

**OFFICE OF THE MISSISSIPPI SECRETARY OF STATE
BUSINESS REGULATION AND ENFORCEMENT DIVISION**

IN THE MATTER OF :

AMVETS POST 355
1139 West Main Street
Tupelo, Mississippi 38807

Respondent

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Administrative Proceeding
Number: C-04-0088

022291

CONSENT ORDER

Finding it appropriate in the public interest, the Business Regulation and Enforcement Division of the Office of the Secretary of State of Mississippi (hereinafter "Division"), on behalf of the Secretary of State, having the power to administer and to provide for the Mississippi Charitable Solicitations Act, Miss. Code Ann. §§79-11-501 to 79-11-529 (Rev. 2001) (hereinafter "Act"), and Respondent AMVETS POST 355 (hereinafter "AmVets") do hereby enter into this Consent Order (hereinafter "Order"). This Order settles all of the Division's allegations of violations of the October 15, 2003, Consent Order, which is affixed hereto as "Exhibit A" and incorporated herein by reference, entered into between the Division and AmVets.

I. Findings of Fact

1. In resolution of the Division's allegations of violations of the Act as to AmVets as contained in the Notice of Intent to Revoke Registration and Impose Administrative Penalty, which is affixed hereto as "Exhibit B," the Division and AmVets entered into an October 15, 2003, Consent Order.

2. On May 26 and 27, 2004, examiners for the Division conducted an examination of the books and records of AmVets pursuant to Miss. Code Ann. §79-11-518. During the examination, the Division found violations of the October 15, 2003, Consent Order.

3. The Division discovered that AmVets violated Section I, Paragraph 1, of the Consent Order. That provision pertaining to Robert Byrd (hereinafter "Byrd") states the following:

Robert Byrd was involved in an accident causing damage to the AmVets' vehicle during the summer of 2003. Insurance coverage was in effect on the damaged vehicle. Robert Byrd will reimburse AmVets for any costs to repair the van not covered by insurance. AmVets shall not and will not allow Robert Byrd to operate the Am Vets' vehicle for any use.

On Thursday May 27, 2004, the Division's examiners witnessed Byrd ask for the AmVets' van keys and ten dollars (\$10.00) cash for gas in order to go to a doctor's appointment. The Division's examiners then witnessed James Williams (hereinafter "Williams"), Finance Officer for AmVets, give Byrd ten dollars (\$10.00) in cash, and Byrd left in the van. AmVets May 26, 2004, board minutes reflect that the board of directors approved Byrd to drive the van. Because AmVets allowed Byrd to operate the AmVets' vehicle, AmVets is in violation of Section I, Paragraph 1, of the Consent Order.

The damaged AmVets' vehicle referred to in Section I, Paragraph 1, of the Consent Order was purchased on or about June 25, 2002, for seventeen thousand five hundred thirteen dollars and fifty cents (\$17,513.50). The insurance check for the damaged AmVets' vehicle deposited into the AmVets' bank account on or about August 7, 2003, was in the amount of eleven thousand five hundred twenty five dollars (\$11,525.00). There is no record of any monetary compensation from Byrd to AmVets

for the difference. Because Byrd did not reimburse AmVets for any costs to repair the van not covered by insurance, AmVets is in violation of Section I, Paragraph 1, of the Consent Order.

4. The Division discovered that AmVets violated Section I, Paragraph 10 of the Consent Order. That provision pertaining to Byrd states the following:

AmVets agrees that Robert Byrd will not be involved in any manner with the operations of AmVets including, but not limited to, serving as an officer or director of the organization or any related entity now existing or created in the future. AmVets agrees to procure and submit to the Division within thirty (30) days from the execution of this Order a signed affidavit from Robert Byrd indicating that he will not be involved in any manner with the operations of AmVets including, but not limited to, serving as an officer or director of the organization or any related entity now existing or created in the future.

During the Division's examination, examiners witnessed Byrd instruct Williams to send AmVets' members in order to represent the organization at two (2) Memorial Day weekend functions; one in Oxford, Mississippi, and one in New Albany, Mississippi. Byrd instructed Williams to make sure to take food. Because Byrd was involved with the operations of AmVets, AmVets is in violation of Section I, Paragraph 10, of the Consent Order.

5. The Division discovered that AmVets violated Section I, Paragraph 14, of the Consent Order. That provision states the following:

AmVets agrees to institute internal controls governing petty cash, income, and expenses. AmVets also agrees to implement all necessary internal controls designed to detect and prevent the misuse of funds. AmVets will provide a copy of all internal control policies to the Division within ninety (90) days from the execution of this Order by AmVets. The internal controls will be subject to review and approval of the Division.

In accordance with the above provisions, AmVets submitted to the Division the AmVets Internal Control Procedures. The Internal Control Procedures require that any and all

income received by AmVets, regardless of amount and source, be reported by the finance manager at the next monthly meeting which occurs immediately thereafter. During the Division's May 2003 examination, the Division discovered that the AmVets' board minutes do not specifically mention any particular income or expenses in violation of AmVets' Internal Control Policies. Because AmVets is in violation of its own internal control policies, AmVets is in violation of Section I, Paragraph 14, of the Consent Order.

