



Department of Transformation and Shared Services

Governor Sarah Huckabee Sanders

Secretary Joseph Wood

April 17, 2023

Mr. James F. Goodhart
General Counsel
Arkansas Game and Fish Commission
2 Natural Resources Drive
Little Rock, Arkansas 72205

RE: Advisory Opinion No. 2023-05
Steven and Allison Fowler

Dear Mr. Goodhart:

This letter is in response to a written request for an advisory opinion and a waiver pursuant to Arkansas Code Annotated §19-11-715(b) and (c), which was sent to me in a letter dated March 27, 2023, and received on April 5, 2023, regarding the Arkansas Game and Fish Commission (AGFC) and its proposed real estate acquisition from two of its employees, Steven and Allison Fowler, and Jon Fowler, Steven Fowler's brother.

This opinion is based upon the following information that you have presented to me and upon which I am relying. It should be noted that if one or more of these information items are later shown to be incorrect, that could result in a revised opinion.

1. Steven Fowler is employed by AGFC as a Biologist Supervisor in the Wildlife Management Division, North Central Region 7;
2. Steven Fowler has been employed by AGFC for 21 years, and his office is located in Mayflower, Arkansas;
3. Allison Fowler is Steven Fowler's wife;
4. Ms. Fowler is employed by AGFC as the Wildlife Diversity Program Coordinator in the Wildlife Management Division;
5. Ms. Fowler has been employed by AGFC for 12 years, and her office is also located in Mayflower, Arkansas;
6. Jon Fowler is Steven Fowler's brother, and he has never been employed by AGFC;
7. Steven and Jon Fowler own a 120-acre real estate parcel through inheritance from a deceased family member;
8. Steven and Jon Fowler's ownership of the 120-acre real estate parcel commenced on April 7, 2011, pursuant to a Trustee's Deed;
9. Steven and Allison Fowler own a 20-acre real estate parcel that they purchased for \$30,000.00 on January 5, 2018;
10. Steven, Jon, and Allison Fowler desire to sell their respective interests in both of these real estate parcels;

11. AGFC desires to purchase both of these real estate parcels and asserts that the AGFC Director and staff believe that there is “a legitimate need to acquire the subject 140 acres and that final acquisition will be in the best interest of the public and all parties involved”;
12. The Fowlers’ property is located adjacent to Cypress Bayou Wildlife Management Area (WMA) in White County, Arkansas;
13. The Cypress Bayou WMA encompasses approximately 2,800 acres in northern Lonoke and southern White counties. Originally, AGFC acquired 1,503 acres through the Farmers Home Administration program in 1989 and subsequently added 1,295 acres since 2015. The WMA is located close to the communities of Beebe, Ward, Austin, and Cabot, and is a popular destination for outdoor recreation, including hunting waterfowl, deer, turkey, and small game;
14. AGFC states that it has been interested in acquiring the Fowlers’ 140 acres “for quite some time”;
15. AGFC real estate ownership surrounds the Fowlers’ parcels on three sides;
16. AGFC asserts that both parcels would make excellent additions to the WMA by incorporating the adjacent forestlands and enabling consistent habitat management for wildlife populations in the immediate vicinity as well as expanding public recreational hunting opportunities for Arkansans and visitors to the state;
17. AGFC affirmatively represents that neither Steven nor Allison Fowler have participated in any way in placing the subject acreage on the AGFC’s land acquisition priority list and that they have had no involvement in AGFC’s management decision-making concerning selection of the land appraisal services or any internal recommendations or approvals for AGFC to acquire the properties;
18. AGFC has obtained Yellow Book land appraisals of both parcels with reviews made by independent third parties. The Uniform Appraisal Standards for Federal Land Acquisitions, which is sometimes referred to as UASFLA or the Yellow Book, is a set of standards for appraisals and appraisal reviews performed on properties that are being acquired by the federal government;
19. White County Assessor records reflect that the 120 parcel has an estimated market value of \$9,600.00 as the basis for an assessed value of \$1,920.00;
20. White County Assessor records reflect that the 20-acre parcel has an estimated market value of \$1,600.00 as the basis for an assessed value of \$320.00;
21. Ferstl Valuation Services appraised the parcels as follows: \$200,000.00 for the 120-acre parcel, and \$34,000.00 for the 20-acre parcel, for a total fair market value of \$234,000.00;
22. Moore Appraisals, LLC served as review appraisers;
23. AGFC represents that it has treated this matter consistent with typical real estate acquisitions, and the Fowlers have had no involvement in AGFC’s planning or decision-making to acquire the properties; and
24. All parties (AGFC, Steven Fowler, Jon Fowler, and Allison Fowler) are agreeable to the sale and purchase of the properties for the appraised price.

