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March 1, 2000

**ADVISORY OPINION NO. 2000-16**

Thomas J. Barclay  
Highway Traffic Safety Director  
Mobile County Sheriff's Office  
5521 White Pine Drive  
Mobile, Alabama 36693

**Conflict Of Interests/Highway Traffic Safety Director With Mobile County Sheriff's Office Operating Grant Writing Consulting Firm On His Own Time.**

The Highway Traffic Safety Director for the Mobile County Sheriff's Office may operate a grant writing and consulting firm on his own time; provided, that he not consult with or write grants for agencies that come under the umbrella of the Mobile County Commission or any other entity for which he writes grants as part of his duties as Highway Traffic Safety Director; that all activities relating to his grant writing consulting firm be done on his own time, whether it be after hours, annual leave, etc.; and, that there be no use of county equipment, facilities, time, materials, human labor or other public property under his discretion or control to assist him in obtaining the consulting opportunities or in performing the consulting work.

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Dear Mr. Barclay:

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**

May the Highway Traffic Safety Director with the Mobile County Sheriff's Office, who is responsible for procuring and administering grants for the Mobile County Commission, establish a grant writing consulting firm to write grants for other government, public and private entities?

### **FACTS AND ANALYSIS**

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

Thomas J. Barclay is the Highway Traffic Safety Director with the Mobile County Sheriff's Office. He has been so employed for approximately 16 ½ years. Mr. Barclay states that his office is financed through a National Highway Traffic Safety Administration (NHTSA) grant awarded through the Law Enforcement Traffic Safety Section of ADECA and also provided with matching funds from the Mobile County Commission.

Mr. Barclay is responsible for procuring and administering this grant, which is primarily a community education effort, as well as procuring and administering overtime traffic enforcement and DUI grants for the Sheriff's Offices of Mobile and Baldwin Counties and several police departments in Mobile and Baldwin Counties. In addition, he writes and procures grants for the Mobile County Sheriff's Office from the U.S. Department of Justice.

Mr. Barclay is interested in opening a grant writing and consulting firm which he would operate on his personal time. He states in his request that he would not solicit or accept any business from any local or state law enforcement agency in Alabama, nor would he solicit or accept any business from the Mobile County Commission. He would simply write grants for other government, public and private entities for a fee that is competitive with other grant writing enterprises.

The Alabama Ethics Law, Code of Alabama, 1975, Section 36-25-1(23) defines a public employee as:

"(23) PUBLIC EMPLOYEE. 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 36-25-5(a) states:

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

"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 36-25-1(8) defines a conflict of interest as:

"(8) CONFLICT OF INTEREST. A conflict on the part of a public official or public employee between his or her private interests and the official responsibilities inherent in an office of public trust. A conflict of interest involves any action, inaction, or decision by a public official or public employee in the discharge of his or her official duties which would materially affect his or her financial interest or those of his or her family members or any business with which the person is associated in a manner different from the manner it affects the other members of the class to which he or she belongs."

Section 36-25-5(c) states:

“(c) 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.”

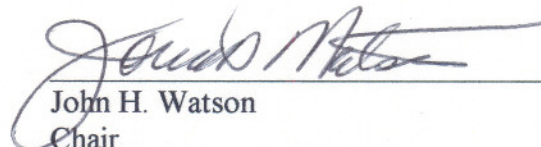
There is nothing in the Alabama Ethics Law that would prohibit Mr. Barclay from establishing a private grant writing and consulting firm; provided, that all activities related to the business be conducted on his own time, whether it be after hours, annual leave, etc.; that he not use any public time, equipment, facilities, materials, human labor or other public property under his discretion or control to assist him in either obtaining the opportunities or in performing the consulting and grant writing services; and further, that he not write grants for or consult with any entity under the umbrella of the Mobile County Commission or any other entity for which he writes or procures grants as a part of his official functions with the Mobile County Sheriff's Office.

#### CONCLUSION

The Highway Traffic Safety Director for the Mobile County Sheriff's Office may operate a grant writing and consulting firm on his own time; provided, that he not consult with or write grants for agencies that come under the umbrella of the Mobile County Commission or any other entity for which he writes grants as part of his duties as Highway Traffic Safety Director; that all activities relating to his grant writing consulting firm be done on his own time, whether it be after hours, annual leave, etc.; and, that there be no use of county equipment, facilities, time, materials, human labor or other public property under his discretion or control to assist him in obtaining the consulting opportunities or in performing the consulting work.

**AUTHORITY**

By 5-0 vote of the Alabama Ethics Commission on March 1, 2000.

A handwritten signature in cursive script, appearing to read "John H. Watson", is written over a horizontal line.

John H. Watson  
Chair  
Alabama Ethics Commission