



Department of Transformation and Shared Services  
Governor Sarah Huckabee Sanders  
Secretary Leslie Fiskens

March 29, 2024

Mr. Jim Rankin, Jr.  
President, Trinity Development Co., Inc.  
P.O. Box 1735  
Conway, Arkansas 72033

RE: Advisory Opinion No. 2024-07  
State Agency Leases with Trinity Development Co., Inc.

Dear Mr. Rankin:

You have requested an advisory opinion from me in my official capacity as the Secretary of the Department of Transformation and Shared Services ("TSS") regarding a possible conflict of interest between your role as a recently appointed member of the Board of Trustees for the University of Central Arkansas ("UCA") and your role as the President of Trinity Development Co., Inc. ("Trinity"), in connection with three existing lease agreements between Department of Finance and Administration, as the lessee, and Trinity, as the lessor. Because I see no conflict of interest in your continuing service as a member of the UCA Board of Trustees and in the DFA's leases, including one renewal agreement, I grant permission to proceed with these transactions.

### **I. Background Information**

I have received the following background information from you and TSS Building Authority Division ("DBA"):

1. You have been appointed to the UCA Board of Trustees by Governor Sarah Sanders for a presumptive seven (7) year term.
2. You are the President and minority owner of Trinity.
3. Trinity is a property development and management company in Conway, Arkansas.
4. Trinity has three separate leases with DFA through its Arkansas Revenue Division ("ARD"), Driver Control Offices ("DCO"), and Office of Child Support Enforcement ("OSCE").
5. ARD and DCO have leased from Trinity for more than twenty (20) years.
6. OSCE has leased from Trinity since July 2008.
7. DBA conducted a formal RFP for two of the three leases for DFA, which resulted in the leases with Trinity.

8. The third and smallest lease with DCO did not require an RFP based on its size (1,380 square feet). This lease was a relocation from another Trinity property to allow expansion by ARD. For this lease, DFA negotiated the terms of the lease with market comparisons in the same area.
9. The lease with the ARD is currently up for renewal.
10. Since you have been appointed to the UCA Board of Trustees, you, your spouse, or immediate family member have not had any direct or indirect participation in the bidding or negotiating of any lease with the State.
11. None of these agencies have any relation to UCA or your position as a member of the UCA Board.

Because the relevant facts and law pertaining to the procurement and prospective renewals are the same, I give my opinion as to these three leases concurrently.

## II. Relevant Law

Executive Order 98-04 (“EO 98-04”) requires, as a condition of obtaining or renewing a contract, lease, purchase agreement, employment, or grant with any state agency, that any individual desiring to contract with, be employed by, or receive grant benefits from, any state agency shall disclose whether that person is a: (1) current or former: member of the general assembly, (2) constitutional officer, (3) board or commission member, (4) state employee, (5) the spouse or immediate family member of any of the aforesaid, or (6) any entity in which any person designated in categories (1) - (5): (i) holds any position of control, or (ii) holds any ownership interest of 10% or greater. When a disclosure indicates that the potential contractor is such an individual or entity, then close review of the proposed contract, lease, purchase agreement, employment, or grant may be warranted.<sup>1</sup>

In addition to EO 98-05, where the interest of a state employee<sup>2</sup> or one’s immediate family member is implicated, a series of statutes, codified at Arkansas Code Annotated § 19-11-701, *et. seq.*, impose ethical restrictions on current and former state employees. The intent of these statutes is to limit conflicts of interest that could arise through public employment “so

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<sup>1</sup> However, under EO 98-04 review is not warranted for: “(i) contracts, leases, or purchase agreements that are the result of competitive sealed bidding, or a request for proposal, which requires public notice and public opening of bids or proposals; provided, however, agencies shall be required to disclose any such contract, lease, or purchase agreement entered into with any of the persons described in the previous paragraph, notice of which is given to the Governor and the Legislative Council; or (ii) contracts or purchase agreements subject to competitive bidding, for which the total consideration is less than \$10,000; provided, however, agencies shall be required to disclose any such contract, lease, or purchase agreement entered into with any of the persons described in the previous paragraph, notice of which is given to the Governor and the Legislative Council; or (iii) any contract, lease, purchase agreement, or grant not subject to competitive sealed bidding or a request for proposal, for which the total consideration is \$10,000 or greater, and the prior written approval of the Chief Fiscal Officer of the State is obtained, notice of which approval is given to the Governor and the Legislative Council.” See EO 98-04, Section II.