6. The AmVets' Internal Control Policies require any expense which is not incurred on a regular monthly or quarterly basis and is in an amount greater than two hundred and fifty dollars (\$250.00) be submitted to the board of directors for approval. During the Division's May 2003 examination, the Division discovered the following transactions whereby AmVets failed to submit expenses greater than two hundred and fifty dollars (\$250.00) to the board of directors for approval in violation of AmVets' Internal Control Policies and, thus, Section I, Paragraph 14, of the Consent Order:

- A. On February 17, 2004, AmVets made a three hundred dollar (\$300.00) donation to Betsy Hide for U.S. soldiers in Iraq. The AmVets' board minutes do not reflect that this transaction was approved.
- B. On March 13, 2004, AmVets paid two hundred sixty eight dollars and thirteen cents (\$268.13) to Blaylock Electric for equipment repairs. The AmVets' board minutes do not reflect that this transaction was approved.
- C. On May 11, 2004, AmVets made a four hundred dollar (\$400.00) donation to Helen Cunningham. The AmVets' board minutes do not reflect that this transaction was approved.
- D. On March 7, 2004, AmVets purchased painting supplies costing six hundred eighty five dollars and nine cents (\$685.09) at Home Depot. The AmVets' board minutes do not reflect that this transaction was approved.
- E. On March 16, 2004, AmVets purchased a refrigerator at Lowes for five hundred sixty six dollars and twenty nine cents (\$566.29). The

AmVets' board minutes do not reflect that this transaction was approved.

- F. On March 31, 2004, AmVets paid four hundred sixteen dollars and ninety three cents (\$416.93) to Ricky Sheffield for glass repair. The AmVets' board minutes do not reflect that this transaction was approved.
- G. On February 2, 2004, AmVets paid five hundred thirty four dollars and seventy four cents (\$534.74) to Sam's Club for supplies. The AmVets' board minutes do not reflect that this transaction was approved.
- H. On March 8, 2004, AmVets paid six hundred four dollars and seventy seven cents (\$604.77) to Sysco for New Year's food. The AmVets' board minutes do not reflect that this transaction was approved.
- I. On January 19, 2004, AmVets paid three hundred twenty eight dollars and five cents (\$328.05) to Tri-County Backhoe for plumbing. The AmVets' board minutes do not reflect that this transaction was approved.
- J. On March 22, 2004, AmVets paid six hundred one dollar and twenty six cents (\$601.26) to Tri-County Backhoe for building repairs. The AmVets' board minutes do not reflect that this transaction was approved.
- K. On May 22, 2004, AmVets paid four hundred dollars and sixty eight cents (\$400.68) to Tupelo Farm & Ranch for lawn mower repairs. The AmVets' board minutes do not reflect that this transaction was approved.

7. The AmVets' Internal Control Policies require that all income and all expenses be reported by the finance manager at the next occurring monthly meeting and be accurately recorded. In addition, all records, including, but not limited to, receipts and deposits of all income and expenses, must be kept for a minimum of three (3) years. During the Division's May 2003 examination, the Division discovered that check register entries were not accurately recorded. First, the check register indicates that the corresponding checks numbered 5372, 5411, 5442, 5462, 5466 and 5486 were designated

as “reimbursement” without any additional detail. Second, the check register is missing any record of deposits made on February 27, 2004, and March 15, 2004. Third, the check register reflects that check number 5381 paid two hundred dollars (\$200.00) to the Mississippi Gaming Commission meeting for food and expenses. The check stub also reflects the same. However, the actual check is made out to Williams. The Division believes that the aforementioned record keeping is inaccurate, violative of AmVets’ Internal Control Procedures, and, thus, the Consent Order.

8. The AmVets’ Internal Control Policies require that checks may not be pre-signed. During the Division’s May 2003 examination, the Division discovered a voided check signed by Williams and Best in violation of AmVets’ Internal Control Policies and, thus, the Consent Order.

9. The AmVets’ Internal Control Policies require that one individual shall be designated to receive contributions and issue receipts. A separate individual, different from the person whose duty is to receive contributions and issue receipts, shall deposit any monies and keep the records. The separation of the receipt and deposit function from the record keeping is essential in thwarting fraud. During the Division’s May 2003 examination, the Division discovered that Williams issues receipts, receives contributions, and keeps records.

10. Section 79-11-519 (3)(j) prohibits charitable organizations from employing any device, scheme or artifice to defraud. AmVets appears to have conducted a fraudulent art contest for high school students during the summer of 2003. The winner of the art contest, receiving a five thousand dollar scholarship (\$5000.00), was Jon Autry, the son of the then AmVets’ bookkeeper Penny Edington (hereinafter “Edington”) and

the grandson of Byrd. The AmVets' board minutes reflect that Edington was a judge for the contest. The Division believes these facts are indicative of the conduct the above statute was intended to thwart.

I. Agreement

In consideration of a final resolution of the matters set forth in the "I. Findings of Fact" above, the Division and Respondent hereby agree, stipulate and undertake as follows:

11. AmVets is a charitable organization located at 1139 West Main Street, Tupelo, Mississippi 38801. On August 26, 2004, the Division received a letter from AmVets indicating that AmVets (1) withdraws its request to renew its registration as a charitable organization with the Division and (2) is in the process of dissolution.

12. AmVets acknowledges and consents to the jurisdiction of the Secretary of State as to all matters and parties herein.

13. The Division shall impose a penalty upon AmVets in the amount of Three Thousand Dollars (\$3,000.00). AmVets shall remit payment to the Division, payable to the "Mississippi Secretary of State" upon execution of this Order. AmVets shall promptly mail the executed Order along with a check in the above amount to the Division.

14. AmVets agrees to donate its remaining property to one (1) or more of the following State Veterans Nursing Homes: State Veterans Home, 3261 Highway 49, Collins, Mississippi 39428; State Veterans Home, 310 Autumn Ridge Drive, Kosciusko, Mississippi 39090; State Veterans Home, 4607 Lindberg Drive, Jackson, Mississippi 39209; and State Veterans Home 120 Veterans Boulevard, Oxford, Mississippi 38655.

