



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

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April 16, 2019

Dr. Carla M. Martin
Vice Chancellor for Finance and Administration
University of Arkansas at Pine Bluff
1200 N. University Drive, Mail Slot 4922
Pine Bluff, AR 71601

RE: Advisory Opinion No. 2019-02

Dear Dr. Martin:

This letter is in response to a written request for an advisory opinion, pursuant to Ark. Code Ann. §19-11-715(b), or alternatively a waiver pursuant to Ark. Code Ann. §19-11-715(c), which was sent to my office in a letter from you dated February 18, 2019, a supporting letter from the University of Arkansas at Pine Bluff ("UAPB") dated February 6, 2019, and a letter from Mr. Travis Martin dated February 6, 2019 (collectively, the "Request Letters"), all having been received electronically by the Department of Finance and Administration ("DFA") Office of State Procurement ("OSP") March 26, 2019, regarding the circumstances described below involving your employment with UAPB and the proposed contracting between UAPB and Associates Career Education Services ("ACES") Real Estate (the "Contract"). 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. Dr. Martin is the Vice Chancellor for Finance and Administration at UAPB;
2. Mr. Travis Martin is the spouse of Dr. Martin and the director of business development for ACES Real Estate;
3. Mr. Martin is a non-owner employee and has no direct financial interest in the Contract, including earning no commission or any other compensation arising from the Contract, nor will Mr. Martin teach the course;
4. Dr. Martin had no involvement in the solicitation of the Contract, nor did she attempt to influence UAPB's awarding the Contract to ACES Real Estate, as the development of the solicitation and Contract was in the academic division of UAPB, and Dr. Martin's Division of Finance and Administration had no involvement until after Contract award;
5. Dr. Martin will not participate in matters pertaining to or involving ACES Real Estate of the Contract, and any such matters involving ACES Real Estate or the Contract will be handled exclusively by Chancellor Laurence B. Alexander.

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 (9) defines “Financial interest” as (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. And Ark. Code Ann. §19-11-701 (11) defines “Immediate family member” as meaning spouse, children, parents, brothers and sisters, and grandparents.

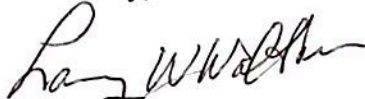
Based on the above facts, your employment with UAPB certainly classifies you as a state employee, and your spouse, Mr. Martin, would seem to have a financial interest in ACES Real Estate given his role as director of business development for the contractor, thereby potentially creating a statutorily barred financial interest for you in the Contract.

However, there is no reason to believe you participated directly or indirectly in any particular matter pertaining to the Contract, as defined by Ark. Code Ann. §19-11-705 (a)(2). To the contrary, you have stated the solicitation and development thereof were handled entirely outside of your purview. Furthermore, you have demonstrated sensitivity to state employee ethics and conflicts of interest by stating future issues pertaining to ACES Real Estate and the Contract will remain outside of your purview and be handled directly by the UAPB Chancellor.

Accordingly, under the facts as stated above, I opine that there is no conflict of interest, and UAPB and ACES Real Estate may proceed with the Contract. However, the measures taken to ensure you do not touch upon or opine about issues pertaining to the Contract must be steadfastly maintained. You are in a position of seniority, and even passing contact with the Contract could create the appearance of a conflict of interest through indirect participation, doubly so given that Mr. Martin’s role as Director of Business Develop with ACES Real Estate indicates he has an incentive to ensure the Contract is managed favorably for the contractor.

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