

## **SUPPLEMENT TO EXPLANATION OF ADVERSE FINDING**

As explained in the applications (*see* BLFT-20160715ABE and BLFT-20160715ABD ), on June 10, 2016, Michael G. Hubbard, President of Auburn Network, Inc. (“Auburn Network”) and former Speaker of the Alabama House of Representatives, was convicted in an Alabama state trial court of twelve felony counts under the Alabama Ethics Act (“the Act”). *See* State of Alabama v. Michael Gregory Hubbard, CC-2014-565 (Circuit Court, Lee County, Alabama). On August 5, 2016, Mr. Hubbard moved for a judgment of acquittal, a dismissal of the charges, or a new trial in the Circuit Court of Lee County, Alabama.

The twelve counts under the Act relate to the following three sections:

### **Lobbying (Ala. Code § 36-25-1.1):**

Counts 12 and 13 arise under Ala. Code § 36-25-1.1, which holds that “[n]o member of the Legislature, for a fee, reward, or other compensation, in addition to that received in his or her official capacity, shall represent any person, firm, corporation, or other business entity before an executive department or agency.” Both counts relate to Mr. Hubbard’s contract for business-related services with Capitol Cups, Inc. (“Capitol Cups”), a plastic cup manufacturing company. Capitol Cups’ shares are owned by CV Holdings, LLC (“CV Holdings”), whose founder is an individual named Robert Abrams. In his appeal, Mr. Hubbard argues that the prosecution misunderstands basic concepts of corporate law and improperly treats all three entities or individuals listed above as the same. For example, the prosecution consistently refers to “Robert Abrams d/b/a CV Holdings, LLC.” However, Mr. Hubbard points out that the acronym d/b/a is inappropriate here, as it indicates a trade name. While Robert Abrams is indeed an officer of CV Holdings, CV Holdings is not his trade name, and CV Holdings is a legal entity separate from Mr. Abrams.

Under these counts, the prosecution argued that Mr. Hubbard represented “Robert Abrams d/b/a CV Holdings, LLC” before the Governor and the Commerce Department, respectively, for compensation to himself or Auburn Network. Mr. Hubbard appeals, arguing (1) that his obligation as a legislator was to look after the interests of his constituents, and that it was routine for him to help businesses and individuals in his district by arranging meetings; (2) that he had no contract with Mr. Abrams or CV Holdings; and (3) that he advocated for economic growth opportunities for his district (Lee County) that involved funds for CV Holdings for *other* manufacturing in the county, not for Capitol Cups.

### **Use of Official Position or Office for Personal Gain (Ala. Code § 36-25-5 (a)-(c)):**

Three counts arise under various subsections of Ala. Code § 36-25-5. Count 11 arises under subsection (a), which holds, in relevant part, that:

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.

The prosecution argued that Mr. Hubbard used his official position to obtain personal gain for himself or Auburn Network from "Robert Abrams d/b/a CV Holdings, LLC." In the appeal, Mr. Hubbard argues that he does not have a contract with CV Holdings; instead, he has a contract with Capitol Cups, a separate entity. Mr. Hubbard highlights that there is no proof or even suggestion that he used his position to benefit Capitol Cups. As Mr. Hubbard makes clear in his motion, there is no proof that his contract with Capitol Cups was improper.

Count 5 relates to a consulting contract between Mr. Hubbard and another company, and it arises under subsection (b), which holds, in relevant part, that "[a] member of a legislative body may not vote for any legislation in which he or she knows or should have known that he or she has a conflict of interest." The prosecution argued that Mr. Hubbard violated the Act by voting for a bill when he had a conflict of interest. The State's theory was that Mr. Hubbard's consulting contract created a conflict of interest, and that based on that conflict, he should have abstained from voting on a general budget bill. Mr. Hubbard's appeal argues that there was no conflict of interest under either of two possible definitions of the term. *First*, the conflict of interest section of the Act explains that a conflict arises when legislation would uniquely affect a business entity and the legislator either (1) owns or otherwise controls more than five percent of the business entity or (2) is an officer or director of the business entity. As Mr. Hubbard explains in the motion, it is undisputed that he does not own any portion of the company with whom he had the contract and that he was not an officer or director of that company. Therefore, there was no conflict of interest. *Second*, the definition section of the Act deems a conflict to exist where a legislator's vote (1) would materially affect (2) the financial interest of (a) the official or his family or (b) a business with which the official is associated, (3) in a manner different from the manner it affects the other members of the class to which he belongs. Mr. Hubbard makes clear in his motion that none of these prongs were proven by the State.

