

**OFFICE OF THE MISSISSIPPI SECRETARY OF STATE  
SECURITIES AND CHARITIES DIVISION**

<b>IN THE MATTER OF:</b>	)	
	)	
<b>HINDS COUNTY FRATERNAL</b>	)	<b>Administrative Proceeding</b>
<b>ORDER OF POLICE LODGE #20</b>	)	<b>Number: <u>C-08-0321</u></b>
	)	
	)	
	)	
<i>Respondent</i>	)	

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**SUMMARY CEASE AND DESIST ORDER AND NOTICE OF INTENT TO IMPOSE  
ADMINISTRATIVE PENALTY**

COMES NOW Melanie Thomas, Senior Attorney for the Securities and Charities Division of the Mississippi Office of the Secretary of State (“Division”), on behalf of Secretary of State C. Delbert Hosemann, Jr., and issues this Summary Cease and Desist Order and Notice of Intent to Impose Administrative Penalty and Revoke Registration against Respondent Hinds County Fraternal Order of Police Lodge #20 (“FOP”), for violating provisions of the Mississippi Charitable Solicitations Act (“Act”), Miss. Code Ann. Sections 79-11-501 *et seq.* In support thereof, the Division respectfully submits as follows:

**JURISDICTION**

The Act gives authority to the Secretary of State to regulate “charitable organizations” that solicit donations in the State of Mississippi. FOP is a non-profit organization operating on behalf of “youth development, human services, public affairs” and for the benefit of society. Their stated charitable purpose is “Back to School ‘Shop with a Cop’; youth activities, various law enforcement agencies.” FOP falls within the definition of “charitable organization” as defined in Section 79-11-501(a)(i)(B) of the Act. Moreover, from May 22, 2008 to May 21, 2009, FOP was registered with the Division as a charitable organization. For these reasons, FOP

has voluntarily submitted to the jurisdiction of and is subject to the regulatory authority of the Secretary of State.

On September 25, 2008 FOP contractually retained the services of CJW, Inc. as a professional fund-raiser. Pursuant to the contract, CJW agreed to assist FOP by soliciting contributions for FOP's "Shop with a Cop" charitable campaign. FOP agreed to pay CJW a commission for its fund-raising efforts. At least three solicitations to Mississippi citizens were made pursuant to this charitable campaign. Therefore, in addition to FOP's status as a charitable organization, as solicitation within the State of Mississippi is confirmed, the Division has jurisdiction over Respondent.

#### **FINDINGS OF FACT**

1. The Hinds County Fraternal Order of the Police Lodge #20 (EIN # 26-1909099) is a Mississippi-based charitable organization located at 1500 East Woodrow Wilson Drive 07B, Jackson, MS 39216. FOP is not registered with the Division to conduct its affairs in the State of Mississippi.
2. On May 22, 2008, FOP initially registered with the Division as a charitable organization. FOP's registration expired on May 21, 2009.
3. FOP has not sought to renew its registration as a charitable organization in Mississippi.
4. On September 25, 2008, FOP executed a contract with CJW, Inc., a professional fundraiser located in Port Clinton, Ohio. Pursuant to the contract, FOP engaged the services of CJW "for the promotion of the Fund Raising Protect and, or production of a (an) Shop with a Cop Program[.]" CJW agreed to act as a professional fundraiser on behalf of FOP in exchange for Twenty-five Percent (25%) "of all gross monies collected from the project".

5. According to the solicitation script agreed upon between the parties, CJW employees were required to identify themselves in the following manner: "This is \_\_\_\_\_ with CJW, Inc., a paid solicitor which has been retained by Hinds County Fraternal Order of Police Lodge #20."

6. During the contract period, FOP failed to properly supervise CJW's solicitation activities within the State of Mississippi, which were performed on behalf of FOP. During the contract period CJW and its employees wrongfully solicited charitable donations by identifying themselves to potential donors as police or law enforcement officers when, in fact, they were not.

7. In late October, 2008, CJW solicited Dr. John Henson over the phone at his office in Jackson, Mississippi. CJW's solicitor first spoke to Dr. Henson's Assistant, Tammy Wilson; the solicitor stated that he was "with the Hinds County Sheriff's Department" and needed to speak to Dr. Henson on a "personal matter".

