



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

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August 9, 2018

Jennifer Ogle
P.O. Box 699
Fayetteville, AR 72702

RE: Advisory Opinion No. 2018-07

Dear Ms. Ogle:

This letter is in response to your request for an advisory opinion, issued pursuant to Ark. Code Ann. §19-11-715(b), regarding whether the circumstances, described below, involving the your former employment with the Department of Arkansas Heritage (“DAH”) and subsequent potential contract with DAH, would violate 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. 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. Ogle was a part-time employee for the Arkansas Natural Heritage Commission (“ANHC”), a division of DAH, as an Extra Help Land Management Specialist, in 2017 and 2018, with the employment ending April 8, 2018;
2. Ms. Ogle’s job duties included mowing, trail maintenance, exotic plant species control, natural area boundary marking, picking up trash, working with volunteers, and maintaining public access;
3. Ms. Ogle earned \$1,875.25 during fiscal year 2017 and \$4,620.05 during fiscal year 2018;
4. Ms. Ogle now seeks to contract with ANHC, for Ms. Ogle to provide services in developing and coordinating the Arkansas Native Seed Program, in which Ms. Ogle would develop and organize a statewide partnership with federal and state governmental agencies, non-governmental agencies and private entities to develop the availability of site-appropriate seeds for habitat restoration and remediation (the “Native Seed Contract”);
5. The Native Seed Contract would be for a one (1) year term with a contract amount of sixty thousand dollars (\$60,000);
6. The Native Seed Contract has not yet been procured through the procurement methods authorized under Arkansas procurement law;
7. DAH states the work scope for the Native Seed Contract is not connected to Ms. Ogle’s former employment with ANHC.

Ark. Code Ann. §19-11-709(b)(1) prohibits former state employees from knowingly acting “as a principal or as an agent for anyone other than the state in connection with any: (A) Judicial or other proceeding, application, request for ruling, or other determination; (B) Contract; (C) Claim; or (D) Charge or controversy, in which the employee participated personally and

substantially through decision, approval, disapproval, recommendation, rendering of advice, investigation, or otherwise while an employee, where the state is a party or has a direct and substantial interest.

Based on the above facts, this matter is indeed in connection with a contract, such being the Native Seed Contract. However, in looking at the job scope, as well as DAH's own attestation, Ms. Ogle's former employment did not cause her to participate personally and substantially in the Native Seed Contract or its formation.


Furthermore, in the matter at hand, Ms. Ogle would be conducting the contractual duties on behalf of and as an agent of, the state, in such a way that the interests of Ms. Ogle as a contractor align with those of the state. Pursuant to the statutory language of Ark. Code Ann. §19-11-709(b)(1), as well as conflict of interest common law, the offending behavior occurs when the former employee acts as a "principal or as an agent for anyone other than the state." Accordingly, I find that no conflict of interest exists.

Of course, my opining that there is no conflict of interest has no bearing on the appropriate procurement method mandated under Arkansas law. Ark. Code Ann. §19-11-234(b) states that contracts with a purchase price exceeding twenty thousand dollars (\$20,000) but less than or equal to seventy-five thousand dollars (\$75,000) may be awarded by use of a competitive bid, although a competitive sealed bid is also permissible. Given the purported contract amount of sixty thousand dollars (\$60,000), either one of these approaches would appear to be an appropriate procurement method.

Additionally, my opining that there is no conflict of interest has no bearing on the reporting requirements mandated under Arkansas law. Ark. Code Ann. §19-11-1001 provides definitions for "contractor" and "professional services contract" that would seem to make, taken with the purported contract amount of sixty thousand dollars (\$60,000), the Native Seed Contract subject to the reporting requirements of Ark. Code Ann. §19-11-1006.

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

Sincerely,


Larry W. Walther
Director

cc: Edward Armstrong, Office of State Procurement