
INTEROFFICE

MEMORANDUM

STATE OF GEORGIA
DEPARTMENT OF LAW

DATE: April 29, 1999
TO: Thurbert E. Baker
Attorney General
THRU: Jeff Milsteen
Chief Deputy Attorney General
FROM: Mike Hobbs
Counsel to the Attorney General
RE: Dr. Shui-Nee Chow, Georgia Tech School of Mathematics

INTRODUCTION

Mr. Ron Stark, Assistant Vice Chancellor For Internal Audit Services for the Board of Regents, asked me to review an audit and investigation he conducted into allegations that the chairman of the School of Mathematics at Georgia Tech had engaged in excessive travel. In addition it was alleged that the chairman, Dr. Shui-Nee Chow, had misdirected certain funds into a Georgia Tech Foundation account when the money should have been deposited in an institutional account.

Dr. Ted Hill, a professor in the School of Mathematics brought these allegations to the attention the Board of Regents. Dr. Hill has utilized the Open Records Act to obtain much evidence concerning the operation of the School of Mathematics over the last year. He is now alleging retaliation against him by certain administrators at Tech because of his efforts.

Mr. Stark requested our review to determine whether criminal proceedings should be instituted. This matter is similar to the Norman Johnson investigation in that the irregularities in the main appear to be the product of a systemic or cultural phenomenon at Tech: laxities in adherence to institutional travel and expense policies. Because Tech is taking steps to improve compliance with its policies, the fact that Georgia Tech has taken an administrative personnel action against Dr. Chow, and because of weaknesses in the evidence, I do not recommend further action by this office.

FACTS

A. Edmonton, Alberta

This inquiry focused on four trips taken by Dr. Chow. The first trip during which questionable expenses were examined was to Edmonton, Alberta, Canada in August 1995 to attend a workshop and conference at the University of Alberta. While Dr. Chow spent eight nights at the Campus Towers at the University between August 16 and 23, 1995, he then spent two nights at the Greenwood Inn in Canmore, Alberta (\$221.76), one night at the Prestige Inn at Golden, British Columbia (\$167.33), one night at Maligne Lodge, Jasper, Alberta (\$166.88), and came back to Edmonton on August 28, 1995. Dr. Chow sought and obtained reimbursement for these expenses from Georgia Tech, submitting copies of the hotel bills as justification. It should be noted that Dr. Chow's wife accompanied him on this trip, but that it was confirmed that the room charges were no more for double occupancy than for single.

Dr. Chow stated that the side trips were taken after several long days of collaboration on math problems. The program built in a respite so that the participants could take a break and work on the problems individually, and then reconvene. He said this was common since researchers cannot work together all the time without having too much influence on one another. He also said that the side trips were approved by the administration at Tech's Center for Dynamical Systems and Nonlinear Studies.

Dr. Chow's reimbursement request was signed "approved" by the administrative accountant for the School of Mathematics. Under Tech policy, the approval is required to be by an official one level above the employee submitting the request. Dr. Chow has stated that he was not familiar with that rule. Dr. Chow has also stated that the Dean of the College of Sciences, of which the School of Mathematics is a part, approved the side trips after the fact. Unfortunately, the inquiry did not confirm one way or the other that this approval was made. The reimbursement was paid from institutional funds.

B. Taiwan

On August 1, 1996, Dr. Chow submitted a reimbursement request for \$35 per day for 86 days (\$3010) that he spent at the University of Taiwan doing research. Dr. Chow was in Taiwan from May 1, 1996, to July 29, 1996. The \$35 per day was for meals. Mr. Gary Schuster, Dean of the College of Sciences, approved this request and the Georgia Tech Foundation made the reimbursement.

During this period, Dr. Chow was on leave from the institution in an "absence from campus" status for which he had applied on April 24, 1996. This was

approved on May 6, 1996. The record is not clear as to whether this leave should have been with or without pay. According to Dr. Chow, he was not on leave of absence without pay, but rather was simply away from the institution and his administrative duties so that he could conduct research. He has stated, and this has been confirmed by administrators, that it is not uncommon for professors to be away from the institution for prolonged periods for research purposes. In his view, he was entitled to the \$35 per day for meals.

C. UTAH

Between May 13, 1997, and May 21, 1997, Dr. Chow was in Utah ostensibly to attend a math symposium at Snowbird and to visit Brigham Young University at Provo. The dates of the conference were May 18 through May 22. Dr. Chow did not seek reimbursement for lodging for May 13, 14, 15, 16, or 17, although he did seek and obtain reimbursement for meals for the entire period. He also sought and obtained reimbursement for a rental car for the entire period. Finally, he was reimbursed for lodging for May 17, 1997, at Bryce, Utah, May 18, 1997, at Green River, Utah, May 19, 1997, at Price, Utah, and May 20, 1997 at Snowbird. The Georgia Tech Foundation funded this travel.

