



# STATE OF ALABAMA ETHICS COMMISSION



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April 4, 2012

## ADVISORY OPINION NO. 2012-01

Mr. Glen Chaplin  
Advisor III, Natural Resource Programs  
Department of Fisheries and Allied Aquacultures  
Auburn University  
6332 Woodside Dr. N.  
Theodore, Alabama 36582

Conflict Of Interest/Auburn University  
Employee Serving As Sole Distributor For  
Company Selling Products To Auburn  
University

An Advisor III with the Natural Resource Programs in the Department of Fisheries and Allied Aquacultures with Auburn University, who is also part owner of a company requesting vendor status with the University, may sell products through his company to the University as a sole distributor in the United States; provided:

- 1) all business activities are conducted separate from the performance of his University responsibilities;
- 2) should the employee desire to use Auburn University equipment, facilities, services or personnel for his private business, he must receive approval through the appropriate University Departments and representatives;

- 3) the use may not interfere with its official use by the University;
- 4) he must compensate the University for its use;
- 5) the Dean of Agriculture, or his designee, must review all aspects of the research and/or testing to ensure that it is carried out consistent with University standards;
- 6) selection of products from the employee's company will be made on clear objective reasons related to research objects, costs and University purchasing policies, and must receive approval;
- 7) the employee may not apply for, or perform purchases, on behalf of the University directly from his company; they must be made by other representatives of the University, and must have the approval of the Departmental Chair;
- 8) all sales made by the employee's company to Auburn University may only be made at cost, consistent with his current price;
- 9) the employee may not otherwise profit from the transaction; and,
- 10) a copy of that contract must be filed with the Ethics Commission within 10 (ten) days.

Dear Mr. Chaplin:

The Alabama Ethics Commission is in receipt of your request for an Advisory Opinion of this Commission, and this opinion is issued pursuant to that request.

### **QUESTION PRESENTED**

Is it a conflict of interest that can be resolved for an Advisor III with the Auburn University Department of Fisheries and Allied Aquacultures, who is also a part owner of a company requesting vendor status with the University, to maintain his own company, partnered with an Australian firm to be the sole distributor in the United States, without violating the Ethics Law?

### **FACTS AND ANALYSIS**

The facts as have been presented to this Commission are as follows:

Glen Chaplin is an Advisor III with the Natural Resource Programs in the Department of Fisheries and Allied Aquacultures with Auburn University, and also part owner of a company that is requesting vendor status with the University.

Along with his wife, he is the co-owner of Chaplin Oyster Services. They are partnering with BST Oyster Supplies Pty Ltd. from Cowell South Australia to be their sole distributor in the United States. They manufacture one type of gear available for commercial oyster farming.

Mr. Chaplin states that Auburn University has used this gear, along with several others, for over five years as they work to evaluate commercial oyster farming in Alabama. It has been determined through their research that this gear is one of the best for growing oysters in the Northern Gulf of Mexico. However, since there was not a United States distributor for this company, the time and logistics, as well as the cost of shipping less than container loads of products could make this gear cost prohibitive to some farmers. In May of 2009, Mr. Chaplin stressed this point to the BST Oyster Supplies and asked them to consider getting a North American distributor for their product.

BST contacted Mr. Chaplin in September of 2011, and asked if he would consider being their sole distributor. Mr. Chaplin has discussed it with his immediate supervisors at Auburn University, who gave their approval; provided, the University was aware of the business.

During this process, a conflict of interest management plan was drawn up and Lee Armstrong, General Counsel for Auburn University, recommended that the plan be submitted for a formal opinion.

It is important to point out that, while the Commission in the past has given informal guidance to entities drafting various types of policies, it is not within the Commission's purview

to approve policies. It is the Commission's role to make certain that the policies comply with the Ethics Law. However, the conflict of interest management plan developed by Auburn University is incorporated by reference and made a part of this opinion.

