# STATE OF ALABAMA
# ETHICS COMMISSION

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August 4, 1999

**ADVISORY OPINION NO. 99-30**

D. David Parsons
Acting Commissioner of Insurance
Department of Insurance
201 Monroe Street, Suite 1700
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Conflict Of Interests/Commissioner Of The Alabama Department Of Insurance Becoming A Member Of A Not-For-Profit Corporation.

The Commissioner of the Alabama Department of Insurance may become a member of a not-for-profit corporation, as there is no personal benefit accruing to him, and any benefits received by membership accrue to the State of Alabama.

Conflict Of Interests/Commissioner Of The Alabama Department Of Insurance Serving As A Board Member Of A Not-For-Profit Corporation.

The Alabama Commissioner of Insurance may serve as a member of the board of a not-for-profit corporation, as there is no personal benefit accruing to him, and any benefits received by membership accrue to the State of Alabama.

Dear Mr. Parsons:

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.

## QUESTIONS PRESENTED

1) Is there any legal obstacle in this state to the Alabama Commissioner of Insurance becoming a member of a not-for-profit corporation?

2) Is there any legal obstacle in this state to the Alabama Commissioner of Insurance serving as a member of the board of a not-for-profit corporation?

## FACTS AND ANALYSIS

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

The National Association of Insurance Commissioners (NAIC) presently is a non-profit, unincorporated association. The members are insurance commissioners, superintendents and directors from each of the fifty (50) states, the District of Columbia and the territories. The main headquarters is located in Kansas City, Missouri.

The NAIC is now wishing to change its status from that discussed above to a non-profit corporation.

The mission of the NAIC is to assist State insurance regulators, individually and collectively, in serving the public interest and achieving the following fundamental insurance regulatory goals in a responsive, efficient and cost effective manner, consistent with the wishes of its members:

Protect the public interest, promote competitive markets and facilitate the fair and equitable treatment of insurance consumers;

Promote the reliability, solvency and financial solidity of insurance institutions; and,

Support and improve State insurance regulation of insurance.

The National Association of Insurance Commissioners is a voluntary organization of the chief regulatory officials of the 50 states, the District of Columbia, American Samoa, Guam, Puerto Rico and the Virgin Islands. Formed in 1871, it is the oldest association of state officials.

The NAIC provides its members with a national forum, through quarterly meetings, for discussing common issues and interests and for working cooperatively on regulatory matters that transcend the boundaries of their own jurisdictions. Every state regulator or the designated staff serves on one or more NAIC committees, subcommittees or task forces. Collectively, commissioners work to develop model legislation, rules, regulations and write papers to coordinate regulatory policy. The overriding objective is to protect consumers and help maintain the financial stability of the insurance industry.

The NAIC offers a wide range of services to support the work of NAIC committees, state insurance departments, state and federal officials, and the public. The association maintains three offices. The Support and Services Office (SSO), or headquarters, is located in Kansas City, Mo. The two branch offices are the Securities Valuation Office (SVO), located in New York, N.Y., and the Washington Counsel/Government and International Relations/Financial Analysis office, located in Washington, D.C.

The NAIC is committed to using state-of-the-art information technology. To this end, it maintains an extensive database and computer network linking all insurance departments.

The NAIC offers financial, actuarial, legal, computer, and economic expertise. Staff maintain database services, research and prepare standard and custom reports, develop uniform statutory financial statements, monitor federal activity, submit legal briefs, track alien insurers, create publications, conduct education/training programs, and much more.

Each commissioner, superintendent or director serving as the chief insurance regulatory official of the 50 states, the District of Columbia, American Samoa, Guam, Puerto Rico and the Virgin Islands is currently a member of this voluntary, non-profit, unincorporated association. The association is divided into four geographic "zones," with three officers of each zone elected by its members. A president, vice-president, and secretary are elected each year by the full organization who, together with the zone officers and the immediate past president, make up the Executive Committee.

The NAIC is now investigating the possibility of becoming a non-profit corporation, which would then afford its members with the individual protection from liability that the corporate structure brings. Although the full details have not yet been worked out, it is anticipated that the organizational structure will remain essentially the same as it is now. Two possibilities are:

Each commissioner will become a "director" of the corporation, rather than a "member" of the association, or

Each commissioner will remain a "member" of the corporation, but the current Executive Committee would be replaced with a Board of Directors, with board members selected in much the same way as the current Executive Committee members are selected.

Under either possibility, the members or directors will have no "regulatory" authority other than as officers of the corporation.

The Alabama Ethics Law, Code of Alabama, 1975, Section 36-25-1(24) defines a public official as:

"PUBLIC OFFICIAL. Any person elected to public office, whether or not that person has taken office, by the vote of the people at state, county, or municipal level of government or their instrumentalities, including governmental corporations, and any person appointed to a position at the state, county, or municipal level of government or their instrumentalities, including governmental corporations. For purposes of this chapter, a public official includes the chairs and vice-chairs or the equivalent offices of each state political party as defined in Section 17-16-2."

Section 36-25-1(2) states:

"(2) BUSINESS WITH WHICH THE PERSON IS ASSOCIATED. Any business of which the person or a member of his or her family is an officer, owner, partner, board of director member, employee, or holder of more than five percent of the fair market value of the business."

Section 36-25-1(8) states:

"(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."

Section 36-25-2(b) 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."

By virtue of his position as Acting Commissioner of the Department of Insurance, David Parsons is a member of the NAIC, which is an agency that develops model laws and regulations for the various insurance departments around the country. The State of Alabama pays membership dues to participate in the not-for-profit corporation. NAIC meets four times a year and also prepares educational seminars for staff members of the various insurance departments around the nation.

The Commissioner of the Alabama Department of Insurance may become a member of a not-for-profit corporation, as there is no personal benefit accruing to him, and any benefits received by membership accrue to the State of Alabama.

The Alabama Commissioner of Insurance may serve as a member of the board of a not-for-profit corporation, as there is no personal benefit accruing to him, and any benefits received by membership accrue to the State of Alabama.

## CONCLUSION

The Commissioner of the Alabama Department of Insurance may become a member of a not-for-profit corporation, as there is no personal benefit accruing to him, and any benefits received by membership accrue to the State of Alabama.

The Alabama Commissioner of Insurance may serve as a member of the board of a not-for-profit corporation, as there is no personal benefit accruing to him, and any benefits received by membership accrue to the State of Alabama.

## AUTHORITY

By 4-0 vote of the Alabama Ethics Commission on August 4, 1999.

Camille S. Butrus

Camille S. Butrus
Chair
Alabama Ethics Commission