15. AmVets' "remaining property" as referred to in Section I, Paragraph 4, herein is alphanumerically listed in AmVets' September 28, 2004, letter sent to the Division and affixed hereto as "Exhibit C."

16. This Order is in resolution of the Division's allegations of violations of the October 15, 2003, Consent Order. Thus, any of the matters alleging violations of the Consent Order detailed herein will not be used as a basis for action by the Division except as set forth in Section II *infra*.

17. AmVets neither admits nor denies the violations of the Act alleged and detailed herein and agrees to comply with the provisions of the Act in the future.

18. AmVets recognizes, acknowledges, and stipulates that a willful failure to comply with any of the terms, conditions or obligations of this Order will result in AmVets being deemed to be in violation of a lawful order made pursuant to the Act and, therefore, subject to the penalties of available under the Act.

19. AmVets is aware of its right to a hearing on this matter at which it may be represented by counsel, present evidence and cross-examine witnesses. AmVets hereby irrevocably waives the right to such a hearing.

20. AmVets understands that the entry of this Order represents the settlement of regulatory claims by the Division against AmVets only and does not, in any way, restrict or affect the rights or causes of action, if any, of any Mississippi residents who have sustained losses as a result of AmVets actions.

21. It is understood and agreed that the Division retains all rights available to it and that this Order is merely a settlement of those matters set forth herein. The Division specifically retains all rights to take such other and further action that it may

deem necessary to take due to the discovery of additional violations of the Act by AmVets, other than those specific violations detailed and alleged in herein.

22. In the event AmVets fails to comply with any of the agreements, stipulations or undertakings set forth in Paragraph I, or should any other governmental entity take action against AmVets, either civil, criminal or administrative, which results in an order or judgment being issued adversely to AmVets, AmVets shall thereby knowingly and voluntarily waive any right to notice and to an administrative hearing and also waive any right to separately stated findings of fact and conclusions of law to which they may have otherwise had a right regarding the matters contained in Paragraph I. The Secretary of State may, in his discretion, enter an Order of Revocation/Denial of Registration and an Order Imposing Administrative Penalty and same will automatically become final and enforceable against AmVets with respect to such matters.

23. As to such final order, AmVets hereby willingly, knowingly and voluntarily waives their right to any appeal.

24. This Order shall remain in full force and effect from the date of execution of this Order by the Secretary of State or his duly appointed representative.

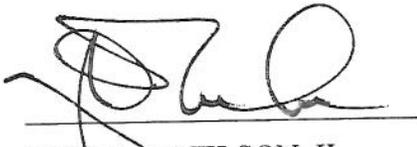
III. Acknowledgement

The parties acknowledge that they have read this Order in its entirety and fully understand the rights, terms and obligations of each contained herein and they have been vested with the express authority to enter into this agreement. The parties further acknowledge that they have not been threatened or otherwise coerced into entering into this Order.

The undersigned hereby acknowledge and agree to the terms and conditions of the foregoing Order by written consent.

ERIC CLARK

Secretary of State

By: 
JAMES C. NELSON, II
Assistant Secretary of State

Date: 1/13/05

AMVETS POST 355

By: 
(Sign Name)

Date: March 3, 2005

James J. Moore
(Print Name)

Attorney For Respondent
(Title) On behalf of Respondent

**OFFICE OF THE MISSISSIPPI SECRETARY OF STATE
BUSINESS REGULATION AND ENFORCEMENT DIVISION**

IN THE MATTER OF :

AMVETS POST 355
2901 South Eason Boulevard
Tupelo, Mississippi 38804

Respondent

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Administrative Proceeding
Number: C-03-0176

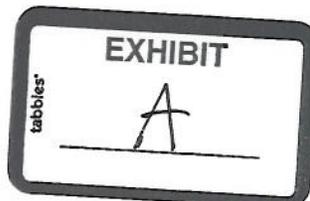
CONSENT ORDER

Finding it appropriate in the public interest, the Business Regulation and Enforcement Division of the Office of the Secretary of State of Mississippi (hereinafter "Division"), on behalf of the Secretary of State, having the power to administer and to provide for the Mississippi Charitable Solicitations Act, Miss. Code Ann. §§79-11-501 to 79-11-529 (Rev. 2001) (hereinafter "Act"), and Respondent AMVETS POST 355 (hereinafter "AmVets") do hereby enter into this Consent Order (hereinafter "Order"). This Order settles all of the Division's allegations of violations of the Act as to AmVets as contained in the Notice of Intent to Revoke Registration and Impose Administrative Penalty affixed hereto as "Exhibit A" and incorporated herein by reference.

I. Agreement

In consideration of a final resolution of the matters set forth in "Exhibit A," the Division and Respondent hereby agree, stipulate and undertake as follows:

1. AmVets is a charitable organization located at 2901 South Eason Boulevard, Tupelo, Mississippi 38804.



2. AmVets acknowledges and consents to the jurisdiction of the Secretary of State as to all matters and parties herein.
3. The Division shall impose a penalty upon AmVets in the amount of Seventy Thousand Dollars (\$70,000.00). AmVets shall remit payment to the Division, payable to the "Mississippi Secretary of State" within fifteen (15) days of the execution of this Order.
4. AmVets agrees that Robert Byrd will not be involved in any manner with the operations of AmVets including, but not limited to, serving as an officer or director of the organization or any related entity now existing or created in the future. AmVets agrees to procure and submit to the Division within thirty (30) days from the execution of this Order a signed affidavit from Robert Byrd indicating that he will not be involved in any manner with the operations of AmVets including, but not limited to, serving as an officer or director of the organization or any related entity now existing or created in the future.
5. AmVets agrees that Jimmy Doug Shelton will not be involved in any manner with the operations of AmVets including, but not limited to, serving as an officer or director of the organization or any related entity now existing or created in the future.
6. AmVets agrees that Penny Edington will not be involved in any manner with the operations of AmVets including, but not limited to, serving as an officer or director of the organization or any related entity now existing or created in the future. AmVets agrees to procure and submit to the

Division within thirty (30) days from the execution of this Order a signed affidavit from Penny Edington indicating that she will not be involved in any manner with the operations of AmVets including, but not limited to, serving as an officer or director of the organization or any related entity now existing or created in the future.

