CONFLICT OF INTEREST

STATE UNIVERSITY EMPLOYEES CONTRACTING WITH THE UNIVERSITY
ON MATTERS UNRELATED TO THEIR UNIVERSITY DUTIES

To:     Mr. Chuck Stubbs and Mr. Martin Schaefer (Tallahassee)

SUMMARY:

Under the circumstances presented, based on the application of Section 112.316,
Florida Statutes, a prohibited conflict of interest will not be created under either
Section 112.313(3) or Section 112.313(7)(a), Florida Statutes, were a company
owned by two technical support persons employed in Information Technology
Services at a State University to contract with the University to provide catering
services at various events, provided that the events are not being organized by
Information Technology Services, as the employees have no responsibilities in their
public capacities regarding the University's selection or procurement of caterers.
CEO 18-05, 18-04, and 07-12 are referenced.¹

QUESTION:

Would a prohibited conflict of interest be created if a company you co-own
contracts with a State University to provide catering services, where you are
employed by the University in Information Technology Services but your positions
do not involve selecting or procuring caterers for University events?

Under the circumstances presented, your question is answered in the negative.

¹ Prior opinions of the Commission on Ethics may be obtained from its website
In your letter of inquiry, additional information provided to our staff, and telephone conversations between you and our staff, you state you are employees in Information Technology Services at a State University and, in your private capacities, are co-owners of a catering company. You indicate your company is included on the list of catering vendors kept by an events facility at the University. You relate that University offices, departments, and colleges who host events—as well as some private entities who host events—often contact the University to obtain catering recommendations, and the University provides them with this list.

You further explain that, in your capacities at the University, you have no involvement with, nor influence over, the selection of catering companies for University events. Rather, you relate your work at Information Technology Services is to ensure the technologies and equipment associated with campus-wide services—such as student enrollment services and payroll services—are functioning properly. You emphasize the technical services you perform may require you to interact with various offices, departments, and colleges of the University, but you follow the same processes and protocols with each office, department, and college, and have no particular influence with any part of the University outside of Information Technology Services. You also emphasize that the technical services you provide are unrelated to the catering of University events.

Your specific inquiry is whether you will have a prohibited conflict under any provision of the Code of Ethics should your company cater events offered by University offices, departments, and colleges who might select your company's name from the University's list. You indicate your company would not solicit these opportunities, but, rather, would respond to a University office,
department, or college contacting your company due to its presence on the list.²

The prohibitions relevant to your inquiry are Sections 112.313(3) and 112.313(7)(a), Florida Statutes, which state:

DOING BUSINESS WITH ONE’S AGENCY.--No employee of an agency acting in his or her official capacity as a purchasing agent, or public officer acting in his or her official capacity, shall either directly or indirectly purchase, rent, or lease any realty, goods, or services for his or her own agency from any business entity of which the officer or employee or the officer's or employee's spouse or child is an officer, partner, director, or proprietor or in which such officer or employee or the officer's or employee's spouse or child, or any combination of them, has a material interest. Nor shall a public officer or employee, acting in a private capacity, rent, lease, or sell any realty, goods, or services to the officer's or employee's own agency, if he or she is a state officer or employee, or to any political subdivision or any agency thereof, if he or she is serving as an officer or employee of that political subdivision . . . This subsection shall not affect or be construed to prohibit contracts entered into prior to:

(a) October 1, 1975.
(b) Qualification for elective office.
(c) Appointment to public office.
(d) Beginning public employment.

[Section 112.313(3), Florida Statutes.]

CONFLICTING EMPLOYMENT OR CONTRACTUAL RELATIONSHIP.--No public officer or employee of an agency shall have or hold any employment or contractual relationship with any business entity or any agency which is subject to the regulation of, or is doing business with, any agency of which he is an officer or employee . . . ; nor shall an officer or employee of an agency have or hold any employment or contractual relationship that will create a continuing or frequently recurring conflict between his private interests and the performance of his public duties or that would impede the full and faithful discharge of his public duties.

[Section 112.313(7)(a), Florida Statutes.]

² While your written inquiry concerned catering an event being sponsored by the University's Office of Faculty Development and Advancement, you clarified in subsequent phone conversations that you seek an opinion addressing whether you may cater events for various University offices, departments, or colleges.
Were the language of the prohibitions to be considered alone, your company would be selling services to the University (your public agency\(^3\)), thereby triggering the second part of Section 112.313(3), and you would have an employment or contractual relationship with your company, a business entity, which, by virtue of the catering contract, would be doing business with the University, thereby triggering the first part of Section 112.313(7)(a).\(^4\)

However, in the past, and in response to unique circumstances, the Commission has applied Section 112.316, Florida Statutes, to negate the application of Sections 112.313(3) and 112.313(7)(a) when a public officer or employee lacks any public capacity responsibility regarding the relationship between his public agency and his private business. Section 112.316 provides:

CONSTRUCTION.—It is not the intent of this part, nor shall it be construed, to prevent any officer or employee of a state agency or county, city, or other political subdivision of the state or any legislator or legislative employee from accepting other employment or following any pursuit which does not interfere with the full and faithful discharge by such officer, employee, legislator, or legislative employee of his or her duties to the state or the county, city, or other political subdivision of the state involved.

In CEO 07-12, a State University professor inquired whether he would have a prohibited conflict were his architectural/engineering firm to contract with the University to perform work on a project. The Commission applied Section 112.316 to negate the application of Sections 112.313(3) and 112.313(7)(a) as it found the professor played no role at the University concerning the project or the potential contract between the University and his firm. See, also, among others, CEO 18-04 (using

\(^3\) For the purposes of Sections 112.313(3) and 112.313(7)(a), your "agency" would be the entire University, as Section 112.312(2), Florida Statutes, defines the term "agency" as "... any public school, community college, or state university ... ."

