



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

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May 31, 2019

Director Arthur Boutiette
701 South Pulaski Street
Little Rock, AR 72201

RE: Advisory Opinion No. 2019-07

Dear Director Boutiette:

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 at Disability Determination for Social Security Administration ("DDSSA") dated May 17, 2019 (the "Request Letter"), regarding the circumstances described below involving the employment of Dr. Clarence Ballard with the Department of Human Services ("DHS") and the proposed contract between Dr. Ballard and DDSSA. 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. Ballard began contracting with DDSSA in 2011;
2. Dr. Ballard works approximately forty hours per week for DDSSA making medical decisions on federal Social Security Administration ("SSA") cases, processing over 2,700 cases per year;
3. Dr. Ballard is also currently employed by DHS as a general physician;
4. Dr. Ballard's duties with DHS are limited to Medicaid case reviews, which do not conflict with federal SSA cases;
5. DDSSA contractors making medical decisions on federal SSA cases can only use SSA provided hardware on a SSA network, effectively harring a contractor from conducting other work while conducting DDSSA contractor duties.

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.

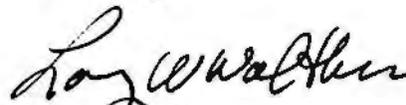
Ark. Code Ann. §19-11-709 goes on to state it is a breach of ethical standards for any employee who is involved in procurement to become or be, while such an employee, the employee of any party contracting with the state agency by which the employee is employed.

Based on the above facts, your employment with DHS certainly classifies you as a state employee. A contract with DDSSA statutorily creates in you a financial interest in that contract. However, there is no reason to believe you participated directly or indirectly in any particular matter pertaining to that contract, as defined by Ark. Code Ann. §19-11-705 (a)(2). To that end, your contracting with DDSSA actually pre-dated your employment with DHS.

Ark. Code Ann. §19-11-709 is inapplicable due to the fact that you are not involved in procurement as a state employee, nor is the contract at issue with DHS, your state employer.

Accordingly, under the facts as stated above, I opine that there is no conflict of interest, and you may proceed with your proposed contract with DDSSA. 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