Obviously, Dr. Chow spent at least three days traveling to various locations in Utah that can not be associated with the stated purposes for the trip. Dr. Chow has admitted that he engaged in personal travel during this period, but has stated that he checked with the foundation and the Dean and obtained approval for the travel after the fact.

D. SEATTLE AND WHITE HORSE, YUKON

In October 1996, Dr. Chow was invited to be a principle speaker at the International Conference on Nonlinear Phenomena in Dynamical Systems and Variational Problems held in White Horse, Yukon, between July 2 1997, and July 6, 1997. On July 15, 1997, Dr. Chow submitted a reimbursement request to the Tech Foundation totaling \$4013 and covering a period beginning June 25, 1997 and ending July 12, 1997. For this period, Dr. Chow requested lodging expenses totaling \$1296 for the following dates and locations:

June 25, 26, 27	Three nights lodging in Seattle
June 28	One night in Cache Creek, B.C.
June 29	One night in Pink Mt., B.C.
June 30	One night in Watson Lake, Yukon
July 1, 2, 3, 4	No lodging reported (conference dates)
July 5-6	Skagway to Prince Rupert Ferry
July 7	One night in Williams Lake, B.C.
July 8, 9, 10, 11	Four nights in Seattle

Dr. Chow also received reimbursement for meals for the entire period, as well as \$762 for a rental car, including approximately \$30 Dr. Chow spent to have the rental vehicle's front end aligned. The Georgia Tech Foundation funded this travel.

As far as I can tell there was no prior written approval for this trip, although Anderson Smith, Associate Dean of the College of Sciences, approved reimbursement after the fact. The only documented support for this trip was the conference in White Horse. Dr. Chow has stated that he spent the days in Seattle visiting with professional colleagues there and to recruit senior faculty from the University of Washington. He drove from Seattle to White Horse for the conference. He has also indicated that the Dean of the College of Sciences approved his driving from Seattle to the Yukon before he made that part of the trip. Again, the record does not substantiate this.

The record does show that two other persons whom he identified as Taiwanese faculty members from the University of Tam-Kang accompanied Dr. Chow on his journey to and from the Yukon.

E. BRIGHAM YOUNG UNIVERSITY REIMBURSEMENT

In 1992, a professor in the School of Mathematics conducted special studies at BYU. Originally, the professor's salary was to be paid by BYU, but it was discovered that his visa limited his right to work to his activities at Georgia Tech. It was subsequently agreed that his salary would continue to be paid by the School of Mathematics, and BYU would reimburse Tech for his salary.

BYU reimbursed the School of Mathematics \$44,480 for the visiting professor's salary. Dr. Chow directed that the payment be made to the Georgia Tech Foundation instead of Georgia Tech. He stated that the reason he gave this direction was that there was no formal agreement between Georgia Tech and BYU. The Foundation has described the payment as a "contribution."

It should be noted that historically Dr. Chow would have had wide discretion in the expenditure of Foundation funds, unlike institutional funds. At the time of the internal audit, approximately \$7000 had been spent. Dr. Chow has stated that all expenditures from this fund were for legitimate Georgia Tech purposes. The auditors have determined that the funds should have been paid to the institution since they were a reimbursement for the visiting professor's salary, and that there was an implied contractual relationship between Tech and BYU for the services of the visiting professor.

GEORGIA TECH'S RESPONSE

The Board of Regents conducted an extensive audit and determined that Dr. Chow erroneously claimed \$6,552 in travel expenses for the four trips described above. The audit also determined that Dr. Chow should have claimed annual leave for 10 days that he was engaged in "side travel" while attending the conferences. The audit also determined that the \$44,480 payment by BYU should have been directed to Georgia Tech and not the Foundation.

On March 3, 1999, President Wayne Clough issued a written reprimand to Dr. Chow, and demanded repayment of the \$6522. Dr. Chow has agreed to make the repayment. Dr. Chow is now on assignment in Singapore and is being paid half-salary by Georgia Tech.

DISCUSSION

A. Travel

My overall impression from the above is that Dr. Chow suffered from the same cultural malady we saw with Norman Johnson. His travel decisions were not subjected to an appropriate level of scrutiny, and there was insufficient review of his travel reimbursement requests prior to approval. The decisions to fund some of Dr. Chow's travel were not the result of considered judgment but appear to have been merely perfunctory.