It is obvious from the detail contained in the conflict of interest management plan, that much thought and attention were put into it.

While the Commission is not going to adopt the conflict of interest management plan, the Commission will, in this opinion, incorporate several aspects and conditions set out in that management plan.

The Alabama Ethics Law, Code of Alabama, Section 36-25-1(25) defines a public employee as:

“Any person employed at the state, county, or municipal level of government or their instrumentalities, including governmental corporations and authorities, but excluding employees of hospitals or other health care corporations including contract employees of those hospitals or other health care corporations, who is paid in whole or in part from state, county or municipal funds. For purposes of this chapter, a public employee does not include a person employed on a part-time basis whose employment is limited to providing professional services other than lobbying, the compensation for which constitutes less than 50 percent of the part-time employee's income.”

Section 36-15-1(13) defines a family member of the public employee as:

“The spouse or a dependent of the public employee.”

Section 36-25-1(2) defines a business with which the person is associated as:

“Any business of which the person or a member of his or her family is an officer, owner, partner, board of director member, employee, or holder of more than five percent of the fair market value of the business.”

Section 36-25-5(a) states:

“No public official or public employee shall use or cause to be used his or her official position or office to obtain personal gain for himself or herself, or family member of the public employee or family member of the public official, or any business with which the person is associated unless the use and gain are otherwise specifically authorized by law. Personal gain is achieved when the public official, public employee, or a family member

thereof receives, obtains, exerts control over, or otherwise converts to personal use the object constituting such personal gain.”

Section 36-25-5(c) states:

“No public official or public employee shall use or cause to be used equipment, facilities, time, materials, human labor, or other public property under his or her discretion or control for the private benefit or business benefit of the public official, public employee, any other person, or principal campaign committee as defined in Section 17-22A-2, which would materially affect his or her financial interest, except as otherwise provided by law or as provided pursuant to a lawful employment agreement regulated by agency policy. Provided, however, nothing in this subsection shall be deemed to limit or otherwise prohibit communication between public officials or public employees and eleemosynary or membership organizations or such organizations communicating with public officials or public employees.”

Section 36-25-2(b) states in pertinent part:

“. . . An essential principle underlying the staffing of our governmental structure is that its public officials and public employees should not be denied the opportunity, available to all other citizens, to acquire and retain private economic and other interests, except where conflicts with the responsibility of public officials and public employees to the public cannot be avoided.”

Section 36-25-11 states:

“Unless exempt pursuant to Alabama competitive bid laws or otherwise permitted by law, no public official or public employee, or a member of the household of the public employee or the public official, and no business with which the person is associated shall enter into any contract to provide goods or services which is to be paid in whole or in part out of state, county, or municipal funds unless the contract has been awarded through a process of competitive bidding and a copy of the contract is filed with the commission. All such contract awards shall be made as a result of original bid takings, and no awards from negotiations after bidding shall be allowed. A copy of each contract, regardless of the amount, entered into by a public official, public employee, a member of the household of the public employee or the public official, and any business with which the person is associated shall be filed with the commission within 10 days after the contract has been entered into.”

The Commission has consistently held that anytime public officials or public employees desire to do business with the entity on which they serve or by which they are employed, it must be done through a bid process.

There are certain circumstances, such as this instance, where bidding is not feasible, as the seller is a sole-source vendor. Likewise, the Commission has consistently held that, in situations where bidding is not an option, the public official/public employee/vendor, may sell the product to their entity at their cost. In other words, they may not profit from the transaction.

Specifically, the Commission held in Advisory Opinion No. 95-107 that a school board member “may sell school supplies to the school system at invoice price and may not make a profit off the sale.”

Likewise, Advisory Opinion No. 96-110 held that, if a sale was exempt from the competitive bid laws, “a business owned by a city board of education member may sell playground equipment to a Parent-Teachers’ Organization at or below invoice price.” In addition, “The board of education’s member may not make a profit on a sale to a Parent-Teachers’ Organization.”