7. The wheelchair discussed in "Exhibit A" has been returned to Winnie Noel.
8. AmVets agrees to immediately exhaust all efforts in repossessing all of AmVets' property, including, but not limited to, any automobiles, vans, lawnmowers, tractors, or any other property whatsoever in the possession of any individual possessing AmVets' property for personal use. AmVets shall submit a list to the Division detailing all property recovered pursuant to this Order within thirty (30) days from the execution of said Order.
9. AmVets shall procure and submit to the Division information evidencing that the purpose for giving Two Thousand Dollars (\$2,000.00) to Ricky Wimbs was in accord with the organization's stated purposes in the documents filed with the Division within thirty (30) days from the execution of this Order. If the contributions to Ricky Wimbs have not been applied for the purposes stated in the documents filed with the Division, then AmVets shall exhaust all efforts in obtaining the Two Thousand Dollars (\$2,000.00) given to Ricky Wimbs within thirty (30) days from the execution of this Order.

10. Robert Byrd was involved in an accident causing damage to the AmVets' vehicle during the summer of 2003. Insurance coverage was in effect on the damaged vehicle. Robert Byrd will reimburse AmVets for any costs to repair the van not covered by insurance. AmVets shall not and will not allow Robert Byrd to operate the AmVets' vehicle for any use.
11. AmVets agrees to elect five (5) new directors to its board within thirty (30) days from the execution of this Order. The three (3) existing directors will join the newly elected five (5) directors and shall act as the board of directors for AmVets. Thus, the board of directors shall consist of eight (8) individuals. Members of the newly-elected board may not be related to any of the current officers and/or directors by blood or marriage. AmVets agrees further that T.Y. Kimmons, Commander of AmVets, no longer maintain any control of AmVets' finances.
12. AmVets agrees to procure and submit to the Division within thirty (30) days from the execution of this Order signed affidavits from each existing and newly-elected board member indicating that Robert Byrd and Jimmy Doug Shelton will not be involved in any manner with the operations of AmVets including, but not limited to, serving as an officer or director of the organization or any related entity now existing or created in the future and that they are not related by blood or marriage to Robert Byrd and Jimmy Doug Shelton.
13. For the next twenty-four (24) months, AmVets agrees that it will undergo an annual audited financial review by a CPA firm approved by the

Division. Results of the audit must be submitted to the Division within seven (7) days of receipt thereof.

14. AmVets agrees to institute internal controls governing petty cash, income, and expenses. AmVets also agrees to implement all necessary internal controls designed to detect and prevent the misuse of funds. AmVets will provide a copy of all internal control policies to the Division within ninety (90) days from the execution of this Order by AmVets. The internal controls will be subject to review and approval of the Division.
15. AmVets agrees that at any such time as the Division desires, and without notice to AmVets, AmVets will submit to an examination of its records by the Division.
16. AmVets agrees to use all reasonable means to provide any materials requested by the Division within ten (10) business days from the date of the request issued by the Division.
17. AmVets will provide a current balance to the Division of funds on deposit in any and all accounts wherein AmVets is a party. This information will be provided on original bank stationery or by other means showing verification by the bank within thirty (30) days from the date of execution of this Order by AmVets.
18. This Consent Order is in resolution of the matters contained in "Exhibit A." Thus, any matters in "Exhibit A" will not be used as a basis for action by the Division except as set forth in Paragraph II *infra*.

19. AmVets neither admits nor denies the violations of the Act alleged and detailed in "Exhibit A" and agrees to comply with the provisions of the Act in the future.

II. Other Considerations

1. AmVets recognizes, acknowledges, and stipulates that a willful failure to comply with any of the terms, conditions or obligations of this Order will result in AmVets being deemed to be in violation of a lawful order made pursuant to the Act and, therefore, subject to the penalties of available under the Act.
2. AmVets is aware of its right to a hearing on this matter at which it may be represented by counsel, present evidence and cross-examine witnesses. AmVets hereby irrevocably waives the right to such a hearing.
3. AmVets understands that the entry of this Order represents the settlement of regulatory claims by the Division against AmVets only and does not, in any way, restrict or affect the rights or causes of action, if any, of any Mississippi residents who have sustained losses as a result of AmVets actions.
4. It is understood and agreed that the Division retains all rights available to it and that this Order is merely a settlement of those matters set forth in "Exhibit A." The Division specifically retains all rights to take such other and further action that it may deem necessary to take due to the discovery of additional violations of the Act by AmVets, other than those specific violations detailed and alleged in "Exhibit A."