A review of the supporting documentation does not suggest that Dr. Chow attempted to disguise the nature of the expenses he claimed. He provided receipts for lodging and other expenses which, when examined, showed that he was claiming expenses that in my opinion were not directly related to the conferences he was attending. It is clear to me that the approvals for these reimbursements were not sufficiently thought out. Nonetheless, from a practical standpoint, these approvals preclude consideration of criminal charges.

I have also been informed by an employee at Tech that ranking members of the institution's management do not believe Dr. Chow had criminal intent to defraud the state, but rather honestly believed the reimbursements were legitimate. It is my belief that the conclusion by Tech's management that there was no criminal intent is the reason Dr. Chow received only a written reprimand in this matter, as opposed to a more stringent sanction.

In addition, I have concluded that Georgia Tech has not been as diligent as needed to fully educate its personnel on what expenses are permissible and what are not. The fact that much of Dr. Chow's travel was reimbursed by the Georgia Tech Foundation is relevant in this regard. Up until recently, very little control was exercised over expenditures funded by the Foundation. As reported

in the Norman Johnson case, President Clough has recently implemented a new policy that requires that most expenses be first paid by the institution, with Foundation funds being reimbursed directly to Tech, as opposed to a particular professor. This will insure that expenses comply with statewide travel and expense regulations. Previously, if an expenditure was arguably beneficial to Tech, it could be expected that the Foundation would reimburse. This fairly unlimited source of funding contributed to the culture we have discussed in the Norman Johnson case where restraint and cognizance of appropriate limitations on expenses has not been emphasized by institutional management.

It should also be noted that in addition to the new policy relating to Foundation funds, President Clough has ordered that travel expenses be processed in a central office at the institution to insure uniformity, and will require periodic audits of all academic units to measure compliance with travel regulations.

B. THE BRIGHAM YOUNG PAYMENT

The BYU payment of \$44,480 was apparently intended by BYU as a reimbursement of the visiting professor's salary for his work at BYU in 1992. Unfortunately, there is virtually no documentation to establish an agreement between BYU and Tech for the services of the visiting professor or the reimbursement of his salary. The Foundation's documents indicate the payment was a "contribution." In addition, there is no evidence that Dr. Chow has attempted to utilize these funds for personal gain. As far as I can tell, all expenditures have been at least arguably beneficial to Georgia Tech. Due to the absence of evidence relating to this transaction and the lack of personal gain, I can not recommend further action by this office.

I am concerned, however, that the visiting professor was permitted to go to BYU at all. As I understand it, the professor, a Dr. Chen, was in the U.S. on a visa that limited his work privileges to Georgia Tech. In order to circumvent this limitation, it was apparently agreed that Georgia Tech would continue to pay Dr. Chen's salary while he was working at BYU. The record is silent whether it was prearranged that BYU would reimburse Tech for Dr. Chen's salary. Moreover, there is no documentary evidence concerning Dr. Chow's involvement in whatever parol agreements that may have existed.

Obviously, my concern is that this arrangement, whether it involved a reimbursement or not, was an effort to circumvent restrictions which had been placed on Dr. Chen by the federal government as a condition of his presence in the U.S. The arrangement might be described as an effort to cover up this violation of Dr. Chen's visa. While I have not attempted to exhaustively study the consequences of this maneuver, I have learned that under 8 USC Section 1227 (a) an alien can be deported for any violation of the conditions of entry into the United States.

In the absence of any documentation setting out an agreement, I can not conclude that Dr. Chow's direction that the payment should be made to the Foundation was criminally wrong, standing alone. If the agreement between Tech and BYU was that Dr. Chen was to stay on Tech's payroll while working at BYU, then BYU's payment might properly be described as a gift. In other words, if Dr. Chen was supposed to receive his salary from Tech because he continued to be "working for Tech," albeit on the campus of BYU, there probably would have been no legal obligation on BYU to make the payment, in the absence of an agreement to the contrary. Therefore the payment might well have been a gift inspired by the benefits of Dr. Chen's labor. In this scenario, Dr. Chow's direction that the payment be made to the Foundation would not appear totally unreasonable.

At a minimum, this matter points up the need for greater control over finances on the institutional level, and highlights the need for a brighter line between Foundation funded activities and institutional matters. However, the cloudiness of the evidence and the absence of documentation concerning the BYU payment prevent any firm conclusions and militate against any action by this office.

CONCLUSION

This case presents issues very similar to those we addressed in the Norman Johnson case. While I believe Dr. Chow took liberties with the system at Tech, I doubt that we can establish criminal conduct beyond a reasonable doubt. I propose that we inform President Clough and the appropriate officials at the Board of Regents that this office will take no further action.