



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

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April 6, 2018

Jewel H. Harper, PLLC
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8406 Highway 107
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Sherwood, AR 72120

RE: Advisory Opinion No. 2018-02

Dear Ms. Harper:

This letter is in response to your request for an advisory opinion or alternatively a waiver of a conflict of interest, pursuant to Ark. Code Ann. §19-11-715(b) and Ark. Code Ann. §19-11-715(c), respectively, sent in a letter dated January 8, 2018, regarding whether the circumstances described below involving your dual employment with the Arkansas Department of Finance and Administration (“DFA”), Office of Child Support Enforcement (“OCSE”) and the Department of Human Services (“DHS”), Division of Medical Services (“DMS”) violates ethical standards under Ark. Code Ann. §19-11-701 *et seq.* This opinion is based upon the following facts that have been presented to me in the attached and which I am relying upon. 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. Ms. Harper began working for DMS in 2004 as a hearing officer, conducting administrative hearings and appeals related to nursing home facilities and residents where a nursing home facility seeks to discharge a resident from the facility against the wishes of the resident, followed by issuing your findings in an administrative order;
2. In 2017, Ms. Harper was assigned sixteen cases by DMS, with six resulting in a hearing, while the remaining ten settled prior to hearing;
3. Ms. Harper and DHS/DMS now seek to renew the contract for your services as a hearing officer, for total compensation \$39,700.00.
4. Ms. Harper began working with OCSE in August, 2016 as an attorney specialist, working in the Little Rock Regional Office, handling cases related to the enforcement of child support obligations owed by payor parents on behalf of minor children, with an active caseload averaging 240 cases at any given time, and between 25 to 35 court appearances per month;
5. Ms. Harper has a work schedule with OCSE in which she works four days per week;
6. Ms. Harper controls the scheduling of the administrative hearings for DMS, and only holds them on her non-OCSE days, and also does not draft the administrative orders during OCSE work time.

Ark. Code Ann. §19-11-701 (8) defines “employee,” for purposes of Ark. Code Ann. §19-11-701 *et seq.*, as 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. §19-11-705 (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. See Ark. Code Ann. §19-11-705. Ark. Code Ann. §19-11-705 (a)(2) defines “direct or indirect participation” as including, but not being 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.

Based on the above facts, your work for OCSE clearly classifies you as a state employee. However, in looking at the matter under Ark. Code Ann. §19-11-705, there is nothing before me to indicate that you had direct or indirect participation in any particular matter pertaining to the DMS contract, whether that be involvement in the decisions and approvals, influencing the procurement request, or otherwise serving in an advisory capacity. Your employment with OCSE would not have offered such an opportunity, and in any case, the contracting with DMS to be a hearing officer actually predates your OCSE employment by 12 years.

Furthermore, you preemptively took steps to ensure the duties under each employment contract would not impose conflicting time demands on you by establishing a four day workweek schedule with OCSE. As a hearing officer, you have the ability to schedule DMS hearings on the fifth weekday, thus avoiding conflicts in your time allocations. Also, based on their nature, it is unlikely the duties you owe the State under the contract or through your employment would cause any conflicts of interest. With OCSE, you advocate on behalf of minor children to enforce the child support obligations of the minor child’s payor parent, while as a hearing officer, you hear disputes between nursing home facilities and nursing home residents concerning the discharge of residents from the nursing home facility. These two different areas are unlikely to overlap or cause conflicts of interest.

Accordingly, I am persuaded that your proposed service under the contract presents no actual conflict of interest under Ark. Code Ann. §19-11-701 et seq. 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 Ark. Code Ann. §19-11-701 et seq.

Sincerely,



Larry W. Walther
Director

cc: Edward Armstrong, Office of State Procurement