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September 25, 2020

Jeffrey Silvyn, Esq.
General Counsel
Pima County Community College District
4905 East Broadway Blvd.
Tucson, AZ 85709-1010

Re: Participation of the College's Chancellor on the Unmudl.com Steering Council.

Dear Mr. Silvyn:

You have asked me to address whether Chancellor Lee Lambert's position and membership on the Steering Council ("Steering Council") of the Unmudl.com network platform ("Unmudl") creates a conflict of interest under Arizona's conflict of laws or policies of Pima County Community College District ("College") by virtue of his employment as the Chancellor of the College. You also have asked me to recommend possible changes to policy or practice going forward.

I have examined relevant documents, as well as laws and College policies, to reach the conclusions below.

Short Answer

1. An officer or employee of a public agency must comply with the requirement of disclosing a conflict of interest and refraining from participating in a transaction or decision if he or she has a substantial interest in the transaction or decision, as defined by law.¹
2. The Chancellor's interest in a transaction or decision pertaining to Unmudl is a remote interest unless he would derive a direct non-speculative economic benefit personally by participating in the transaction or decision.

¹ For purposes of this opinion, the terms "contract," "sale," "purchase," or "service" as used in paragraph A of A.R.S. §38-503 are collectively referred to as "transaction."

3. If the Chancellor's interest is remote, it is not a substantial interest and he is not required to disclose any conflict of interest or refrain from participating in any transaction or decision made by the College as to Social Tech or Unmudl.
4. The Chancellor's interest in the Social Tech transaction or any related decision is not a substantial interest.
5. The Chancellor's involvement in the Steering Council does not violate the Arizona Conflict of Interest laws.
6. The Chancellor was within his authority to sign the Memorandum of Understanding with Social Tech.
7. The Chancellor has not violated any law or College Policy by virtue of the Memorandum of Understanding or his involvement with and participation on the Steering Council.
8. In the future, while not required by law or College Policy, I suggest the Chancellor continue to refrain from direct involvement with completing the final agreement between Social Tech and the College.

Discussion and Analysis

I. Background.

Unmudl is a network platform that connects community colleges, students, and employers to provide a) individuals with learning opportunities intended to increase their employability and opportunities for career advancement and b) employers with resources for training their employees and finding prospective employees with particular skills. Tabs 1 and 2. The Unmudl platform was developed by Social Tech, Inc., ("Social Tech"), a for-profit corporation, that, among other things, manages and maintains the Unmudl website, markets the platform, and provides the College with information and review to help it achieve optimal use of the platform by users. *Id.*

The College has a short term Memorandum of Understanding ("MOU") with Social Tech, that was executed on October 15, 2019. Tab 2. The amount of this MOU is under the threshold amount, specified by Board Policy 1.05, that delegates to the Chancellor the authority to enter

into agreements with third parties.² That threshold amount is \$250,000. Thus, Chancellor Lambert had full authority to sign this MOU.³

Social Tech created the 13 member Steering Council, which, according to a document dated January 1, 2020, does the following:

... provides future-focused strategic leadership, support, and expert guidance on Unmudl's progress. Council Members are not responsible for day-to-day activities and tasks and instead focus on guiding the vision; leading the field with cutting-edge, trailblazing, future-focused thoughtful leadership; informing marketplace policies; and providing expert feedback to the leadership team.

Tab 3.

Chancellor Lambert is the Chair of the Council. He receives no compensation or direct or indirect pecuniary benefit by virtue of his participation in and service on the Council. He has no ownership interest in Social Tech or Unmudl.

II. Legal Analysis.

A. Analysis Based upon Arizona Conflict of Interest Law.

² Section C of Board Policy 1.05, "Powers and Duties of the Chancellor" states:

The Chancellor is authorized, to the extent permitted by law, to enter all agreements on behalf of the College, except for those which require approval of the Board as set forth in the list below:

1. Agreements with total value exceeding the Simplified Acquisition Threshold amount, as defined in the Federal Acquisition Regulations and in effect at the time of execution;
2. Intergovernmental agreements;
3. Dual enrollment agreements; and
4. All agreements for the purchase, sale, or permanent encumbrance of real property.

The Simplified Acquisition Threshold Amount is \$250,000.

³ The College is negotiating a five year agreement with Social Tech, which requires an annual fee ranging from \$10,000 to \$25,000 per year. The negotiation has been rigorous and robust, involving both the Contracts and Legal Departments. The amount that the College will pay Social Tech under that agreement will continue to be under the threshold amount of \$250,000.

1. Arizona Conflict of Interest Law prohibits the involvement of public employees in a transaction or decision when the employee has a substantial interest in the transaction or decision.

Arizona's Conflict of Interest Law is codified at A.R.S. §§38-501-511. The principal provision of the law is in §38-503, which states, in pertinent part, the following:

A. Any public officer or employee of a public agency who has, or whose relative has, a substantial interest in any contract, sale, purchase or service to such public agency shall make known that interest in the official records of such public agency and shall refrain from voting upon or otherwise participating in any manner as an officer or employee in such contract, sale or purchase.

B. Any public officer or employee who has, or whose relative has, a substantial interest in any decision of a public agency shall make known such interest in the official records of such public agency and shall refrain from participating in any manner as an officer or employee in such decision.

The term "substantial interest" as used in A.R.S. § 38-503 is defined as "any nonspeculative pecuniary or proprietary interest, either direct or indirect, other than a remote interest." A.R.S. § 38-502(11). "Interest" does not mean a mere abstract interest in the general subject or a contingent interest but is "a pecuniary or proprietary interest, by which a person will gain or lose something, as contrasted with a general sympathy, feeling or bias." *Yetman v. Naumann*, 16 Ariz. App. 314, 317, 492 P.2d 1252, 1255 (1972). "[T]o violate the conflict of interest statute, a public official must have a **non-speculative, non-remote pecuniary or proprietary interest in the decision at issue.**" *Hughes v. Jorgenson*, 203 Ariz. 71, 74-75; 50 P.3d 821, 824-25 (2002) [Emphasis added.]

