



STATE OF ARKANSAS
**Department of Finance
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November 3, 2020

Dr. Janet Dickinson
Superintendent
Arkansas School for the Deaf
2400 W. Markham
Little Rock, Arkansas 72205

RE: Advisory Opinion No. 2020-12

Dear Dr. Dickinson:

This letter is in response to a written request for an advisory opinion pursuant to Arkansas Code Annotated § 19-11-715(b) that was sent to me in a letter dated October 19, 2020, regarding the circumstances described below involving the ability of Cromwell Architects Engineers (Cromwell) to bid on future facilities projects and related opportunities at the Arkansas School for the Deaf.

This opinion is based upon the following facts that have been presented to me and upon which I am relying. 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. You are Superintendent of the Arkansas School for the Deaf;
2. Your son, Alosha Cerney, is employed by Cromwell as an architectural technician, which is an entry position in his field;
3. Mr. Cerney is deaf;
4. Cromwell, in adapting to having a deaf employee, has paid for most of its staff to attend evening sign language classes, which has resulted in rarely needing an interpreter as so many of the employees now know sign language;
5. Cromwell has gained an understanding of deaf design elements, and how these elements benefit all users, in regard to architecture design;
6. This knowledge has served Cromwell well as the firm has won deaf school facilities projects, an example of which is designing the new education and gymnasium complex at the Metro Deaf School in Minnesota;
7. In your opinion, Cromwell has developed a depth of cultural awareness that could be a unique advantage in bidding for projects at the Arkansas School for the Deaf;
8. It is your desire for all decisions to be made without any hint of a conflict of interest, and you are willing to recuse yourself from all decision-making regarding the selection of architectural and engineering firms;

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9. There is currently an opportunity to bid on the on-call architect and engineering services for a shared contract with both the School for the Deaf and the School for the Blind, which opportunity closes in the first week of November; and
10. You were recently made aware that the Arkansas School of the Blind had sent an invitation to Cromwell to interview for this current opportunity.

I. Relevant Law

The ethical strictures set forth in Arkansas Code Annotated § 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. Arkansas Code Annotated § 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 Arkansas Code Annotated § 19-11-701, *et seq.*, Arkansas Code Annotated § 19-11-701(8) defines “employee,” as “an individual drawing a salary from a state agency, whether elected or not, and any non-salaried individual performing personal services for any state agency.” “State agency” is defined in Arkansas Code Annotated § 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.”

Arkansas Code Annotated § 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 Arkansas Code Annotated § 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.

II. Analysis

Based on the above facts, your current employment as Superintendent of the Arkansas School for the Deaf classifies you as a state employee, and Mr. Cerney’s employment at Cromwell clearly establishes the potential for direct or indirect participation in a particular matter pertaining to a state agency contract in which your immediate family member has a financial interest.

However, I am persuaded, in general, by your desire that all decisions be made without any hint of a conflict of interest and your express willingness to recuse yourself from all decision-making

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regarding the selection of architectural and engineering firms in determining that these circumstances support a waiver of the ethical prohibition contained in the statute in regard to Cromwell's existing opportunity to bid on the on-call architect and engineering services for a shared contract with both the School for the Deaf and the School for the Blind.


With that being said, public service is a position of trust, and the public must maintain its trust of public servants. It is, therefore, paramount that state employees strive to avoid even the appearance of a conflict of interest. As you have expressly noted that 1) Cromwell has gained an understanding of deaf design elements, and how these elements benefit all users, in regard to architecture design as a result of hiring your son, who is deaf, and facilitating sign language instruction for its employees, 2) this knowledge has served Cromwell well as the firm has won deaf school facilities projects, an example of which is designing the new education and gymnasium complex at the Metro Deaf School in Minnesota, and 3) in your opinion, Cromwell has developed a depth of cultural awareness that could be a unique advantage in bidding for projects at the Arkansas School for the Deaf, any additional contract opportunity between the parties that involves you and Mr. Cerney in your current employment capacities with the same or elevated positions of authority must be presented to me for review and approval prior to commencement of a new contract.

III. Decision

Thank you for seeking my counsel and approaching the issue with transparency. I am persuaded that, under the facts as stated above, any ethical conflict that might exist is insubstantial or remote, and I grant permission to proceed to such extent and upon such terms and conditions as specified in this letter. This decision grants a waiver in accordance with Arkansas Code Annotated § 19-11-715(c) in regard to an opportunity for Cromwell to bid on the on-call architect and engineering services for a shared contract with both the School for the Deaf and the School for the Blind.

If Cromwell responds to an additional Arkansas School for the Deaf solicitation while you and your son are employed in similar capacities identified in this advisory opinion, then you shall again recuse yourself from the review committee and all facets of the review and selection process, and any new proposed contract between the parties shall be submitted to me for review and approval prior to commencement of the new contract. Compliance with the above course of conduct is deemed to constitute compliance with the ethical standards of Arkansas Code Annotated §19-11-701, *et seq.*

Sincerely,


Larry W. Walther
Secretary

cc: Edward Armstrong, Office of State Procurement
Amy Fecher, TSS Secretary