peregrine contract to provide a series of professional developmental courses for DFA staff, a consulting contract with an agency outside of your purview and specialty of veterans' affairs, this contract with ADVA falls directly into the sphere of your work for the State of Arkansas.

- (c) To achieve the purpose of this subchapter, it is essential that those doing business with the state also observe the ethical standards prescribed in this subchapter.

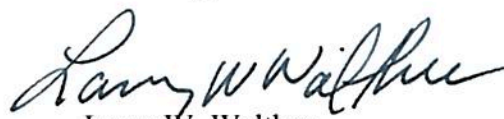
Ark. Code Ann. §19-11-703. In the matter at hand, your work as Military, Veteran, and Public Safety Liaison with the Office of Governor Hutchinson and Peregrine's touches the subject matter of the consultant work that Peregrine would be required to provide ADVA. Compensation for Mr. Tafner's consulting work with ADVA would be paid to Peregrine, resulting in your financial benefit. This seems inconsistent with the principles set forward in Ark. Code Ann. § 19-11-709(c). Along those lines, the website for Peregrine directly references your work with Peregrine and with Governor Hutchinson:

As Vice President of Peregrine Integrated Management, [Eggensperger] manages operations for government and corporate contracts involving project management, quality management, and professional development training. He manages Peregrine's network of professional associate consultants and support staff and coordinates with strategic business partners to exceed expectations and create value for customers. He also serves as a Senior Liaison to Arkansas Governor Asa Hutchinson in the areas of Military and Veteran Affairs and Public Safety.

Although you represented that you did not directly participate in the procurement process for this contract, your job as liaison puts you in routine contact with employees of ADVA. Interactions you have with ADVA workers and Governor's office co-workers could easily be construed as exerting direct or indirect influence regarding contracting with Peregrine. Your ability to discharge your duties as Military, Veteran, and Public Safety Liaison with the Office of Governor Hutchinson impartially, as well as ADVA's ability to discharge its duties impartially, could be brought into question.

In light of the aforesaid, I do not see how the interests of the state require granting a waiver for Peregrine to contract with ADVA. As Ark. Code Ann. §19-11-703 (a) articulates, while there is an intent to balance objectives, the objectives of protecting government integrity and fostering public confidence are essential objectives. Accordingly, I am persuaded that a conflict of interest exists under Ark. Code Ann. §19-11-701 et seq., regarding Peregrine's Contract with ADVA, and that waiver is not appropriate. This advisory opinion is issued in accordance with Ark. Code Ann. § 19-11-715(b) and Ark. Code Ann. § 19-11-715(c). Compliance with the above course of conduct is deemed to constitute compliance with the ethical standards of the Ark. Code Ann. §19-11-701 et seq., and Executive Order 98-04.

Sincerely,


Larry W. Walther
Director