5. In the event AmVets fails to comply with any of the agreements, stipulations or undertakings set forth in Paragraph I, or should any other governmental entity take action against AmVets, either civil, criminal or administrative, which results in an order or judgment being issued adversely to AmVets, AmVets shall thereby knowingly and voluntarily waive any right to notice and to an administrative hearing and also waive any right to separately stated findings of fact and conclusions of law to which they may have otherwise had a right regarding the matters contained in Paragraph I. The Secretary of State may, in his discretion, enter an Order of Revocation/Denial of Registration and an Order Imposing Administrative Penalty and same will automatically become final and enforceable against AmVets with respect to such matters.
6. As to such final order, AmVets hereby willingly, knowingly and voluntarily waives their right to any appeal.
7. This Consent Order shall remain in full force and effect from the date of execution of this Order by the Secretary of State or his duly appointed representative.
8. The Division shall lift the Notice of Intent to Revoke Registration and Impose Administrative Penalty, affixed hereto as "Exhibit A," upon execution of this Consent Order.

III. Acknowledgement

The parties acknowledge that they have read this Consent Order in its

entirety and fully understand the rights, terms and obligations of each contained herein and they have been vested with the express authority to enter into this agreement. The parties further acknowledge that they have not been threatened or otherwise coerced into entering into this Consent Order.

The undersigned hereby acknowledge and agree to the terms and conditions of the foregoing Consent Order by written consent.

ERIC CLARK
Secretary of State

By: 
JAMES O. NELSON, II
Assistant Secretary of State

Date: 10/1/2003

AMVETS POST 355

By: 
(Sign Name)

Ty Kimmons
(Print Name)

Commander Amvets Post 355
(Title)

Date: 10/15/2003

**OFFICE OF THE MISSISSIPPI SECRETARY OF STATE
BUSINESS REGULATION AND ENFORCEMENT DIVISION**

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| IN THE MATTER OF : |) | |
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| AMVETS POST 355 |) | Administrative Proceeding |
| 2901 South Eason Boulevard |) | Number: <u>C-03-0176</u> |
| Tupelo, Mississippi 38804 |) | |
| |) | |
| Robert Byrd |) | |
| 414 Elvis Presley Boulevard |) | |
| Tupelo, Mississippi 38801 |) | |
| |) | |
| <i>Respondents</i> |) | |

**NOTICE OF INTENT TO REVOKE REGISTRATION AND IMPOSE
ADMINISTRATIVE PENALTY**

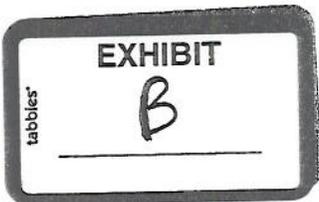
The SECRETARY OF STATE OF MISSISSIPPI, by and through the undersigned designated representative, hereby issues this Notice of Intent to Revoke Registration and Impose Administrative Penalty to AMVETS POST 355, (hereinafter "AmVets") and in support hereof, states the following:

I. JURISDICTION

The Secretary of State is vested with the regulation of charitable organizations in the state of Mississippi pursuant to Miss. Code Ann. Sections 79-11-501, et seq. (2001). Amvets is a charitable organization as defined by Miss. Code Ann Section 79-11-501(a)(i)(B) (2001), to-wit:

(a)(i) "Charitable organization" means either of the following:

(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.

Amvets has purported to be established for the following purposes: helping American Veterans and their families by providing medical expenses and transportation; to donate to worthy causes, advancement of education, religious and social needs of veterans and the community; to provide a post home for members of Amvets; and to provide wheelchairs and walkers and other medical needs for veterans who cannot afford to purchase those items. Because the entity purports to be established for voluntary health and welfare, benevolent, philanthropic, patriotic, educational, and other eleemosynary purposes, AmVets falls within the definition of "charitable organization." Thus, AmVets is subject to the Secretary of State's regulatory authority.

II. FINDINGS OF FACT

1. Pursuant to the lawful authority codified in Miss. Code Ann. §79-11-518, the Division's authorized representative conducted an inspection of AmVets' books and records. The inspection was conducted between July 24, 2002, and July 26, 2002.

2. On September 11, 2002, the Division's lawful representative conducted further inspection of AmVets' books and records. The Division's representative examined many additional records including, but not limited to, AmVets' bingo check registers, accounting information, and charity expense receipts.

3. Upon completion of the inspection, Bill Wilkerson, Director of the Division, sent a letter via certified mail, dated December 6, 2002, which is affixed hereto as "Exhibit A," to Mr. T.Y. Kimmons, Commander of AmVets and registered agent for service of process. The letter lists deficiencies noted by the Division's examination.

4. In addition to enumerating the Division's findings during the July and September examinations, the Division's December 6, 2002, letter requests that AmVets provide a detailed written response to the above items including explanations and appropriate documentation, if applicable, by January 8, 2003.

5. On Tuesday, December 31, 2002, Peter L. Doran contacted Mr. Wilkerson. Mr. Doran explained that he had been retained as counsel to assist AmVets in responding to the Division's December 6, 2002, letter. Mr. Doran requested that the Division extend AmVets' deadline until January 15, 2003, and Mr. Wilkerson agreed.

6. On January 15, 2003, the Division received AmVets' response providing explanations for the problematic activities described in the Division's December 6, 2003, letter. The response is affixed hereto as "Exhibit B."

7. A cursory analysis of AmVets' January 15, 2003, response revealed that AmVets' report was inadequate. On January 31, 2003, Mr. Wilkerson sent a letter to Mr. Doran indicating that some of the explanations to the enumerated items were unsatisfactory.

8. Because AmVets offered no explanations that would excuse certain violations of the Act detailed in the Division's December 6, 2002, letter, the Division continued investigating AmVets' activities. The Division's subsequent ongoing investigation revealed that AmVets continued to engage in conduct mandating a revocation of AmVets' registration.

9. Robert G. Byrd is a natural person whose last known address is 414 Elvis Presley Boulevard, Tupelo, Mississippi 38801. The Division has discovered that Mr.

