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August 1, 2001

**ADVISORY OPINION NO. 2001-42**

Lt. W. D. Hamner  
8<sup>th</sup> District Vice-President  
Alabama Peace Officers Association  
940 Pelham Street  
Montgomery, Alabama 36104

**Conflict Of Interests/Member Of Alabama Peace Officers Association Providing Letter Of Introduction On Department Letterhead And/Or Local Law Enforcement Officer Accompanying Solicitor Of Advertisements In Calls On Local Businesses.**

A police officer, who is a member of the Alabama Peace Officers Association, may provide a letter of introduction on Department letterhead stating that the holder of the letter is selling advertisements and is legitimately representing the Alabama Peace Officers Association, and may physically accompany the individuals, other than family members, selling advertisements to local businesses, when the solicitations are made on behalf of a non-profit organization, and there is no personal gain involved; provided, that all activities relating to the solicitations are done on the police officer's own time, whether it is after-hours, weekends, annual leave, etc.; that there is no use of Departmental equipment, facilities, time, materials, human labor, or other public property under the officer's discretion or

control to assist in the solicitations; and further, that vendors doing business with that officer's Department or lobbyists not be solicited for donations by the officer.

In addition, a police officer may not assist in solicitations on behalf of the Alabama Peace Officers Association where the solicitation is made of individuals and/or businesses with whom or which he may be involved in investigating a matter or working a case.

Dear Lt. Hamner:

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 a police officer, who is a member of the Alabama Peace Officers Association, write a letter of introduction on his Department's letterhead to be used by an individual soliciting funds, advertisements, sales, etc., on behalf of the Alabama Peace Officers Association, and may that police officer accompany the individual on the solicitation calls?

#### **FACTS AND ANALYSIS**

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

W. D. Hamner currently serves as the 8<sup>TH</sup> District Vice-President of the Alabama Peace Officers Association and also serves as a Lieutenant with the Selma Police Department.

The Alabama Peace Officers Association is a non-profit organization that provides specialized training and other benefits to Alabama's law enforcement officers. It has operated in Alabama since 1933. Several Sheriffs and Police Chiefs serve on its Board of Directors. The Alabama Peace Officers Association has voting members on three state boards: the Peace Officers Standards and Training Commission, the Tuition Eligibility Board and the Peace Officers Annuity and Benefit Board. The Alabama Peace Officers Association has employees, but none are

currently law enforcement officers. No member or employee of the Selma Police Department has any business connection or association that would benefit directly or indirectly from the Alabama Peace Officers Association. Lt. Hamner is not aware of any public employee, any family member of a public employee, or any business connection with a public employee benefitting from the activities of the Alabama Peace Officers Association in a manner other than those benefits available to any law enforcement officer.

The Association publishes a magazine in part as a training tool, and in part as a fund-raiser through advertising sales. For many years, members of the Selma Police Department, as well as many other law enforcement agencies, have endorsed the advertisement sales by letters of endorsement stating that the Alabama Peace Officers Association is a legitimate non-profit organization promoting the public good through training and professionalization of the State's law enforcement officers.

Apparently, in response to a recent request from the Alabama Peace Officers Association, Selma's Mayor has issued a memo to Selma Police Chief E. L. Tate that, "to endorse the solicitation of private organizations reveals that the proposed action is a violation of the state ethics law. The organizations you propose to support are understood to be membership organizations and one cannot use their public office for non-public gain."

Based on this memo from the Mayor, Lt. Hamner requests an opinion as to the propriety of this action. It should be pointed out that this opinion will affect not only the Selma Police Department, but all law enforcement agencies and members of the Alabama Peace Officers Association.

Lt. Hamner states that the type of endorsement and/or assistance that would be provided would be in the form of a letter of introduction, either on Department letterhead, or as an alternative, on plain paper, stating that the individual selling advertisements is legitimately representing the Alabama Peace Officers Association, and that the Alabama Peace Officers Association is a legitimate organization. (A sample of the type of letter of introduction is attached to the opinion request.) An alternative form of assistance would be for a local law enforcement officer to physically accompany the individual selling advertisements when contacting the various businesses.

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 36-25-1(11) defines a family member of the public employee as:

"(11) FAMILY MEMBER OF THE PUBLIC EMPLOYEE. The spouse or a dependent of the public employee."

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(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 36-25-5(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.”

The Commission has held in the past that members of non-profit membership organizations may solicit on behalf of that non-profit organization where there is no personal gain to the public employee and no influencing of official action. That is the case before the Commission.

In July of 1996, the Commission rendered Advisory Opinion No. 96-57, which stated that:

“Members of the Alabama State Employees Association, Third Division Transportation Chapter, may solicit a thing of value from a person or business with whom they do not directly inspect, regulate, or supervise in their official capacity, when the solicitation is done for a non-profit organization, where there is no personal gain to the public employee, and no influencing of official action.”

