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ADVISORY OPINION NO. 2026-EC-001 Issued May 15, 2026

The Arkansas Ethics Commission (the “Commission”) has received a written advisory opinion request from Mr. Matthew Sparks, Technology Manager with the Arkansas Office of State Technology (“OST”). Therein, Mr. Sparks provides the following information:

In my role as a Technology Manager with the OST, I have been responsible for managing certain technology platforms and vendor relationships, including working with IBM. My duties have included participating in discussions regarding technical needs, helping define requirements, and being involved in negotiations related to the acquisition of IBM products and services.

I have been presented with a potential employment opportunity with IBM as an Account Technical Leader. In that role, I would potentially provide technical support, guidance related to governmental clients, and be involved in the selling of technology to various clients, including the State of Arkansas.

Mr. Sparks posed the following questions:

1. *Whether he would be prohibited from working on any contracts, renewals, or matters involving IBM and the State of Arkansas that he was personally and substantially involved in during his state employment.*
2. *How “official responsibility” is interpreted in his circumstances, and whether it would restrict him from working on IBM contracts or matters that he did not personally handle.*
3. *Whether, during the one-year period following his separation from state employment, he would be prohibited from:*
 - (i) *Participating in or supporting proposals involving the State of Arkansas;*

- (ii) Providing internal technical guidance related to Arkansas accounts; or*
 - (iii) Having any direct or indirect communication with Arkansas state agencies on behalf of IBM.*
- 4. Whether there are any permissible ways to structure his role with IBM (e.g., limiting his involvement to non-Arkansas clients or internal-only responsibilities) that would ensure compliance during the one-year period.*
- 5. Any additional restrictions or considerations he should be aware of based on his involvement in procurement-related activities.*

It should be noted at the outset that the advisory opinion process is not a vehicle designed to make factual findings regarding events that have already occurred. An advisory opinion, by its very nature, is intended to provide guidance related to future conduct - not past events - and is prospective in its application. Accordingly, the Commission refrains from opining about the permissibility of a specific past event.

Applicable Statutes

Ark. Code Ann. § 19-64-503

Mr. Sparks began his request by asking about the applicability of Ark. Code Ann. § 19-11-709 to his circumstances. That statute, which is now Ark. Code Ann. § 19-64-503,¹ pertains to conflicts of interest involving persons (“special state employees”) appointed to a “covered board.” The statute defines a “special state employee” to mean a person appointed to a covered board, whether or not the person: (i) Receives compensation for his or her services; (ii) Receives reimbursement for travel expenses; (iii) Receives per diem; or (iv) Was appointed formally or informally. Ark. Code Ann. § 19-64-503(a)(3)(B) provides that “special state employee” does not include a constitutional officeholder or an ex officio or nonvoting member of a covered board.

Ark. Code Ann. § 19-64-503(a)(2)(A) defines a “covered board” to mean the following: (i) A commission, board, bureau, office, or other state instrumentality created within the executive branch; and (ii) An entity that is created by rule, statute, legislative direction, executive order, or other informal means if the entity has decision-making authority over procurement criteria, contracts, appointment of individuals to negotiate procurement directly or indirectly, or the approval of procurements.

¹ Title 19 of the Arkansas Code was recodified pursuant to Act 419 of 2025. As a result, Ark. Code Ann. § 19-11-709 was recodified as Ark. Code Ann. § 19-64-503.

Ark. Code Ann. § 19-64-503(a)(2)(B) provides that the term "covered board" does not include the following:

- (i) The constitutional departments of the state;
- (ii) The elected constitutional offices of the state;
- (iii) The General Assembly, including the Legislative Council, the Legislative Joint Auditing Committee, and supporting agencies and bureaus of the General Assembly;
- (iv) The Supreme Court;
- (v) The Court of Appeals;
- (vi) The circuit courts;
- (vii) Prosecuting attorneys;
- (viii) The Administrative Office of the Courts;
- (ix) An institution of higher education;
- (x) A municipal government;
- (xi) A county government;
- (xii) An interstate agency; or
- (xiii) A legislative task force or committee if the legislative task force or committee only advises the General Assembly[.]