In the same opinion, the Commission stated that a restaurant owned by a city board of education member “may sell food to school organizations at or below invoice price.” And they “may not make a profit . . .”

This position was also adopted in Advisory Opinion No. 98-23, as well as Opinion No. 2000-54, which likewise stated that purchases made by a school system outside the competitive bid laws, could be purchases from a school board member at invoice price, with the board member not making a profit from the sale.

In addition to the above, anytime a public employee or a public official enters into a contract paid out of public monies, a copy of that contract must be filed with the Ethics Commission within 10 (ten) days.

Based on the facts as provided and the above law, an Advisor III with the Natural Resource Programs in the Department of Fisheries and Allied Aquacultures with Auburn University, who is also part owner of a company requesting vendor status with the University, may sell products through his company to the University as a sole distributor in the United States; provided:

- 1) all business activities are conducted separate from the performance of his University responsibilities;

- 2) should Mr. Chaplin desire to use Auburn University equipment, facilities, services or personnel for his private business, he must receive approval through the appropriate University Departments and representatives;
- 3) the use may not interfere with its official use by the University;
- 4) he must compensate the University for its use;
- 5) the Dean of Agriculture, or his designee, must review all aspects of the research and/or testing to ensure that it is carried out consistent with University standards;
- 6) selection of products from BST Oyster Supplies/Chaplin Oyster Services will be made on clear objective reasons related to research objects, costs and University purchasing policies, and must receive approval;
- 7) Mr. Chaplin may not apply for, or perform purchases, on behalf of the University directly from BST Oyster Supplies/Chaplin Oyster Services; they must be made by other representatives of the University, and must have the approval of the Departmental Chair;
- 8) all sales made from BST Oyster Supplies/Chaplin Oyster Services to Auburn University may only be made at cost, consistent with his current price;
- 9) Mr. Chaplin may not profit from the transaction; and,
- 10) a copy of that contract must be filed with the Ethics Commission within 10 (ten) days.

### CONCLUSION

An Advisor III with the Natural Resource Programs in the Department of Fisheries and Allied Aquacultures with Auburn University, who is also part owner of a company requesting vendor status with the University, may sell products through his company to the University as a sole distributor in the United States; provided:

- 1) all business activities are conducted separate from the performance of his University responsibilities;
- 2) should Mr. Chaplin desire to use Auburn University equipment, facilities, services or personnel for his private business, he must receive approval through the appropriate University Departments and representatives;
- 3) the use may not interfere with its official use by the University;
- 4) he must compensate the University for its use;
- 5) the Dean of Agriculture, or his designee, must review all aspects of the research and/or testing to ensure that it is carried out consistent with University standards;
- 6) selection of products from BST Oyster Supplies/Chaplin Oyster Services will be made on clear objective reasons related to research objects, costs and University purchasing policies, and must receive approval;

- 7) Mr. Chaplin may not apply for, or perform purchases, on behalf of the University directly from BST Oyster Supplies/Chaplin Oyster Services; they must be made by other representatives of the University, and must have the approval of the Departmental Chair;
- 8) all sales made from BST Oyster Supplies/Chaplin Oyster Services to Auburn University may only be made at cost, consistent with his current price;
- 9) Mr. Chaplin may not profit from the transaction; and,
- 10) a copy of that contract must be filed with the Ethics Commission within 10 (ten) days.

The conflict of interest management plan that is attached to the request for a formal Advisory Opinion is going to be attached as an Exhibit to our opinion.

**AUTHORITY**

By 5-0 vote of the Alabama Ethics Commission on April 4, 2012.