Byrd, while not listed as an officer or director of AmVets in the Division's records, attends officers' meetings and has significant influence over AmVets' decisions. In addition, Mr. Byrd is listed as the president of Lee Investments, Inc., in the records of the Mississippi Secretary of State's Office. Lee Investments, Inc., owns the building in which AmVets is housed at 2901 South Eason Boulevard, Tupelo, Mississippi 38804. AmVets makes monthly rent payments to Lee Investments, Inc., in the amount of Five Thousand Dollars (\$5,000.00).

10. In the course of its investigation, the Division discovered that Mr. Byrd placed a full-page advertisement in *The Magnolia Shopper*, a Mississippi advertisement newspaper, during November and December of 2002 on behalf of AmVets. The advertisement ran on the following dates: November 15, 2002; November 22, 2002; November 29, 2002; December 6, 2002; December 13, 2002; and December 20, 2002. According to the *The Magnolia Shopper's* invoice for this sale, the standard price for such an advertisement is One Thousand Dollars (\$1,000.00). The Division's investigation revealed that Mr. Byrd paid for the ad with check number 4756 from the AmVets' BancorpSouth checking account number 60176583 in the amount One Thousand Five Hundred Dollars (\$1,500.00) payable to *The Magnolia Shopper*. The check was dated November 7, 2002. According to *The Magnolia Shopper's* invoice for this sale, among other evidence obtained by the Division, AmVets paid the additional Five Hundred Dollars (\$500.00) above the standard price for the advertisement so that Mr. Byrd could receive a Five Hundred Dollar (\$500.00) "kick-back."

11. Mr. Byrd received a second "kick-back" in the same manner as

described in Paragraph 10 herein. More specifically, Mr. Byrd purchased ads with check number 4835 from the AmVets' BancorpSouth checking account number 60176583 in the amount of One Thousand Two Hundred and Fifty Dollars (\$1,250.00). The check is dated December 12, 2002. This amount was purportedly payment for another full-page, four (4) week advertisement in *The Magnolia Shopper* with an additional two (2) free weeks. However, according to *The Magnolia Shopper's* invoices from these sales, the ad costs were actually One Thousand Dollars (\$1,000.00) and the Two Hundred and fifty dollar (\$250.00) difference was refunded to Mr. Byrd in cash.

12. Mr. Byrd's involvement in AmVets' business is not only reflected in *The Magnolia Shopper* advertisement kickbacks. According to AmVets' check register, the organization purchased an electric wheelchair from Mary Rogers on June 10, 2002, for Three Thousand Eight Hundred Dollars (\$3,800.00). BancorpSouth records reflect that check number 4472 drawn on account number 60176583 in the amount of Three Thousand Eight Hundred Dollars (\$3,800.00) and made payable to Mary Rogers was cashed on the same day. However, the Division discovered that the AmVets' invoice reflecting the wheelchair transaction indicates that the wheelchair was purchased from Melissa Moore. Because of the discrepancy between the name of the individual on the check and the name of the individual on the invoice, the Division investigated further and found that the wheelchair actually had belonged to Mattie Noel.

13. The Division traced the serial number on the wheelchair to Mattie Noel, who received the wheelchair from the Durant Medical Supply Company on or about October of 2001. Medicaid paid for the wheelchair. Mattie Noel passed away in February of 2002. Soon thereafter, Mr. Byrd visited Mrs. Noel's daughter, Winnie Noel.

Mr. Byrd explained that he had been diagnosed with cancer and needed a wheelchair. Winnie Noel offered to loan Mr. Byrd the wheelchair and he accepted. Mr. Byrd left with possession of the wheelchair.

14. On or about February of 2003, Winnie Noel received a phone call from a person stating that her wheelchair had been purchased by a VA nursing home. Winnie Noel's affidavit, which is affixed hereto as "Exhibit C," details the events regarding the wheelchair and Mr. Byrd and states that Mr. Byrd called her indicating that he still had the wheelchair. While the AmVets' records indicate that a "Mary Rogers" and/or a "Melissa Moore" had sold the wheelchair to the organization, neither the AmVets' records, nor the Division's investigation could confirm the existence of "Mary Rogers." No records that the Division has examined demonstrate that any persons bearing such names have ever owned the wheelchair in question.

15. In furtherance of the investigation, the Division took a sworn statement from Willie Nichols, Senior Officer for AmVets. Mr. Nichols testified that Mr. Byrd told him that he had found an electric wheelchair for a good price of Three Thousand Eight Hundred Dollars (\$3,800.00), which Mr. Byrd could purchase from Mary Rogers. Mr. Nichols and other members of the AmVets' board had determined that was a good price for an electric wheelchair and agreed to purchase it. Mr. Byrd told Mr. Nichols to write out a check in that amount payable to Mary Rogers. Mr. Byrd then instructed Mr. Nichols to cash the check. Mr. Nichols testified that the bank would not cash the check without an endorsement so he signed Mary Rogers' name on the back of the check so that the check could be cashed. Upon receiving the Three Thousand Eight Hundred Dollars (\$3,800.00) from the bank, Mr. Nichols gave the money to Mr. Byrd. Mr. Nichols

testified that he does not believe Mary Rogers exists. He also stated that he traced the wheelchair back to Durant Medical Supplies in Lexington, Mississippi, but that they refused to provide him with the name of the rightful owner.

16. Mr. Nichols testified that as of early April of 2003, he no longer worked as Senior Officer at AmVets. Mr. Nichols explained that Penny Edington, Robert Byrd's daughter, has replaced him as Senior Officer. Up to the date of the issuance of this Order, the Division has not received any information from AmVets regarding Mr. Nichols departure and/or replacement.