\(^4\) You relate by phone that any catering contract would be between the University and your company.
Section 112.316 to negate the application of Section 112.313(3) where a city councilperson's company was intending to sell construction services to a local school system encompassed within city government because the city council had no responsibilities regarding the business between the company and the school system) and CEO 18-05 (using Section 112.316 to negate the application of Section 112.313(3) where a company co-owned by a member of a city's planning and zoning board was selling goods and services to the city's community redevelopment agency because the planning and zoning board had no influence over which contracts the community redevelopment agency would approve).

Similarly, here, you relate your University employment responsibilities are not related to selecting caterers or providing catering at University events. Accordingly, under the particular circumstances presented in your inquiry, we find that Section 112.316 will negate the application of Sections 112.313(3) and 112.313(7)(a) if your company contracts to provide catering to University offices, departments, and colleges, provided that the catering is not for an event being sponsored by Information Technology Services.

Your question is answered accordingly.

cc: Mr. Chuck Stubbs  
    Mr. Martin Schaefer  

GWN/gps/dw
From: Chuck @ BWCC <chuck@bluewatercooking.com>
Sent: Tuesday, March 05, 2019 8:39 AM
To: Anderson, Chris <ANDERSON.CHRIS@leg.state.fl.us>
Cc: Martin Schaefer <martin@bluewatercooking.com>
Subject: RE: BlueWater Cooking Company and FSU

Chuck,

Received. We will be in touch.

Thanks,
Chris Anderson
C. Christopher Anderson, III
General Counsel and Deputy Executive Director
Florida Commission on Ethics
(850) 488-7864

Chris,

We would like to move forward with getting a formal opinion. Please let us know, if you need any additional information to include.

Thanks

Chris,

Here is the situation that we are up against and would like to get an informal opinion on.

BlueWater Cooking Company - Owners Chuck Stubs and Martin Schaefer - Catering company in Tallahassee Florida since 2008. We cater all kinds of food for all kinds of people and organizations. We have recently been contacted by a department at Florida State University to cater a meal for them. The department is Office of Faculty Development and Advancement. This is not work that we solicited, we were recommended to them and they called us.

Issue: Owners of BlueWater are currently employed by Florida State University in full-time positions. Both owners work in Information Technology Services and provide technical support for campus. It has been brought
to our attention that this might be a violation of FS 112.313(3), where a company cannot do business with an agency that they are employed by. We feel like there is plenty of separation between our jobs at FSU and the services that BlueWater provides that this should not be a conflict. There is separation of the two departments that there should not be a conflict. Please see the two organizational charts to see the separation. Also note that FSU outsources all of its catering services to outside vendors.

Please let us know if you need any additional information,

Chuck

850-545-5975
From: Schafer, Grayden
Sent: Wednesday, March 13, 2019 11:01 AM
To: Schafer, Grayden
Subject: Ethics Inquiry

Mr. Stubbs and Mr. Schaefer:

I am an attorney with the State Ethics Commission and have been assigned preparing a draft response to your request for a formal opinion. Chris Anderson indicated you both understand that the earliest possible consideration of the draft will be at our Commission meeting on April 12. I have a few questions for you, just to understand the context of your situation. You may reply by email, and, once I receive your response, I will begin preparing a draft opinion.

1. Am I correct in understanding you both work full-time for FSU in the Information Technology Services Department?

2. On the flow-chart concerning the breakdown of the Information Technology Services Department, I saw Mr. Stubbs’s name highlighted under the “Enterprise Applications” tab, but I did not see Mr. Schaefer’s name. I did see highlighted “Maria Whitaker’s” name. Does this mean Mr. Schaefer works for Ms. Whitaker? If not, please clarify where on the flow-chart Mr. Schaefer is employed, as well as why Ms. Whitaker’s name is highlighted.

3. Do either of you have any influence—in your public capacity—over which catering company will be selected by the Office of Faculty Development & Advancement?

4. Do either of you perform any work for the Office of Faculty Development & Advancement? If so, please describe the work and indicate how—if at all—it differs from your work for other Departments/Offices at FSU.

5. Will any of the technical support you anticipate providing the Office of Faculty Development & Advancement relate to the meal that you have been asked to cater?

Please let me know if you need any of these questions clarified. Thank you.

Gray Schafer
Senior Attorney
Florida Commission on Ethics
(850)-488-7864

From: Chuck - bluewatercooking.com <chuck@bluewatercooking.com>
Sent: Thursday, March 07, 2019 9:37 AM
To: Schafer, Grayden <SCHAFER.GRAYDEN@leg.state.fl.us>; martin@bluewatercooking.com
Subject: Re: Ethics Inquiry
Gray,

Thanks for working with us on this Inquiry.

Here are the answers to your questions: Note ITS - Information Technology Services

1. Yes

2. Yes, Mr Schaefer works for Maria Whitaker she is his direct supervisor, forgot to include that in the initial email to Chris Anderson.

3. No

4. Yes, we (ITS) perform work for the Office of Faculty Development and Advancement based on the direction given to us from our supervisors as part of the support that Enterprise Applications provides for the technologies that ITS Enterprise Applications are responsible for. The work that we (ITS), as an Enterprise Application support office, perform for the Office of Faculty Development and Advancement follows the same process, protocols and project and resource management that provided for the other central administrative and academic offices on campus.

5. No

Please let us know if you have any additional questions or need any additional clarifications.

Chuck Stubbs