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Braxton L. Kittrell, Jr., Esq.  
Chair  
Alabama Ethics Commission

Attachment





## Conflict of Interest Management Plan

A conflict of interest exists when an individual's private interests (as perceived by a third party) compete with his/her professional obligations to the University to a degree that an independent observer might reasonably question whether the individual's professional actions or decisions are determined by considerations of personal gain at the expense of the best interests of the University. A conflict of interest, or perceived conflict of interest, is *not* an accusation and does *not* imply that an employee's judgement *has been* compromised, or that an employee has violated any applicable laws or rules of ethical conduct. The purpose of this document is to address the management of any such real or perceived conflicts of interest associated with a person working for the University and ownership of a business that the University purchases from.

Business Name: BST Oyster Supplies Pty Ltd, Cowell South Australia and Chaplin Oyster Services  
Products sold: Aquaculture growing systems to raise oysters for research and half shell market  
Potential Staff Licensee/Company: Glen Ira Chaplin, Chaplin Oyster Services hereinafter referred to as "Company"

Glen Ira Chaplin is an Advisor III, Natural Resource Programs in the Department of Fisheries and Allied Aquacultures. His work location is the Auburn University Shellfish Laboratory (AUSL) on Dauphin Island, Alabama. His primary duties as an Auburn University employee are; Assist AUSL manager, faculty and graduate students with ongoing research at AUSL as well as maintenance and repair of AUSL facilities. Secondly, Mr. Chaplin is responsible for all oysters stocks at multiple field locations used for research. This includes maintenance and repair of oysters and field gear in remote locations.

Mr. Chaplin is also part owner, with his wife Martha Chaplin, of Chaplin Oyster Services. This company provides multiple services such as gear set up and oyster maintenance to people who are commercially farming oysters. Chaplin Oyster Services has also partnered with BST Oyster Supplies as the sole United States distributor for their oyster grow-out system. The farming method created by BST is known as the adjustable longline system (ALS). The ALS system has been recognized worldwide as one of the preferred methods of farming oysters. This system uses cages or baskets which are hung from a cable that can be adjusted up or down within the water column. This adjustability allows the farmer to control fouling on the oysters and cages, as well as shell growth and shape, and meat condition. This flexibility allows the farmer to provide a premium oyster to market which commands a higher price than traditional "wild" caught oysters.

- A. Auburn University, through the Shellfish Lab, has been using gear manufactured by BST Oyster Supplies for research and extension purposes for over five years. Dr. William Walton, with the fisheries department, along with his graduate students, have compared the BST adjustable longline system to other commercially available types of oyster grow out gear such as, Oyster Gro and Low Pro cages, to determine which type of gear may be best for farming in the Northern Gulf of Mexico. Furthermore, a current graduate student of Dr. Walton, is looking

at the BST gear specifically in trying to determine what is the optimum density of oyster per cage, as well as which bag orientation / bag density combination allows for optimum growth. Scott Rikard, the Shellfish Lab manager, has also looked at using BST cages as one of the preferred methods for the field grow out component of the hatchery's oyster seed production. Mr. Chaplin has handled all the logistics of all previous purchases of oyster gear from BST for Auburn University. Through this, Mr. Chaplin has come to know the owners of BST and understands the logistics of shipping gear internationally. Mr. Chaplin also works with this gear on an almost daily basis and has the best understanding of how this gear works. With all of our experience with this gear, BST became one of the preferred gear types used by Auburn University as well as commercial farmers. However there was a substantial cost to ship the product to the United States from South Australia. Mr. Chaplin expressed his concern to BST on the high cost of shipping the gear to the United States in small individual orders and asked if BST would consider setting up a distributorship somewhere in North America to possibly reduce the shipping costs and therefore overall cost of using BST gear. Several months past and BST contacted Mr. Chaplin to ask him if he would be interested in becoming the sole distributor of their gear in the United States. They felt Mr. Chaplin, through his previous dealings with their company, had the best knowledge of how their gear worked, as well as, the logistics of getting the gear to the United States. Mr. Chaplin saw this as an opportunity to make BST gear more accessible to commercial farmers by having the product readily available in the United States and also reducing the overall shipping costs per unit, thus making the product less expensive and more competitive with other oyster grow out gear.