17. On April 14, 2003, Volume 1, No. 1 edition of *The Grapevine* newspaper, a Mississippi advertisement newspaper, was published. On page six (6) of this edition of *The Grapevine*, said newspaper's address is listed as 2901 South Eason Boulevard, Tupelo, Mississippi 38804. The fax number for *The Grapevine* is listed as (662) 884-8179. Registration materials submitted by AmVets to the Division lists that organization's address as 2901 South Eason Boulevard, Tupelo, Mississippi 38804. The registration materials indicate that AmVets' fax number is (662) 884-8179. Thus, the address of *The Grapevine* and the fax number of *The Grapevine* are identical to AmVets' address and fax number as registered with the Division. The Division has not received any notice that AmVets has changed addresses or fax numbers.

18. The Division's December 6, 2002, letter enumerating certain violations of the Act have not been resolved. The conduct engaged in by Mr. Byrd and AmVets' officers is indicative of that which the Act is intended to thwart. This fact is so because the Act mandates that such conduct result in a revocation of AmVets' registration with the Division.

III. CONCLUSIONS OF LAW

The previous paragraphs are incorporated herein by reference.

19. AmVets filed documents with the Secretary of State containing one or more false or misleading statements or omitting material facts in violation of Miss. Code Ann. §79-11-509(c).

20. AmVets charitable contributions have not been or are not being applied for the purpose or purposes stated in the documents filed with the Secretary of State in violation of Miss. Code Ann. §79-11-509(d).

21. AmVets has violated or failed to comply with any provisions of this chapter or any rule or order thereunder pursuant to Miss. Code Ann. §79-11-509(e).

22. AmVets has engaged in the use or employment of dishonesty, fraud, deception, misrepresentation, false promise or false pretense in violation of Miss. Code Ann. §79-11-509(g).

23. AmVets' officers breached the fiduciary duties described in Miss. Code Ann. §79-11-525:

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.

24. AmVets violated Miss. Code Ann. §79-11-519(3)(f) by making false or misleading statements on documents required by Sections 79-11-501 through 79-11-529 or any rule or order thereunder.

25. AmVets engaged in financial transactions which were not related to the accomplishment of its charitable purpose, or which jeopardized or interfered with the

ability of the charitable organization to accomplish its charitable purpose in violation of Miss. Code Ann. §79-11-519(4)(a).

26. AmVets failed to keep true and correct records and records of solicitation activities pursuant to Miss. Code Ann. §79-11-518.

27. AmVets failed to notify the Secretary of State within thirty (30) days of any change in the information required to be furnished by such organization under Sections 79-11-501 through 79-11-529.

28. AmVets violated Miss. Code Ann. §79-11-519(3)(f), which states that it is a violation of Sections 79-11-501 through 79-11-529 for any person to commit any unfair or deceptive act or practice.

IV. NOTICE OF INTENDED ACTION

The Secretary of State intends to revoke AmVets' registration pursuant to Miss. Code Ann. §79-11-509(1)(c), (d), (e), (g), and (f).

In addition, the Secretary of State intends to impose an administrative penalty pursuant to Miss. Code Ann. §79-11-509(4)(b). This provision permits the Secretary of State to impose an administrative penalty up to Twenty-five Thousand Dollars (\$25,000.00) for each offense, each violation to be considered as a separate offense.

V. RIGHT TO ADMINISTRATIVE HEARING

AmVets may request an administrative hearing in this matter. Any such request shall be made in writing to James O. Nelson, II, Assistant Secretary of State, Office of Secretary of State, Post Office Box 136, Jackson, Mississippi 39205, within thirty (30) days

from the date of receipt of this Notice of Intent to Revoke Registration and Impose Administrative Penalty.

If an administrative hearing is requested, written notice of the date, time, and place, will be given to all parties by certified mail, return receipt request requested. Said notice will also designate a Hearing Officer.

VI. 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 out in Miss. Code. Ann. §79-11-501, et seq. (2001).

VII. RIGHT TO AMEND

The Secretary of State hereby reserves the right to amend this Notice of Intent to Revoke Registration and Impose Administrative Penalty.

ISSUED, this the 17th day of July 2003.

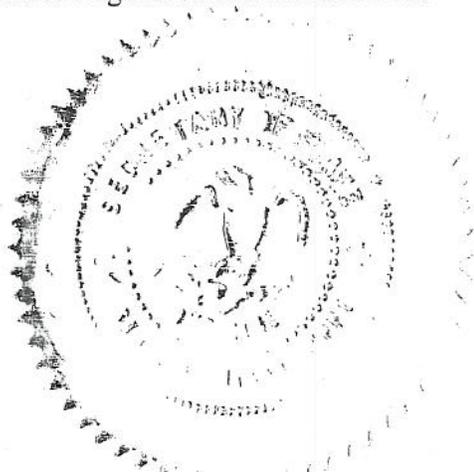
ERIC CLARK
Secretary of State

BY:



JAMES O. NELSON, II
Assistant Secretary of State
Business Regulation and Enforcement

Nathan Thomas MSB #100496
Senior Attorney
P.O. Box 136
301 North President Street
Jackson, MS 39205
(601) 359-6366



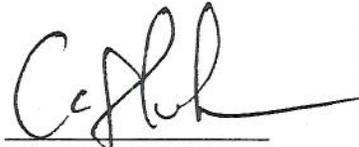
CERTIFICATE OF SERVICE

I, Nathan Thomas, do here by certify that I have this day mailed via Certified Mail, postage pre-paid, a true and correct copy of the Notice of Intent to Revoke Registration and Impose Administrative Penalty to the following:

T.Y. Kimmons
AMVETS POST 355
2901 South Eason Boulevard
Tupelo, Mississippi 38804

Robert Byrd
414 Elvis Presley Boulevard
Tupelo, Mississippi 38801

This the 18 day of July 2003.