I. Relevant Law

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.”

Mr. James F. Goodhart
Advisory Opinion No. 2023-05
April 17, 2023

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 Ark. Code Ann. §19-11-701(9) 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;

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. *See* Arkansas Code Annotated § 19-11-705. 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.”

II. Analysis

Based on the above representations, Steven and Allison Fowler’s current employment with AGFC classifies them as state employees, and their ownership of real estate that AGFC proposes to purchase establishes that they have a financial interest in a proposed state agency contract.

While both Mr. and Mrs. Fowler have been AGFC employees for 21 years as a Biologist Supervisor and 12 years as the Wildlife Diversity Program Coordinator in the Wildlife Management Division respectively, AGFC expressly represents that it has treated this matter consistently with typical real estate acquisitions, and the Fowlers have had no involvement in AGFC’s planning or decision-making to acquire these properties. Further, AGFC affirmatively represents that neither Mr. or Mrs. Fowler have participated in any way in placing the subject acreage on the AGFC’s land acquisition priority list and that they have had no involvement in AGFC’s management decision-making concerning selection of the land appraisal services or any internal recommendations or approvals for AGFC to acquire the properties.

Mr. Fowler’s ownership interest in the 120 acre parcel pursuant to a Trustee’s Deed in 2011 post-dates AGFC’s initial acquisition of the Cypress Bayou WMA in 1989; however, the manner of acquisition does not impute any personal motivation by Mr. Fowler. While Mr. and Mrs. Fowler’s purchase of the 20 acre parcel in 2018 is subsequent to AGFC’s additional acquisition of 1,295 acres in the WMA since 2015, and even though Mrs. Fowler is the Wildlife Diversity Program Coordinator in the Wildlife Management Division, it is significant and a determining factor that AGFC affirmatively represents that the Fowlers have had no involvement in AGFC’s planning or internal recommendations or approvals to acquire these properties.

These express representations persuade me that there has been no impropriety in AGFC’s selection or decision-making process to acquire the Fowlers’ interests in these two parcels. Although AGFC has obtained land appraisals with reviews made by independent third parties, utilizing UASFLA standards, my review encompasses only that of the statutory prohibition and not the amount or process of the appraised

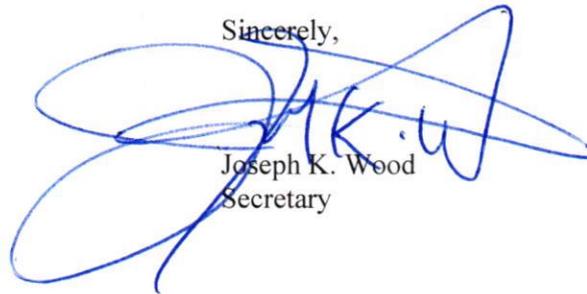
Mr. James F. Goodhart
Advisory Opinion No. 2023-05
April 17, 2023

value. As a result, I am persuaded that the circumstances demonstrate that a conflict is insubstantial or remote so as not to taint the current or future procurement processes.

III. Decision

Thank you for seeking my counsel and approaching the issue with transparency. I am persuaded that under the representations as stated above, any ethical conflict that might exist is insubstantial or remote based on AGFC's affirmation that neither Mr. nor Mrs. Fowler have had any involvement or participation in AGFC's planning or internal recommendations or approvals to acquire these properties. Therefore, 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 the interests of the state and in accordance with Arkansas Code Annotated § 19-11-715(c); compliance with the above course of conduct is deemed to constitute compliance with the ethical standards of the Arkansas Code Annotated § 19-11-701 *et seq.*

Sincerely,

A handwritten signature in blue ink, appearing to read 'J.K.W.', is written over the typed name and title. The signature is stylized and somewhat abstract.

Joseph K. Wood
Secretary