



Department of Transformation and Shared Services
Governor Asa Hutchinson
Secretary Amy Fecher

September 8, 2021

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

Re: Advisory Opinion No. 2021-10

Dear Dr. Dickinson:

This letter is in response to a written request for an advisory opinion pursuant to Arkansas Code Annotated § 19-11-715(c), which was sent to my office in a letter dated August 10, 2021 and received via e-mail on August 11, 2021, regarding Suzanne Kenreich and your request that she be permitted to work as a substitute paraprofessional at the Arkansas School for the Deaf (ASD).

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, then that could result in a revised opinion.

1. Ms. Kenreich's husband, Kevin Kenreich, is the manager of ASD's central supply area;
2. Mr. Kenreich also serves as the ASD Safety Coordinator;
3. Mr. Kenreich does not serve in any capacity that would provide decision-making or supervision of any area in which Ms. Kenreich would be working;
4. Ms. Kenreich has expressed interest in working as a substitute paraprofessional while a particular staff paraprofessional is absent on extended medical leave;
5. Ms. Kenreich has extensive experience with children's camps through her church and volunteer activities and is certified in CPR;
6. Ms. Kenreich is also fluent in American Sign Language;
7. ASD paraprofessionals serve a critical role as most of them serve as one-on-one aides for medically fragile students; and
8. If Ms. Kenreich were to be approved to work as an ASD substitute paraprofessional, she would not only be a dependable resource while the staff paraprofessional is unavailable due to extended medical leave but she would also be able to be utilized for any future need.

On August 12, 2021, you supplemented your original request with the following information:

9. Mr. Kenreich has no authority or participation in the hiring process of paraprofessionals.

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I. Relevant Law

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. Arkansas 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 non-salaried individual performing personal services for any state agency." "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."

Arkansas 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; ...

II. Analysis

As an initial matter, this advisory opinion addresses only the statutory provisions identified above and does not opine on ASD's ability or authorization to employ Ms. Kenreich as a substitute paraprofessional.

Based on the above facts, Mr. Kenreich's ASD employment qualifies him as an employee subject to the ethics statutory provisions, and Ms. Kenreich's proposed provision of substitute paraprofessional services that would be paid by ASD serves as the basis for the application of the ethics statutory provisions.

In this case, although Mr. Kenreich's ASD employment as ASD Safety Coordinator and the manager of ASD's central supply area precedes Ms. Kenreich's proposed provision of substitute paraprofessional services to ASD, I am persuaded by your representation that he does not serve in any capacity that would provide decision-making or supervision of any area in which Ms. Kenreich would be working in concluding that Ms. Kenreich's proposed selection to provide substitute paraprofessional services is not due to inappropriate influence or conduct. My conclusion is further supported by your confirmation that Mr. Kenreich has no authority or participation in the hiring process of paraprofessionals.

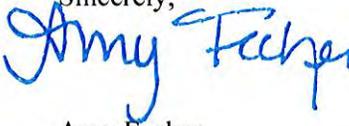
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Consequently, as Mr. Kenreich has no apparent procurement authority or responsibility in selecting or supervising paraprofessional services or participating in their hiring by ASD, I conclude that any conflict is insubstantial and remote.

III. Decision

Thank you for seeking my counsel and approaching the issue with evident 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 Ann. § 19-11-715(c) regarding Ms. Kenreich working and providing substitute paraprofessional services at ASD as long as Mr. Kenreich continues to have no procurement authority or responsibility at ASD and is not involved with the selection, supervision or hiring of paraprofessional services.

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,

Amy Fecher

cc: Edward Armstrong, Office of State Procurement