NATHAN THOMAS
Senior Attorney

Nathan Thomas, MSB # 100496
Mississippi Secretary of State's Office
Post Office Box 136
301 North President Street
Jackson, Mississippi 39205
(601) 359-6366

JAMES D. MOORE

ATTORNEY AT LAW

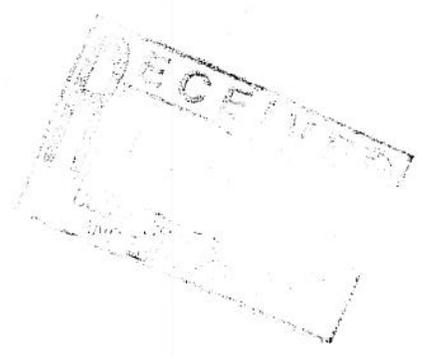


322 NORTH BROADWAY STREET
P.O. Box 911
TUPELO, MS 38802-0911
TELEPHONE: 662.840.8141
FACSIMILE: 662.840.8140

LEE COUNTY PROSECUTING ATTORNEY
PHONE: 662.841.9140

PARALEGAL: HEATHER HOLLEY

September 28, 2004



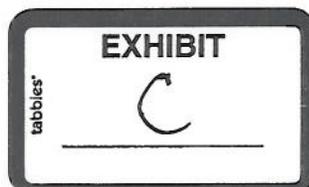
Honorable Nathan Thomas
Senior Attorney
Office of the Mississippi Secretary of State
Post Office Box 136
301 North President Street
Jackson, MS 39205-0136

RE: AmVets Post 355

Dear Mr. Thomas:

This is the letter you had requested concerning the current assets of AmVets Post 355. The assets at the present time include the following which are located in the office on West Main Street:

- a. 1big screen t.v.
- b. 1jukebox
- c. 4 desks
- d. 3 copiers
- e. 7 small TVS
- f. 2 computer monitors
- g. 3 tall filing cabinets
- h. 1short cabinet
- i. 1 half cabinet
- j. 1 half black cabinet
- k. 1 card file
- l. 3 office chairs
- m. 2 long tables
- n. 16 folding chairs
- o. 2 printers
- p. 1 shop vac
- q. 1 vacuum cleaner
- r. 1 refrigerator
- s. 1 microwave oven



Also among the present assets of AmVets Post 355 are the following items located in the shed:

- a. 1 kees riding mower
- b. 1 shed
- c. 1 pressure washer
- d. 1 paint sprayer
- e. 1 weed eater
- f. 1 long table
- g. 1 ladder
- h. 2 cash registers
- i. 1 garden rake
- j. 1 pressure sprayer
- k. numerous pictures
- l. 1 small table
- m. 1 lamp
- n. 2 push vacuums
- o. 1 blk & decker sander
- p. 1 chainsaw

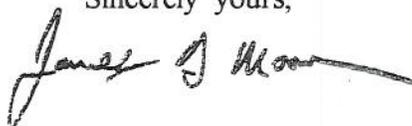
I have also been advised that AmVets Post 355 has approximately \$2,700.00 in its operating account and no other funds. I have also been advised that the Post has donated the trailer which was formerly in its possession to Robert Simmons, a board member, and that the van was donated to Bobby Bird in order to assist him with his transportation needs during his time of illness. Mr. Bird is suffering from cancer and often has to use a wheelchair. It is also my understanding that he is suffering from some other ailments.

As indicated in the previous letter to the office of the Secretary of State, AmVets Post 355 no longer wishes to remain a charity. At the time of the audit back during the late spring of this year, AmVets Post 355 was actually not a charitable organization since its renewal request had not been approved. Therefore, even though there may have been some violations of the previous agreed order, I think that it is questionable whether or not the Secretary of State would have jurisdiction under the laws governing charities over an organization which was not actually a charity at that time. I am just mentioning this as a possible legal defense for consideration by your office at this time. After the audit in the late spring, when it became apparent that there might be some problems with the organization from a charity standpoint, I discussed with the board the problems which they would likely have in renewing the charity and told them that dropping the application would probably be the best gesture to the office of the Secretary of State as a resolution of any issues which your office might have had with the audit. None of the funds held by AmVets Post 355 for the last several months, approaching one year, were derived from charity. These funds were derived from the sale of the bingo type "slot" machines which the Post previously used while it was operating bingo. Those machines were purchased from a loan which members of the Post made to it prior to beginning bingo operations at its Eason Boulevard location. One of the problems which the Post encountered with the gaming commission which ultimately resulted in it not being able to operate bingo anymore was that the Post erroneously identified the repayment of the loan as a charitable contribution when it should have went

down as an expense which is not charity related. The license of the Post to operate bingo was ultimately revoked for this, among other violations, by the Gaming Commission. Therefore the proceeds of the sale of these machines are not charitable money and this is the only money which the Post has been operating on since its charitable status expired toward the end of last November. Since it could not solicit charitable contributions it ran out of money and this was the only means it had to obtain more money to operate on.

I hope that this information will be helpful to your office in evaluating this situation. Please advise as soon as you are in a position to do so. As always, I look forward to working with your office in these matters.

Sincerely yours,

A handwritten signature in cursive script that reads "James D. Moore". The signature is written in black ink and has a long, sweeping horizontal line extending to the right.

James D. Moore

JDM/hch