Description of potential areas where conflicts of interest (real or perceived) may occur include, but are not necessarily limited to:

- (1) Mr. Chaplin's University commitment to research and outreach versus his commitment to Company.
- (2) The utilization of University equipment, facilities, services or personnel pursuant to Mr. Chaplin's activities with Company.
- (3) Mr. Chaplin's direct purchasing for the University from the Company.

B. Specific steps to address the potential conflicts described in Section A above:

- (1) Mr. Chaplin's University responsibilities are primary and the performance of these duties is not done in a way that benefits his company. Furthermore, it is clear that Mr. Chaplin's business activities are conducted separate from the performance of his university responsibilities. Lastly, if Mr. Chaplin is engaged in his business activities during Auburn University business hours, then Mr. Chaplin must be on annual leave. The Dean of Agriculture or his designee will review with Mr. Chaplin his business activities to ensure that University responsibilities and policies with respect to conflicts of interest management are being met.
- (2) If during his involvement with Company, Mr. Chaplin desires to use AU equipment, facilities, services or personnel for use other than the University, he will receive approval through the appropriate University departments and representatives. Such use must be only on a non-interference basis and must be compensated. Any use of University facilities by Mr. Chaplin must be during times when he is not acting as a University employee. Generally, it is recommended that Mr. Chaplin not use University equipment or facilities in the conduct of his business activities. Also, other companies

with a similar interest as BST Oyster Supplies/Chaplin Oyster Services may also have similar access after following the same approval process mentioned above.

- (3) In order to ensure that the potential for personal gain does not jeopardize or appear to jeopardize the integrity of the research process, the Dean of Agriculture or his designee will review all aspects of the research and/or testing to ensure that it is carried out consistent with University standards, and covered by the appropriate agreements. He will have access to all project information necessary for his review of the sponsored research program(s). Selection of products from BST oyster Supplies/Chaplin Oyster Services will be made on clear objective reasons related to research objectives, costs, and University purchasing policies. The plans and priorities for the use of the research facilities will be transparent. Finally, Auburn University does not advocate for or promote any particular company's products or services and will only report objective research results on the performance of certain products and services.
- (4) Generally, Mr. Chaplin shall not apply for or perform purchases, on behalf of the University, directly from BST Oyster Supplies/Chaplin Oyster Services. In the event that products are purchased from Chaplin Oyster Services, clear steps on the reasoning for purchasing from Chaplin Oyster Services will be specified. All purchases of products distributed by Chaplin Oyster Services shall be made by other representatives of the University and must have approval of the Departmental Chair of Fisheries and Allied Aquacultures to complete the purchase.
- (5) Should Mr. Chaplin no longer have any association with Company, AU will be notified.

I hereby approve the above Plan for handling conflicts of interest (real or perceived) arising out of my relationship with Company and agree to comply with any reasonable conditions and restrictions to manage, reduce, or eliminate conflicts of interest so long as the activity covered by this Plan and the provisions of this Plan are not determined to (i) violate Alabama or United States Law, (ii) violate Auburn University policy (iii) waive rights or privileges provided to me via the AU Faculty Staff Handbook, (iv) circumvent or obviate any provisions of the AU-Company license agreement, or (v) conflict with the rules and provisions applied to Auburn University employees as set forth by the Alabama Ethics Commission.

\_\_\_\_\_ Date \_\_\_\_\_  
Mr. Glen Ira Chaplin

We approve the above Plan for handling the conflict of interest identified by the faculty member.

\_\_\_\_\_  
\_\_\_\_\_, Dean of \_\_\_\_\_ Date \_\_\_\_\_

\_\_\_\_\_

Date \_\_\_\_\_

Associate Provost and Vice President for Research

Company hereby acknowledges this Plan and agrees to cooperate with the implementation of and adherence to this Conflict of Interest Management Plan.

\_\_\_\_\_  
Name:  
Title:

Date \_\_\_\_\_