Ark. Code Ann. § 19-64-503 requires a "special state employee" to disclose conflicts of interest regarding procurement matters either in writing to the head of the covered board or orally or in writing at a public meeting of the covered board. The statute prohibits special state employees from voting on, receiving or reading confidential materials related to, participating in discussion of, or attempting to influence the covered board's decision on a procurement matter if the special state employee has a conflict of interest in the procurement matter.

While the OST arguably meets the criteria of a "covered board" because it is an instrumentality created within the executive branch, the definition of a "special state employee" contemplates a voting member of a state board or commission rather than a non-voting employee of a state agency. Mr. Sparks is a state employee, but he does not appear to meet the definition of a "special state employee." Accordingly, he is not subject to the prohibitions set forth in Ark. Code Ann. § 19-64-503. However, there are several other statutes under the Ethics Commission's jurisdiction that state employees should keep in mind when receiving a job offer from a vendor to the state.

Ark. Code Ann. § 21-8-304(a)

The first statutory provision potentially applicable to the situation is Ark. Code Ann. § 21-8-304(a), which provides, in pertinent part, as follows:

No public servant shall use or attempt to use his or her official position to secure special privileges or exemptions for himself or herself or his or her spouse, child, parents, or other persons standing in the first degree of relationship, or for those with whom he or she has a substantial financial relationship that are not available to others except as may be otherwise provided by law.

For purposes of analysis, Ark. Code Ann. § 21-8-304(a) can be broken down into four (4) elements, each of which would have to have been met to find a violation. Those elements are:

- (1) No public servant;
- (2) Shall use or attempt to use his or her official position;
- (3) To secure special privileges that are not available to others;
- (4) For himself or herself, or his or her spouse, child, parents, or other persons standing in the first degree of relationship or for those with whom he or she has a substantial financial relationship except as may be otherwise provided by law.

The prohibitions set forth in Ark. Code Ann. § 21-8-304(a) apply to Mr. Sparks because he is an employee of the OST, making him a public servant.² As used in Ark. Code Ann. § 21-8-304(a), the term “special privileges or exemptions” is defined in 21 CAR § 2-103 of the Code of Arkansas Rules (the Ethics Commission’s Rules on Conflicts) to mean “a particular benefit or advantage unfairly extended to a person beyond the common advantages of others or the unjustified release of a person from a duty or obligation required of others.”

In his current role as a Technology Manager with the OST, Mr. Sparks undoubtedly has specialized knowledge pertaining to the technological needs of the OST and other state entities. Moreover, he is in a position to recommend that the OST purchase goods and services from IBM. Before leaving his employment with OST and joining IBM, Mr. Sparks should be mindful of the potential pitfalls from purchasing or recommending the purchase of goods and services from IBM.

A potential special privilege could be extended to IBM if Mr. Sparks chooses to recommend the purchase of goods or services from IBM rather than a competitor in some situations. Analysis of whether or not a special privilege or exemption is fact-intensive, but such an analysis could be avoided if Mr. Sparks declines to be involved in decisions regarding IBM while still working for OST.

² Ark. Code Ann. § 21-8-301(6) defines a “public servant” as a public appointee; a public employee; or a public official. Ark Code Ann. § 21-8-301(4) defines a “public employee” to mean an individual who is employed by a governmental body or who is appointed to serve a governmental body.

Mr. Sparks would be a potential recipient of a special privilege if he did participate in a decision regarding a purchase by OST from IBM. Likewise, Mr. Sparks would presumably have a substantial financial interest with IBM while he has a pending job offer.

Ark. Code Ann. § 21-8-304(b) and (c)

Ark. Code Ann. § 21-8-304(b) and (c) are also potentially applicable. Ark. Code Ann. § 21-8-304(b) provides as follows:

No public servant shall accept employment or engage in any public or professional activity while serving as a public official which he or she might reasonably expect would require or induce him or her to disclose any information acquired by him or her by reason of his or her official position that is declared by law or rule to be confidential.

