



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

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October 11, 2019

Christy Clark
15825 Cantrell Road
Little Rock, AR 72222

RE: Advisory Opinion No. 2019-15

Dear Ms. Clark:

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 dated August 28, 2019 (“the Request Letter”), regarding the circumstances described below involving your service on the Board of Trustees of Arkansas State University (“ASU”) and you and your spouse’s respective positions with Clark Contractors, LLC (“Clark Contractors”), the successful bidder of a project on the ASU campus for the Windgate Arts Studio. This opinion is based upon the following facts that have been presented to me and 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. Clark is a Board of Trustees member of ASU, her appointment expiring January 2023;
2. Ms. Clark is controller of Clark Contractors;
3. Mr. William Clark is Ms. Clark’s husband, and is one of the owners of Clark Contractors;
4. On or about October 22, 2018, ASU published a request for qualifications for a project on the Windgate Arts Studio, funding for which being provided by the Windgate Foundation;
5. Clark Contractors responded to the solicitation, and ultimately was awarded the contract;
6. In her role with Clark Contractors as controller, Ms. Clark has no participation in pursuing jobs, the interviewing process for responding to requests for qualifications, or client development;
7. In her role as an ASU Board of Trustees member, Ms. Clark does not participate in contractor selection for construction projects awarded on the ASU campus, and otherwise has no involvement in contractor selection or the solicitation process for the ASU System, nor does the Board of Trustees of ASU.

I. Relevant Law

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.”

“Immediate family” means “a spouse, children, parents, brothers and sisters, and grandparents.” Ark. Code Ann. §19-11-701 (11). “State agency” is defined 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” to mean “any corporation, partnership, individual, sole proprietorship, joint-stock company, joint venture, or any other legal entity.” The term “financial interest” is defined 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). The ethical strictures set forth in Ark. Code Ann. §19-11-705 (a)(1)(A) prohibit 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.

II. Analysis

Based on the above facts, your membership on the ASU Board of Trustees certainly classifies you as a state employee, and regardless of the particulars of the terms of your own employment with Clark Contractors, your husband being an owner of Clark Contractors certainly classifies you as having a financial interest in a state agency contract. However, owing to the fact that the procurement for the relevant contract in the Windgate Arts Studio project was issued and evaluated by ASU without your involvement, and the response was provided by Clark Contractors without your involvement, there is nothing before me to indicate that as a state employee you had direct or indirect participation in any particular matter pertaining to this ASU contracts.

Thank you for seeking my counsel. Public service is a position of trust. It is, therefore, paramount that state employees strive to avoid even the appearance of a conflict of interest under Ark. Code Ann. §19-11-701 *et seq.* As long as you do not participate directly or indirectly in renewals or extensions of the existing Clark Contractors contracts with HSU, nor participate directly or indirectly in any future procurements of contracts to which Clark Contractors responds or in which you may have an interest, then ASU should be able to continue with the current contract with Clark Contractors and consider future bids and proposals submitted by Clark Contractors without you violating Ark. Code Ann. §19-11-701 *et seq.*

To that end, you must continue abstaining from personal involvement, direct or indirect, from involvement with any present or future contracts between ASU and Clark Contractors, and any other contract in which you or an immediate family member may have an interest.

Accordingly, I am persuaded that under the facts as stated above, any ethical conflict is insubstantial or remote, and I grant permission to proceed with the contracts to such extent and upon such terms and conditions as specified in this letter. This advisory opinion is issued in accordance with Ark. Code Ann. § 19-11-715 (b) and (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
Secretary

cc: Edward Armstrong, Office of State Procurement