



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

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September 20, 2018

Cheryl L. Schluterman, CPA  
126 Montpelier Drive  
Maumelle, AR 72113

RE: Advisory Opinion No. 2018-08

Dear Ms. Schluterman:

This letter is in response to your written request for an advisory opinion, pursuant to Ark. Code Ann. §19-11-715(b), which you sent to my office July 20, 2018 (the "Request Letter"), regarding the circumstances described below involving your employment with the Arkansas Development Finance Authority ("ADFA") and your proposed work with MedFinancial, LLC. This opinion is based upon the following facts that have been presented to me in the attached documents, 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. Schluterman became an ADFA employee in 2013, and is currently the Vice President of Finance and Administration overseeing the accounting, human resources, purchasing, loan servicing, and finance functions;
2. The Arkansas Student Loan Authority ("ASLA") merged with ADFA on July 1, 2017;
3. Prior to the ASLA merger with ADFA, ASLA awarded a two year contract to EdFinancial Services to provide student loans servicing, default management services, and outreach activities;
4. Ms. Schluterman was not involved, directly or indirectly, in the procurement process of the ASLA contract with EdFinancial Services;
5. EdFinancial Services is owned by the same holding company as MedFinancial, LLC, a medical loan servicing company;
6. MedFinancial, LLC seeks to hire Ms. Schluterman on a part-time contract basis to setup and attend meetings with top healthcare officials in Arkansas hospitals with whom Ms. Schluterman is familiar due to previous employment;
7. ADFA's procurement decisions are made by the Professional Selection Committee, which is comprised of the president of ADFA, the vice president of Legal & Tax, the vice president of Housing, the vice president of Development Finance, the vice president of Finance & Administration (Ms. Schluterman), the director of Public Finance, the director of Economic Policy, the director of ASLA, and the chief financial officer of ASLA;
8. Vendor performance reports and vendor management and communications for ASLA contracts are handled by the ASLA director and chief financial officer, and the ASLA director reports directly to the ADFA president.

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.

For purposes of interpreting Ark. Code Ann. §19-11-701 *et seq.*, Ark. Code Ann. §19-11-701 (8) defines “employee,” 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, before defining “state agency” in Ark. Code Ann. §19-11-701 (16) as meaning any office, department, commission, council, board, bureau, committee, institution, legislative body, agency, government corporation, or other establishment or official of the executive, judicial, or legislative branch of this state.

Ark. Code Ann. §19-11-701 (2) defines “business” as to mean any corporation, partnership, individual, sole proprietorship, joint-stock company, joint venture, or any other legal entity, while defining “financial interest” in Ark. Code Ann. §19-11-701 (9) (C) as meaning:

- (A) Ownership of any interest or involvement in any relationship from which, or as a result of which, a person within the past year has received, or is presently or in the future entitled to receive, more than one thousand dollars (\$1,000) per year, or its equivalent;
- (B) Ownership of more than a five percent (5%) interest in any business; or
- (C) Holding a position in a business such as an officer, director, trustee, partner, employee, or the like, or holding any position of management;

Ark. Code Ann. §19-11-701 (9) (C).

Based on the above facts, your employment with ADFA certainly classifies you as a state employee, and becoming an employee of MedFinancial, LLC would statutorily create a financial interest in MedFinancial, LLC’s sister’s contract with ASLA. However, owing to the fact that ASLA’s procurement of the contract awarded to EdFinancial Services was undertaken and completed prior to the merger of ASLA and your state employer ADFA, there is nothing before me to indicate that as a state employee you had any direct or indirect participation in any particular matter pertaining to the EdFinancial Services contract.


Public service is a position of trust. Thus, it is paramount that state employees strive to avoid the mere appearance of a conflict of interest under Ark. Code Ann. §19-11-701 *et seq.* As long as you do not use your ADFA position to participate directly or indirectly in renewals or extensions of the existing EdFinancial Services contract with ASLA, nor participate directly or indirectly in future procurements involving EdFinancial Services or MedFinancial, LLC with ADFA, then ADFA and ASLA should be able to consider renewals and extensions, or bids and proposals, submitted by EdFinancial Services and MedFinancial, LLC without you violating Ark. Code Ann. §19-11-701 *et seq.* To that end, you have stated in your Request Letter that you will recuse yourself

from any future discussions or decisions regarding this contract and the entire procurement process for these services in the future, indicating other ADFA officials will manage the process and ultimate decision making.

In looking at the proposed employment with MedFinancial, LLC, the role you would take with MedFinancial, LLC would be to setup and attend meetings on behalf of MedFinancial, LLC with top healthcare officials in Arkansas hospitals. Taken in the light of your relative seniority within state government, which includes some participation in managing purchasing and procurement, these interactions with top healthcare officials could easily be construed as exerting direct or indirect influence over their contractual decisions through your state employment for personal gain, calling into question your ability to discharge your duties impartially. *See Ark. Code Ann. §19-11-703 (b)*. Thus, you should strive to carefully avoid interacting with the same people in both of your respective capacities. It is not enough to simply declare which “hat” you are wearing in a given interaction. Rather, best practice would be to ensure you are not interacting with the same officials in the different capacities. In communications with the Department of Finance and Administration, you have reported that your ADFA position does not bring you into contact with the healthcare officials you would be meeting with for MedFinancial, LLC. I encourage you to ensure this continues to be true.

Accordingly, I am persuaded that under the facts as stated above, if you continue to recuse yourself entirely from any procurement decisions involving EdFinancial Services or MedFinancial, LLC or their competitors in their respective fields of endeavor, that there is no conflict of interest. . Subject to the condition of your continued recusal from any such procurement decisions, I opine that you may proceed with your proposed work for MedFinancial, LLC as specified in this letter. 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