8. On October 16, 2008, CJW solicited Skipper Westbrook by phone at his office in Jackson, Mississippi. CJW's solicitor first spoke to Tim English, Mr. Westbrook's employee; the solicitor informed Mr. English that he was "from the Clinton Police Department" and was trying to reach Mr. Westbrook "on an urgent matter".

9. English contacted Westbrook, who immediately returned the call. Westbrook spoke with a man who identified himself as "Logan with Clinton Police Department". Westbrook did not know that "Logan" was a representative of CJW. After Logan began to solicit for donations for the FOP, Westbrook became suspicious and began to question Logan. At this point, Logan admitted that he was a fundraiser and not a police officer.

10. Westbrook informed Logan that he would be reporting this information to the Secretary of State's Office. Within an hour of this phone call, Westbrook received a second call, this time

from Daniel Dudley, President of the FOP. Dudley informed Westbrook that FOP was trying to raise money to take children to Wal-Mart for Christmas shopping. Dudley also stated that FOP had experienced trouble with a different fundraiser in the past, but that FOP itself was a legitimate organization and was registered with the Secretary of State's Office.

11. Mr. Dudley's statement to Skipper Westbrook was inaccurate. FOP had not experienced previous trouble with a different fundraiser; FOP had experienced previous trouble with the same fundraiser: CJW. And that previous trouble FOP experienced was the same as FOP's current trouble: the impersonation of law enforcement officers by CJW.

12. Despite Mr. Dudley's reassurances to Skipper Westbrook, and despite FOP's knowledge of the CJW problem, just days later on October 30, 2008, Glenda Barner was solicited at her office in Jackson, Mississippi, by an individual identifying himself as "with the Hinds County Sheriff's Department". This individual stated that the Sheriff's Department was raising money to buy Christmas toys for children.

13. These violations demonstrate a pattern of irresponsibility and improper business activities employed by FOP in selecting their professional fundraiser, evidenced further by the following history. On May 2, 2008, FOP entered into a Consent Agreement with the Division which resolved the exact same violations by FOP. These previous violations occurred when CJW's solicitors called potential donors and falsely stated that they were police officers. For these and other violations, FOP signed a Consent Agreement on May 2, 2008, agreeing to pay a penalty of Three Hundred Dollars (\$300.00) and "comply with the provisions of the Mississippi Charitable Solicitations Act as currently in effect or as may be subsequently amended."<sup>1</sup> FOP is once again in violation of the Act and now has also violated the May 2, 2008, Consent Agreement.

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<sup>1</sup> CJW was made the subject of separate administrative action, and was fined Seven Thousand Five Hundred Dollars (\$7500.00) for its violations of the Act.

## APPLICABLE LAW

14. Miss. Code Ann. Section 79-11-501(a)(i)(B) defines a charitable organization as either of the following:

(A) Any person determined by the Internal Revenue Service to be a tax exempt organization pursuant to Section 501(c)(3) of the Internal Revenue Code; or

(B) Any person actually or purporting to be established for any voluntary health and welfare, benevolent, philanthropic, patriotic, educational, humane, scientific, public health, environmental conservation, civic, or other eleemosynary purpose or for the benefit of law enforcement personnel, fire fighters, or other public safety organizations, or any person employing in any manner a charitable appeal as the basis of any solicitation or an appeal that suggests that there is a charitable purpose to any solicitation and includes each local, county or area division within this state of such charitable organization, provided such local, county or area division has authority and discretion to disburse funds or property otherwise than by transfer to any parent organization.

15. Pursuant to Section 79-11-501(j) solicitation is defined as the request for “money, credit, property, financial assistance or any other thing of value” on the representation that such item (or any portion thereof) “will be used for a charitable purpose or will benefit a charitable organization.”

16. Section 79-11-501(g) defines a professional fund-raiser as a person,

who for compensation or other consideration is retained by a charitable organization to solicit in or from this state contributions for charitable purposes directly or in the form of payment for goods, services or admission to fund-raising events, whether such solicitation is performed personally or through his agents, servants or employees or through agents, servants or employees especially employed by or for a charitable organization who are engaged in the solicitation of contributions, the sale of goods or services or the production of events under the direction of such person, or a person who plans, conducts, manages, carries on, advises or consults, whether directly or indirectly, in connection with the solicitation of contributions, sale of goods or services or the production of events for or on behalf of any charitable organization, but does not qualify as a counsel within the meaning of Sections 79-11-501 through 79-11-529, or who engaged in the business of or holds himself out as independently engaged in the business of soliciting contributions for such purposes [...]