“Members of the Alabama State Employees Association, Third Division Transportation Chapter, may not solicit a thing of value from a vendor who does business with the Department of Transportation that they directly inspect, regulate, or supervise.”

In accord is Advisory Opinion No. 96-101, rendered in October of 1996.

Advisory Opinion No. 97-102, rendered in December of 1997, held that:

“A Court System may solicit and accept computer hardware/software and related peripheral devices in order to aid in delivering a better quality of judicial service in the form of case management, inventory, and docket control; provided, donations not be solicited from vendors doing business with the Court System or from individuals or businesses which may have matters pending in the Judge’s Court; and, that the equipment will be used exclusively in the public office of the Judiciary for public purposes.”

“Further, a Circuit Judge may not personally solicit donations from any individual or business, and no one may solicit a donation from attorneys appearing before the Court.”

Advisory Opinion No. 98-13, rendered in March of 1998, held that:

“Employees of the Geological Survey of Alabama and the Oil and Gas Board may solicit donations for the Geological Survey’s 150th anniversary celebration from persons or businesses whom they do not directly inspect, regulate, or supervise in their official capacity, when the solicitation is done solely for purposes of carrying-out the Geological Survey of Alabama’s 150th anniversary celebration, and there is no personal gain to the public employee and no influencing of official action.”

The opinions have consistently held that a business which is regulated, inspected, or audited by a public entity may not be solicited for contributions, even when those contributions are for a charitable purpose.

The distinction in the current opinion is that law enforcement officers are sworn to uphold and enforce the laws, but do not regulate, investigate, or audit in the ordinary sense of the words. However, it would present, at a minimum, the perception of a conflict of interest for a police officer to assist in soliciting from individuals or businesses with whom or which he may be involved in investigating a matter or working a case.

It would not violate the Alabama Ethics Law for police officers, who are members of the Alabama Peace Officers Association, to provide letters of introduction to individuals soliciting the sale of advertisements for the Alabama Peace Officers Association, nor would it violate the law for a member of the Alabama Peace Officers Association to accompany the individual making the solicitation; provided, that this is done on the officer’s own time; that he not personally participate in the solicitation of vendors doing business with his Department; and that he not solicit lobbyists.

Based on the facts as provided and the above law, a police officer, who is a member of the Alabama Peace Officers Association, may provide a letter of introduction on Department letterhead stating that the holder of the letter is selling advertisements and is legitimately representing the Alabama Peace Officers Association, and may physically accompany the individuals, other than family members, selling advertisements to local businesses, when the solicitations are made on behalf of a non-profit organization, and there is no personal gain involved; provided,

- 1) that all activities relating to the solicitations are done on the police officer’s own time, whether it is after-hours, weekends, annual leave, etc.;

- 2) that there is no use of Departmental equipment, facilities, time, materials, human labor, or other public property under the officer's discretion or control to assist in the solicitations;
- 3) that vendors doing business with that officer's Department or lobbyists not be solicited for donations by the officer; and in addition,
- 4) that he not assist in solicitations on behalf of the Alabama Peace Officers Association where the solicitation is made of individuals and/or businesses with whom or which he may be involved in investigating a matter or working a case.

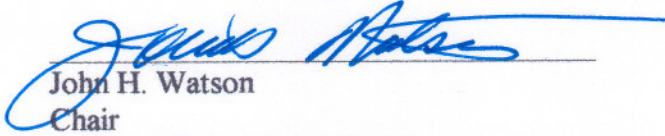
#### CONCLUSION

A police officer, who is a member of the Alabama Peace Officers Association, may provide a letter of introduction on Department letterhead stating that the holder of the letter is selling advertisements and is legitimately representing the Alabama Peace Officers Association, and may physically accompany the individuals, other than family members, selling advertisements to local businesses, when the solicitations are made on behalf of a non-profit organization, and there is no personal gain involved; provided, that all activities relating to the solicitations are done on the police officer's own time, whether it is after-hours, weekends, annual leave, etc.; that there is no use of Departmental equipment, facilities, time, materials, human labor, or other public property under the officer's discretion or control to assist in the solicitations; and further, that vendors doing business with that officer's Department or lobbyists not be solicited for donations by the officer.

In addition, a police officer may not assist in solicitations on behalf of the Alabama Peace Officers Association where the solicitation is made of individuals and/or businesses with whom or which he may be involved in investigating a matter or working a case.

#### AUTHORITY

By 5-0 vote of the Alabama Ethics Commission on August 1, 2001.

  
John H. Watson  
Chair

Alabama Ethics Commission