<sup>2</sup> 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.”

as to assure fair competitive access to governmental procurement by responsible contractors.”<sup>3</sup> At issue here is Arkansas Code Annotated § 19-11-705(a)(1)(A), which prohibits state employees from participating directly or indirectly in any particular matter pertaining to any state-agency<sup>4</sup> contracts in which an employee or an employee’s immediate family member has a financial interest.<sup>5</sup> “[D]irect or indirect participation” includes, but is not 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.”<sup>6</sup>

However, the TSS Secretary is given discretionary authority to grant an employee a written waiver from the application of Arkansas Code Annotated § 19-11-705 and to grant permission to proceed with a transaction to such extent and upon such terms and conditions as the Secretary may specify.<sup>7</sup> “Such waiver and permission may be granted when the interests of the state so require or when the ethical conflict is insubstantial or remote.”<sup>8</sup> Also, on written request of a state employee or contractor, and in consultation with the Attorney General, the TSS Secretary may render a written advisory opinion regarding the appropriateness of the course of conduct to be followed in proposed transactions.<sup>9</sup>

### III. Analysis

Based on the representations you have made, your position as a current member of the UCA Board of Trustees classifies you as a state employee, and subjects you to the forgoing laws. In addition, the leases at issue are contracts in which you have a financial interest as a minority owner in Trinity.

However, because the leases were in place prior to your appointment to the UCA Board of Trustees, you had no direct or indirect involvement as a state employee, in procuring these leases. Furthermore, your role as a member of the UCA Board of Trustees will not put you in a position to directly or indirectly participate in the procurement or renewal of any leases that TSS DBA awards to DFA. DBA procured the leases for DOC and OSCE using competitive sealed bidding or requests for sealed proposals. Although a sealed bidding procedure was not issued for the ARD lease or its renewal, DBA negotiated it following its standard practice of due diligence in searching market comparisons in the area. It is, therefore, my opinion there has been no impropriety in the procurement of any of these leases and that the renewal of the ARD lease would not violate the ethical strictures of Arkansas Code Annotated § 19-11-705 or EO 98-04.

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<sup>3</sup> Ark. Code Ann. § 19-11-703(b).

<sup>4</sup> “State agency” means “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(16).

<sup>5</sup> See Arkansas Code Annotated § 19-11-705.

<sup>6</sup> Arkansas Code Annotated § 19-11-705(a)(2).

<sup>7</sup> See Ark. Code Ann. § 19-11-715(c).

<sup>8</sup> *Id.*

<sup>9</sup> Ark. Code Ann. § 19-11-715(b).

Mr. Jim Rankin, Jr.  
Advisory Opinion No. 2024-07  
March 29, 2024

This analysis relies on the above factual background you provided, as well as information from DBA. If one or more of these representations are materially incorrect, the advisory opinion and any waiver granted, if applicable, may not be relied upon to show that your actions comply with these ethical standards or that any conflict has effectively been waived.

#### **IV. Decision**

Thank you for disclosing and clarifying your interest in Trinity. Under the facts represented, I see no conflict of interest in your continuing service as a member of the Board of Trustees of UCA or in DFA's renewal of the ARD lease. In accordance with Arkansas Code Annotated § 19-11-715(c), compliance with the course of conduct provided in this advisory opinion is deemed to constitute presumptive compliance with the ethical standards of Arkansas Code Annotated § 19-11-701 *et seq.*

Sincerely,

A handwritten signature in black ink that reads "Leslie Fisker". The signature is written in a cursive, flowing style.

Leslie Fisker  
Secretary

cc: Anne Laidlaw, Division of Building Authority Director