The final count under this section, Count 14, relates again to the Capitol Cups contract, and arises under subsection (c), which holds, in relevant part, that:

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.

Specifically, the prosecution argued that Mr. Hubbard used state property and employee time for his personal benefit, namely, money for himself or Auburn Network from "Robert Abrams d/b/a CV Holdings, LLC." Mr. Hubbard, however, argues that Capitol Cups is the separate entity with whom he had a contract, and he had no business relationship with Mr. Abrams or CV Holdings. Additionally, Mr. Hubbard makes clear that there is no proof that Capitol Cups paid him for any use of public time or resources.

**Limitation on Actions of Lobbyists, Subordinates of Lobbyists, and Principals (§ 36-25-5.1(a)):**

The remaining seven charges arise under Ala. Code § 36-25-5.1(a), which holds, in relevant part, that:

No lobbyist, subordinate of a lobbyist, or principal shall offer or provide a thing of value to a public employee or public official or to a family member of the public employee or family member of the public official; and no public employee or public official or family member of the public employee or family member of the public official shall solicit or receive a thing of value from a lobbyist, subordinate of a lobbyist, or principal.

Counts 16, 17, 18, and 19 charge that Mr. Hubbard violated the statute when certain individuals, who the State claimed to be principals of lobbyists, purchased equity interest in one of Mr. Hubbard's businesses. Under the State's theory, the investments were prohibited because they were made by "principal[s]," and they constituted a "thing of value." See Ala. Code § 36-25-5.1(a). However, in his appeal, Mr. Hubbard argues that, under the Act, the investments were not things of value and that the individuals who made these investments were not principals. The Act specifically defines "thing of value" to *exclude* "[a]nything for which the recipient pays full value." See Ala. Code § 36-25-1(34)(b)(9). Additionally, Mr. Hubbard argues that the term "principal" in the Act refers to the entity for which the lobbyist actually works, not the high level officials of that entity, as the State would define the term. Finally, Mr. Hubbard argues that for certain of the investors, the Friendship Exception—which excludes from the definition of "thing of value" "[a]nything given by a friend of the recipient under circumstances which make it clear that it is motivated by a friendship and not given because of the recipients' official position"—applies. See Ala. Code § 36-25-1(34)(b)(3). For this argument, Mr. Hubbard highlights testimony from three of the individuals explaining their friendships with Mr. Hubbard and the fact that they made the investments because of those friendships and because the investments made good business sense.

Counts 6 and 10 arise from certain of Mr. Hubbard's consulting and business contracts. The prosecution argued that Mr. Hubbard violated the Act by having a consulting contract with one company and a business contract with another company. However, in his appeal, Mr. Hubbard argues that these business relationships were in no way improper. *First*, the contracts were for Mr. Hubbard's services to these companies outside the State of Alabama, so Mr. Hubbard did not utilize his office in furtherance of the contracts. *Second*, the money earned through the contracts was not a prohibited "thing of value." Not only was there a full-value exchange between Mr. Hubbard and the two companies, but the money earned under the contracts also fits under another exception to the "thing of value" definition—that "[c]ompensation . . . earned from a non-government . . . client . . . under circumstances which make it clear that the thing is provided for reasons unrelated to the recipient's public service as a public official or public employee" is not a "thing of value." See Ala. Code § 36-25-1(34)(b)(10). *Third*, Mr. Hubbard argues that the State's Ethics Commission approved a similar consulting agreement between Mr. Hubbard and another company, and that it is contrary to due process for the State to call the contracts with these companies criminal, yet see no problem with a materially similar contract.

Finally, Count 23 relates to Mr. Hubbard allegedly soliciting or receiving intangible business assistance from a friend. Mr. Hubbard appeals this count, arguing that the friend is not a "principal" under the Act because individuals do not become principals simply by virtue of their status as officers or directors of principals.