



STATE OF ARKANSAS
**Department of Finance
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August 9, 2018

James Barnes
11300 Cantrell Road
Suite 105
Little Rock, AR 72212

RE: Advisory Opinion No. 2018-06

Dear Mr. Barnes:

This letter is in response to your request for a waiver of a conflict of interest, pursuant to Ark. Code Ann. §19-11-715(c), sent in a letter to my office July 20, 2018 (the "Request Letter"), regarding the circumstances described below involving your service on the Board of Trustees of Henderson State University ("HSU") and your management position with Barnes Books Associates ("BBA Solutions"), which is engaged in business with HSU, as applied to the ethical standards under Ark. Code Ann. §19-11-701 *et seq.* This opinion is based upon the following facts that have been presented to me in the attached 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. BBA Solutions, a business of which Mr. Barnes is [chief executive officer], entered into a contract with HSU in [2013] for management of the HSU bookstore, which was awarded as a result of a request for proposals (the "Bookstore Contract"), under which HSU gets a commission of \$88,000;
2. The Bookstore Contract expires 2020, at which time HSU will again conduct a competitive bid for the awarding of a new bookstore contract;
3. BBA Solutions, a business of which Mr. Barnes is [chief executive officer], entered into a contract with HSU in [2013] for management of the HSU post office, which was awarded as a result of a request for proposals (the "Post Office Contract"), under which HSU gets a commission of \$67,500;
4. The Post Office Contract expires 2020, at which time HSU will again conduct a competitive bid for the awarding of a new post office contract;
5. On January 13, 2018, Mr. Barnes was appointed to the Board of Trustees of HSU for a term set to expire January 14, 2025;

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 no salaried 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. §19-11-701 (2) defines “business” as to mean any corporation, partnership, individual, sole proprietorship, joint-stock company, joint venture, or any other legal entity, while defining “financial interest” 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). Furthermore, 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.


Based on the above facts, your membership on the HSU Board of Trustees certainly classifies you as a state employee, and being the chief executive officer of BBA Solutions certainly classifies you as having a financial interest in a state agency contract. However, owing to the fact that the procurement processes for the Bookstore Contract and Post Office Contract were undertaken and completed prior to your appointment to the HSU Board of Trustees, there is nothing before me to indicate that as a state employee you had direct or indirect participation in any particular matter pertaining to these HSU contracts.

Public service is a position of trust. Thus, it is paramount that state employees strive to avoid the mere 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 BBA Solutions contracts with HSU, nor participate directly or indirectly in future procurements of the bookstore contract, post office contract, or other HSU procurement of any contracts in which you may have an interest, then HSU should be able to consider renewals and extensions, or bids and proposals, submitted by BBA Solutions without you violating Ark. Code Ann. §19-11-701 *et seq.* To that end, you have stated in your Request Letter that you currently are not personally involved in any discussions, conferences, and negotiations concerning the contract relationships, and that as a HSU Board of Trustee member, you will personally abstain from any discussion or action concerning any present or future contracts or renewals or extensions.

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 (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