Ark. Code Ann. § 21-8-304(c) provides as follows:

No public servant shall disclose any such information gained by reason of his or her position, nor shall he or she otherwise use such information for his or her personal gain or benefit.

Both Ark. Code Ann. § 21-8-304(b) and (c) contain prohibitions surrounding the use or disclosure of confidential information. If Mr. Sparks has access to OST information that is declared by law or rule to be confidential, he should refrain from accepting an employment offer from any prospective employer that would require or induce him to disclose that confidential information. Likewise, he should not use or disclose any confidential information he acquired during the course of his employment with OST.

Ark. Code Ann. § 21-8-601 et seq.

Ark. Code Ann. § 21-8-601 et seq. is potentially applicable once Mr. Sparks has resigned from OST and when he begins selling technology services or products to public entities or public officials in Arkansas. Ark. Code Ann. § 21-8-601(a)(3)(H) contains an exception for lobbyist registration for actions by contractors or employees of contractors while engaged in selling to a governmental body by demonstrating or describing commodities or services or inquiring as to specifications or terms and conditions of a particular purchase. However, that statutory provision goes on to provide that a contractor or its employees engaged in selling commodities or services to a governmental body must register as a lobbyist if the contractor or its employees expend in excess of four hundred dollars (\$400) in a calendar quarter for food, lodging, travel, or gifts to benefit public servants who purchase commodities or services on behalf of a governmental body.

Ark. Code Ann. § 21-8-801

Ark. Code Ann. § 21-8-801 is also potentially applicable. That statute provides, in pertinent part, as follows:

(a) No public servant shall:

(1) Receive a gift or compensation as defined in § 21-8-401 et seq.,³ other than income and benefits from the governmental body to which he or she is duly entitled, for the performance of the duties and responsibilities of his or her office or position; or

(2) Purposely use or disclose to any other person or entity confidential government information acquired by him or her in the course of and by reason of the public servant's official duties, to secure anything of material value or benefit for himself or herself or his or her family.

If Mr. Sparks' prospective employer offers a signing bonus or other compensation for past action taken in his capacity as a Technology Manager for OST, he should refrain from accepting that offer. Likewise, he should ensure that no confidential government information acquired while he was employed by OST is used or disclosed in the course of business with a new employer.

Discussion

Question 1: Mr. Sparks' first question was whether he would be prohibited from working on any contracts, renewals, or matters involving IBM and the State of Arkansas that he was personally and substantially involved in during his state employment.

While none of the statutes under the Ethics Commission's jurisdiction directly address this question, as noted above, Ark. Code Ann. § 21-8-304(b) and (c) could potentially impact any involvement by Mr. Sparks in contracts, renewals, or matters involving IBM and the State of Arkansas that he was personally and substantially involved in during his state employment. Likewise, Mr. Sparks' involvement in matters between IBM and the State of Arkansas could violate Ark. Code Ann. § 21-8-801(a)(2). If the OST has information that is kept confidential regarding technology needs of Arkansas state agencies, the foregoing

³ Ark. Code Ann. § 21-8-402(5)(A) defines the term "gift" to mean any payment, entertainment, advance, services, or anything of value, unless consideration of equal or greater value has been given therefor. Ark. Code Ann. § 21-8-402(5)(B) provides a list of exceptions to the term "gift." Ark. Code Ann. § 21-8-402(7)(A) defines "income" or "compensation" to mean any money or anything of value received or to be received as a claim for future services, whether in the form of a retainer, fee, salary, expense, allowance, forbearance, forgiveness, interest, dividend, royalty, rent, or any other form of recompense or any combination thereof. It includes a payment made under obligation for services or other value received.

statutory provisions would make it difficult for Mr. Sparks to be involved in matters between IBM and the OST.