17. Miss. Code Ann. Section 79-11-509(1) stipulates the Secretary of State shall deny, suspend or revoke FOP's registration if it violates or fails to comply with any provisions of the Act or rules promulgated thereunder; or if it engages in the use or employment of dishonesty fraud, deception, misrepresentation, false promise or false pretense. Miss. Code Ann. § 79-11-509(e), (g).

18. Section 79-11-519 states that it shall be a violation of the Act for any person:

(a) To misrepresent the purpose or beneficiary of a solicitation.

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(c) To use or exploit the fact of registration so as to lead the public to believe that such registration constitutes an endorsement or approval by the state;

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(h) To commit any unfair or deceptive act or practice

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(k) To make any false or misleading statements in the solicitations of contributions in this state or to omit to state any fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading

(l) To engage in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person;

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(n) To obtain money or property by means of false pretense, representation or promise;

19. Section 79-11-509(4) of the Act states as follows:

(4) Whenever it appears to the Secretary of State that any person has engaged in or is about to engage in any act or practice constituting a violation of any provision of this chapter or any rule or order hereunder, he may, in his discretion, seek the following remedies in addition to other remedies authorized by law:

(a) Issue a cease and desist order, with or without a prior hearing against the person or persons engaged in the prohibited activities, directing them to cease and desist from further illegal activity; or

(b) Issue an order in the case of a registered charity, professional fundraiser or solicitor, or other person who violated this chapter, imposing an administrative penalty up to a maximum of Twenty-five Thousand Dollars (\$25,000.00) for each offense, each violation to be considered as a separate offense in a single proceeding or a series of related proceedings;

(c) For the purpose of determining the amount or extent of a sanction, if any, to be imposed under subparagraph (b) of this section, the Secretary of State shall consider, among other factors, the frequency, persistence and willfulness of the conduct constituting a violation of this chapter or a rule promulgated thereunder or an order of the Secretary of State, the number of persons adversely affected by the conduct, and the resources of the person committing the violation.

20. Section 79-11-525 of the Act states as follows:

Every person who solicits, collects or expends contributions on behalf of a charitable organization or for a charitable purpose, or who conducts a charitable sales promotion, and every officer, director, trustee or employee of that person who is concerned with the solicitation, collection or expenditure of those contributions shall be considered a fiduciary and as acting in a fiduciary capacity. This section does not supersede or otherwise alter the standard of care or the limitations on the liability of volunteers.

21. At the time of the solicitations made the subject of this Summary Cease and Desist Order, FOP was registered with the Division as a charitable organization; and CJW was registered as a professional fundraiser acting on behalf of FOP and its “Shop with a Cop” charitable campaign. Also at the time of these pertinent solicitations, FOP had already entered into a Consent Agreement with the Division in an effort to resolve the problem of CJW impersonating police officers while soliciting on behalf of FOP. Despite this past history, despite the red flags, FOP allowed CJW’s practice of impersonating police officers to continue without remedy.

22. FOP did not do so merely through neglect, although that alone constitutes a violation of the Act. FOP had knowledge of CJW’s unlawful activity as of October 16, 2008, when FOP

President Daniel Dudley personally responded to the complaint by Skipper Westbrook. Mr. Dudley's conversation with Westbrook occurred more than two weeks before Glenda Barner became the next target of the FOP campaign. Moreover, FOP actively supported and participated in CJW's unlawful activity by: renewing their contract with CJW in September of 2008 despite CJW's prior impersonation of police officers (which led to administrative action taken by the Division against FOP and, separately, CJW); failing to properly monitor CJW; and failing to remedy CJW's continued impropriety even after knowledge of that impropriety surfaced. Such actions by Respondent are in clear violation of the Act.

### **CONCLUSIONS OF LAW**

23. The previous paragraphs are incorporated herein by reference.

24. FOP is a charitable organization as defined by Miss. Code Ann. Section 79-11-501(a)(i)(B).

25. FOP has consistently and persistently violated the Act by allowing CJW to make false and misleading statements (impersonating law enforcement officers) while soliciting on behalf of FOP. Not only did FOP fail to monitor CJW's solicitation activity in an effort to deter the possibility of police impersonation tactics, FOP also received a complaint of impersonation from a potential donor (Westbrook) but took no action to remedy the problem.