"Remote interest" means an interest that falls in any of twelve categories listed in A.R.S. § 38-502(10). The Arizona Legislature "has determined that certain economic interests are so remote that they do not impermissibly influence a person's decisions or actions." *Arizona Attorney General Agency Handbook* (Revised 2018) ("*Handbook*") §8.3. If the public official or employee has only a remote interest, there is no need for further analysis.

The most relevant types of "remote interest" for purposes of this discussion are the following:

(e) The ownership of less than three percent of the shares of a corporation for profit, provided the total annual income from dividends, including the value of stock dividends, from the corporation does not exceed five percent of the total annual income of such officer or employee and any other payments made to him by the corporation do not exceed five percent of his total annual income.

(f) That of a public officer or employee in being reimbursed for his actual and necessary expenses incurred in the performance of official duty.

The Arizona Attorney General sets forth a test to determine if a public employee has a substantial interest:

To determine whether a substantial interest exists, the public officer should ask:

1. Could the decision affect, either positively or negatively, an interest of the officer or employee or the officer's or employee's relative?
2. Is the interest a pecuniary or proprietary interest? Could it affect a financial interest or ownership interest?
3. Is the interest something that is not statutorily designated as a remote interest?

If the answer to each of these questions is yes, then a substantial interest exists that requires disclosure and disqualification by the public officer or employee.

Handbook, §8.3. [Emphasis added.].

2. Other Prohibitions contained in Arizona's Conflict of Interest Laws.

A.R.S. §38-504 states:

C. A public officer or employee shall not use or attempt to use the officer's or employee's official position to secure any valuable thing or valuable benefit for the officer or employee that would not ordinarily accrue to the officer or employee in the performance of the officer's or employee's official duties if the thing or benefit is of such character as to manifest a substantial and improper influence on the officer or employee with respect to the officer's or employee's duties.

A.R.S. §38-505, which is also part of Arizona's Conflict of Interest Law, states:

A. No public officer or employee may receive or agree to receive directly or indirectly compensation other than as provided by law for any service rendered or to be rendered by him personally in any case, proceeding, application, or other matter which is pending before the public agency of which he is a public officer or employee.

3. There has been no violation of Arizona's Conflict of Law.

If the transaction or decision of Chancellor Lambert will confer a direct non-speculative economic benefit or detriment on him as an employee of the College, he must declare a conflict and refrain from voting upon or otherwise participating in any manner in any transaction or decision related to Social Tech or Unmudl. This determination will have to be made on a case-by-case basis. Ariz. Atty. Gen. Op. I18-001.

Because Chancellor Lambert does not receive such a benefit or detriment by virtue of his participation in and service on the Steering Council, he has no conflict of interest under the Arizona Conflict of Interest Law in the College's transactions or decisions related to Social Tech and Unmudl.

B. Analysis under College Policies.

1. The College's Procurement, Purchasing, and Acquisition Procedures Manual and AP 1.25.05 follow the statutory Arizona Conflict of Interest Law.

Section 1.4 of the College's Procurement, Purchasing, and Acquisition Procedures Manual (Rev. 2018) incorporates the language of A.R.S. §38-503. It states:

1.4 Conflict of Interest

College employees must comply with the Arizona Conflict of Interest Law, ARS § 38-503. The Conflict of Interest Law provides if an employee or an employee's relative has a financial interest in any decision or transaction made or to be made by the College the employee must: (1) disclose such financial interest on a "Conflict of Interest Disclosure Form" and (2) refrain from participating in any manner in such decision or transaction, including any contract, fee, grant, purchase, sale, service, benefit or any other matter. The Conflict of Interest Law does not prevent an employee from doing business with the College. A College employee may supply equipment, material, supplies, or services to the College but only if the

contract is awarded after public competitive bidding. The employee should contact the Department for a description of the competitive bidding requirements. Note when a College employee does business with the College, the employee has a financial interest in the transaction and the disclosure and non-participation requirements set out above apply. (See AP 1.25.05)

Since I have concluded that Chancellor Lambert's participation on the Steering Council does not violate Arizona Conflict of Interest law, my conclusion is also that it does not violate Section 1.4 of the Procurement, Purchasing, and Acquisition Procedures Manual or AP 1.25.05.

2. The Ethical Standards of the Employee Handbook also tie into Arizona Conflict of Interest Law.

I have also examined the section of the College Employee Handbook entitled "Ethical Standards and Conflict of Interest," adopted September 11, 2020. That section also reiterates A.R.S. §38-501 through 511, which are the relevant statutory conflict of interest provisions for public employees.

Since I have concluded that Chancellor Lambert's membership and participation on the Steering Council does not violate the Arizona Conflict of Interest Law, my conclusion is also that it does not violate the College Employee Handbook Ethical Standards and Conflict provisions.

III. Recommendations Going Forward.

While members of the Board have raised questions about Chancellor Lambert's membership and participation on the Steering Council, there has been no violation of the law or College policy. That said, as a best practice to ensure public confidence, while not required by law or policy, I recommend that the Chancellor continue to refrain from participating in the negotiation and also refrain from executing a final agreement with Social Tech so long as he participates on the Steering Council. Execution of the final agreement could be done by another authorized College official who does not hold a position with the Unmudl Steering Committee.

If you should have any questions, please do not hesitate to contact me.

Very truly yours,


Susan P. Segal
For the Firm