Question 2: Mr. Sparks asks how “official responsibility” is interpreted in his circumstances, and whether it would restrict him from working on IBM contracts or matters that he did not personally handle. The term “official responsibility” appears in the definition of “official capacity” in Ark. Code Ann. § 21-8-402(13), which defines the term “official capacity” to mean activities which: (A) Arise solely because of the position held by the public servant; (B) Would be subject to expense reimbursement by the agency with which the public servant is associated; and (C) Involve matters which fall within the *official responsibility* of the public servant. (Emphasis added). That is the sole statute under the Ethics Commission’s jurisdiction where the term appears. It appears to be a key term in Ark. Code Ann. § 19-64-206,⁴ which falls outside the jurisdiction of the Ethics Commission.

Question 3: Mr. Sparks asks whether, during the one-year period following his separation from state employment, he would be prohibited from:

- (i) Participating in or supporting proposals involving the State of Arkansas;
- (ii) Providing internal technical guidance related to Arkansas accounts;
or
- (iii) Having any direct or indirect communication with Arkansas state agencies on behalf of IBM.

A one-year period following his separation from state employment does not appear in any relevant statute falling under the Ethics Commission’s Jurisdiction. However, Ark. Code Ann. § 19-64-206(b)(2) contains the following subtitle: “One-Year Representation Restriction Regarding Matters for Which a Former Employee Was Officially Responsible.”

Question 4: Mr. Sparks asks whether there are any permissible ways to structure his role with IBM (e.g., limiting his involvement to non-Arkansas clients or internal-only responsibilities) that would ensure compliance during the one-year period.

Limiting his involvement to matters involving non-State of Arkansas clients would allow Mr. Sparks to work for IBM without violating any statute under the Ethics Commission’s

⁴ Ark. Code Ann. § 19-64-206 contains restrictions on former state employees in matters connected with their former duties. The restrictions and prohibitions set forth in that statute appear to directly address many of the questions posed by Mr. Sparks. The enforcement of Ark. Code Ann. § 19-64-206 appears to fall under the purview of the Secretary of the Department of Shared Administrative Services pursuant to Ark. Code Ann. § 19-64-302.

jurisdiction as long as he does not use or disclose confidential (State of Arkansas/OST) information during the course of his employment. Mr. Sparks should also refrain from using or disclosing confidential information for any internal responsibilities (i.e. advising an IBM colleague who interfaces directly with OST personnel on Arkansas state agency technology requirements).

Question 5: Mr. Sparks asks if there are any additional restrictions or considerations he should be aware of based on his involvement in procurement-related activities. As noted above, Ark. Code Ann. §§ 21-8-304, 21-8-601 et seq., and 21-8-801 are all potentially applicable to his involvement in procurement-related activities.

Ultimately, it appears that while there are several Arkansas statutes enforced by the Ethics Commission are potentially applicable, Ark. Code Ann. § 19-64-201 et seq. and provisions of the Arkansas Procurement Law, Ark. Code Ann. §§ 19-61-101 through 19-61-812, appear to be directly on point regarding the questions posed by Mr. Sparks. Accordingly, the Ethics Commission encourages Mr. Sparks to seek advice from the Office of State Procurement regarding compliance with those statutes. Mr. Sparks is further encouraged to seek a written advisory opinion from the Secretary of the Department of Shared Administrative Services pursuant to Ark. Code Ann. § 19-64-402.⁵

This advisory opinion is issued by the Commission pursuant to Ark. Code Ann. § 7-6-217(g)(2).

ARKANSAS ETHICS COMMISSION

By: _____
Drew Blankenship, Staff Attorney

⁵ Ark. Code Ann. § 19-64-402 provides as follows: (a)(1) On written request of an employee or contractor and in consultation with the Attorney General, the Secretary of the Department of Shared Administrative Services may render a written advisory opinion regarding the appropriateness of the course of conduct to be followed in a proposed transaction. (2) A request and a written advisory opinion under subdivision (a)(1) of this section may be published in the manner in which rules of this state are published. (b) Compliance with the requirements of a written advisory opinion of the secretary rendered under this section constitutes compliance with the ethical standards of this chapter.