26. Adding to the current violations is the fact that such activity occurred so recently after the Division and FOP entered into the May 2, 2008, Consent Agreement addressing these very same issues. Within five months of signing that Agreement, FOP had again contracted with CJW to act as their professional fundraiser. In CJW's subsequent solicitations, they contacted five more Mississippians using the same "police impersonation" tactic. That FOP re-contracted with CJW (who so quickly digressed into the same illegal solicitation activities) plainly demonstrates, at

minimum, FOP's neglect of their responsibility under the Act, and at maximum, FOP's deliberate and adamant refusal to abide by the Act.

27. FOP also violated the Act by failing to abide by their fiduciary duties and responsibilities. FOP did so when they knowingly handed all responsibility for solicitation to their professional fundraiser, despite the fact that CJW had already subjected FOP to administrative action after impersonating police officers "on their behalf".

### **NOTICE OF INTENDED ACTION**

28. The previous paragraphs are incorporated herein by reference. As provided in Miss. Code Ann. Section 79-11-509, the Secretary of State intends to take the following action:

A. Order Respondent to Cease and Desist from further illegal activity in the State of Mississippi.

B. Impose an administrative penalty of up to Twenty-five Thousand Dollars (\$25,000.00) for each offense against Respondent—with each solicitation to be considered a separate offense in a single proceeding—taken in violation of Miss. Code Ann. Sections 79-11-501 *et seq.*

29. This order shall remain in effect until further directive of the Secretary of State.

### **PUBLIC INTEREST**

The actions taken and proposed to be taken herein by the Secretary of State are in the public interest and are consistent with the purposes set forth in Miss. Code Ann. Sections 79-11-501, *et seq.*

## **AMENDMENTS**

The Division reserves the right to amend this Summary Cease and Desist Order and Notice of Intent to Impose Administrative Penalty.

### **RIGHT TO AN ADMINISTRATIVE HEARING**

An administrative hearing may be requested in this matter. NOTICE is hereby given that FOP has thirty (30) days from the date of receipt of this Summary Cease and Desist Order and Notice of Intent to Impose Administrative Penalty to provide written notice of their request for an administrative hearing to Melanie Thomas, Senior Attorney for the Securities and Charities Division, Office of the Secretary of State, Post Office Box 136, Jackson, Mississippi 39205-0136.

If such hearing is requested, written notice of the date, time and place of such hearing, as well as a designation of the Hearing Officer, will be provided to all parties via certified mail, return receipt requested. Respondent may appear at the hearing with or without the assistance of counsel. Respondent will have the right to cross-examine witnesses and present testimony, evidence and argument relating to the matters contained herein. Upon request, subpoenas may be issued for the attendance of witnesses and for the production of books and papers on Respondent's behalf.

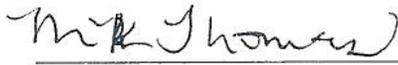
In the event such written notice for a hearing is not received within thirty (30) days, a FINAL CEASE AND DESIST ORDER IMPOSING ADMINISTRATIVE PENALTY may be entered in this proceeding without further notice.

**ORDER**

IT IS, THEREFORE, ORDERED AND ADJUDGED, pursuant to the authority set forth in Miss. Code Ann. Sections 79-11-501 *et seq.*, that Respondent FOP shall immediately CEASE AND DESIST FROM ANY FURTHER ILLEGAL ACTIVITY IN, OR ORIGINATING FROM, the State of Mississippi in connection with solicitations of charitable contributions.

Respectfully submitted this the 10<sup>th</sup> day of July, 2009.

C. DELBERT HOSEMANN, JR.  
Secretary of State  
State of Mississippi

By:   
\_\_\_\_\_  
MELANIE THOMAS  
Senior Attorney  
Securities and Charities Division

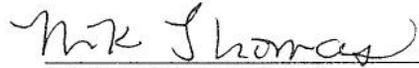
Melanie Thomas, MSB #101016  
Mississippi Secretary of State's Office  
P.O. Box 136  
Jackson, MS 39205-0136  
(601) 359-6366

**CERTIFICATE OF SERVICE**

I, Melanie Thomas, do hereby certify that I have this day mailed a true and correct copy of the above and foregoing document, via certified mail postage pre-paid, to the following:

Daniel Dudley  
Hinds County Fraternal Order of the Police Lodge #20  
1500 East Woodrow Wilson Drive, 07B  
Jackson, MS 39126

This the 10<sup>th</sup> day of July, 2009.

  
\_\_\_\_\_  
MELANIE THOMAS  
Senior Attorney