



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

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July 9, 2019

Price C. Gardner
Friday Eldredge & Clark, LLP
400 West Capitol, Ste 2000
Little Rock, AR 72201

RE: Advisory Opinion No. 2019-14

Dear Mr. Gardner,

This letter is in response to your request for an advisory opinion and/or waiver of a conflict of interest pursuant to Ark. Code Ann. §19-11-701 *et seq.*, regarding whether it would violate State ethical standards for Friday Eldredge & Clark (“Friday”) to contract with the State. This opinion is based upon the following facts that have been presented to me in your request, which I am relying upon. It should be noted that if one or more of these facts are later shown to be incorrect, it could result in a revised opinion.

1. Friday, a law firm focusing on general legal matters, has provided legal services to the Arkansas State University System (the “ASU System”) for over fifty years;
2. You, Mr. Gardner, are a managing partner at Friday and currently serve as a member of the Board of Trustees of the ASU System, having been appointed by the Governor in January of 2017;
3. On March 8, 2017, the ASU System issued a Request for Proposals (“RFP”) for the procurement of legal services, with fourteen (14) responses ultimately being submitted to ASU by April 7, 2017;
4. In compliance with Executive Order 98-04, you disclosed your status as a managing partner at Friday;
5. According to your letter, you, as a member of the ASU Board of Trustees, did not participate in any decision to issue the RFP, did not participate in Friday’s response to the RFP, and did not participate in the review or selection of the law firms approved to provide legal services;
6. Friday is an approved firm, with no retainer or other binding obligation;
7. Since 2017, the fees invoiced by Friday and paid by ASU System totaled \$2,925.00, none of which personally benefitted you;
8. According to your letter, you are not involved in decisions to engage any law firms to provide legal services to ASU Systems;
9. You recuse from participating in any discussion and voting on any matter involving the engagement or potential engagement of Friday, which recusal is on the record with full disclosure of your involvement;


10. You will not personally perform any legal services on behalf of Friday for ASU Systems and Friday has installed a “Chinese wall” with respect to your participation on any matters handled by other members of Friday on behalf of ASU System;
11. Wendy Clark, legal assistant for ASU Systems, has confirmed that you were not involved in the procurement process at all from the ASU Systems’ side and stated that she and Dr. Charles Welch, ASU Systems President, reviewed the RFP responses and made the selections for the firms based on historical work they have done on behalf of the university and new/upcoming needs of the system campuses.

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. “Direct or indirect participation” is defined to include, but not be 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. *See* Ark. Code Ann. §19-11-705 (a)(2).

Based on the above facts and reviewing the matter under Ark. Code Ann. §19-11-705 (a)(1)(A), Friday’s legal services contract with ASU Systems does not violate the statute’s wording regarding participating directly or indirectly in the procurement process. There is no indication that you were involved in the ASU Systems procurement process in any way, directly or indirectly. Furthermore, you have recused from participating in any discussion and voting on any matter involving the engagement or potential engagement of Friday, which recusal is on the record with full disclosure of your involvement. ASU Systems’ legal assistant, Wendy Clark has confirmed that you were not involved in the procurement process at all from the ASU Systems’ side. You have stated that you will not personally perform any legal services on behalf of Friday for ASU Systems and Friday has installed a “Chinese wall” with respect to your participation on any matters handled by other members of Friday on behalf of ASU System.

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