

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

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|---|---|----------------------------------|
| IN THE MATTER OF: |) | |
| |) | |
| |) | |
| FINE ARTS INSTITUTE OF MISSISSIPPI, |) | Administrative Proceeding |
| a non-profit Mississippi corporation |) | Number C-08-0322 |
| and BILLY JAY MURPHY |) | |
| |) | |
| |) | |
| Respondents. |) | |

**FINAL ORDER REVOKING REGISTRATION
AND IMPOSING ADMINISTRATIVE PENALTIES**

WHEREAS, the Fine Arts Institute of Mississippi, Inc. (“FAIM”), and Billy Jay Murphy (“Murphy”) were Respondents in the Notice of Intent to Revoke Registration and Impose Administrative Penalty issued in this matter by the Securities and Charities Division of the Mississippi Secretary of State’s Office on September 18, 2009; and

WHEREAS, pursuant to Respondents’ request for an administrative hearing, James D. Holland was appointed as the hearing officer and an administrative hearing was held on March 2, 2010; and

WHEREAS, the hearing officer, after hearing testimony and reviewing documentary evidence issued his Opinion on April 5, 2008, a copy of which is affixed hereto as Exhibit “A” and incorporated herein by reference.

NOW, THEREFORE, the Secretary of State, as the administrator of the Act, hereby enters this Order:

I. FINDINGS OF FACT

- A. FAIM failed to maintain its books and records of all of its financial activities.
- B. FAIM’s books and records were not available for inspection by the Division.

- C. FAIM engaged in financial transactions not related to the accomplishment of its charitable purpose.
- D. FAIM provided false and misleading information to the Division.
- E. FAIM spent an unreasonable amount of money for management.
- F. Murphy, as a member of the board of directors and as Executive Director, violated his fiduciary duties to FAIM.

II. ORDER

IT IS THEREFORE ORDERED that FAIM pay an administrative penalty of Twenty-Five Thousand Dollars (\$25,000.00). Said penalty is to be paid within thirty (30) days from the date of this Order.

IT IS FURTHER ORDERED that Billy Jay Murphy pay an administrative penalty of Twenty-Five Thousand Dollars (\$25,000.00). Said penalty is to be paid within thirty (30) days from the date of this Order.

IT IS FURTHER ORDERED that FAIM's registration as a charitable organization with the Securities and Charities Division of the Mississippi Secretary of State's Office is hereby revoked.

SO ORDERED, this, the 14th day of April, 2010.


C. DELBERT HOSEMANN, JR.
SECRETARY OF STATE

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OFFICE OF THE MISSISSIPPI SECRETARY OF STATE
SECURITIES AND CHARITIES DIVISION

IN THE MATTER OF:

FINE ARTS INSTITUTE OF MISSISSIPPI
AND BILLY JAY MURPHY

Administrative Proceeding
Number C-08-0322

Respondents.

OPINION OF HEARING OFFICER

This matter is before this hearing officer on the Petition of Fine Arts Institute of Mississippi, Inc. and of Billy Jay Murphy for a review of the Secretary of State's Summary Cease and Desist Order and Notice of Intent to Revoke Registration and Impose Administrative Remedy, dated September 18, 2009. The Order and Notice of Intent were directed to FAIM and to Billy Jay Murphy for violations of the Mississippi Charitable Solicitations Act ("Act"), Miss. Code Ann. Sections 79-11-501, et seq.

A hearing was conducted on March 2, 2010, before this hearing officer and a court reporter. FAIM and Murphy were represented by Eric Hamer. The Secretary of State was represented by Patricia Melvin, Chief Counsel, and Melanie Thomas, Senior Attorney for the Securities and Charities Division of the Mississippi Secretary of State's office. Testimony was given by Kim Anderson, Examiner, by Maria Breland, Director of Examinations, and by Murphy.

The Respondents had requested a continuance of an earlier hearing date. All parties were given the opportunity to provide the hearing officer with all motions, briefs of legal authority and documentary evidence in advance of the hearing and both parties were given

the opportunity to review the submissions by the other. All witnesses were allowed to give all testimony and all exhibits were admitted as requested by either party. The hearing was held pursuant to the rules for such hearings found at Article Four of the Mississippi Charities Act Rules.

The only motions filed were the one for a continuance of a much earlier hearing date and one filed after the hearing, requesting that the legal brief submitted by the Division be stricken and, as a result, a mistrial given. Both sides were invited to address certain legal issues following the hearing as addresses below, the major difference between the two post trial filings was that the Respondent's brief was shorter. The Respondent's motion to strike the post-trial brief filed by the Secretary of State's office is hereby denied. The Respondents' motion for a mistrial blamed on the post trial brief is also denied as the post trial summaries provided no new evidence. These findings are based on evidence from the hearing and not on evidence submitted after the hearing by either party. All rulings were and this opinion is provided pursuant to this authority of the Mississippi Charities Act Rules and Section 79-11-504, Miss Code Ann. Neither party raised any other challenges to jurisdiction, procedure or evidence.

PROCEDURAL HISTORY

Following a September 14, 2006 examination, the Division sent a letter listing numerous violations found. On March 19, 2007 the Division received a response to those listed violations from FAIM. After a second examination and on September 18, 2009, the Securities and Charities Division of the Mississippi Secretary of State instituted an

enforcement action against the Respondents by issuing a Summary Cease and Desist Order and Notice of Intent to Revoke Registration and Impose Administrative Penalty. The Respondents timely appealed the Division's decision and its appeal was the subject of the hearing held on March 2, 2010, at which time all parties had the opportunity to present witnesses and documents in support of their respective positions. After reviewing all evidence in this matter, I make the following findings.

BACKGROUND

Mississippi is one of the most giving places on Earth, in spite of our economy and per capital income. We take care of each other and those in our communities. We support our musicians and artists and culture, as we know they all make the State a better place. We live, after all, in the Hospitality State.

Our Legislature in its wisdom directed our Secretary of State and, in some situations the Gaming Commission and the Attorney General, to carefully watch and monitor those who ask for our hard earned money and time to ensure that the charity we give is used for the purposes we intended - that it is placed where it was needed and with those who need it. The statutes and regulations in our State require that charities be good and careful stewards of the monies and time we humbly give. Being careful with the financial and personal gifts of our citizens is how we honor those who have sacrificed and given either money or time to perpetuate our charities and their work.

There are those who benefited from the money that FAIM did spend furthering its stated purpose. There are students, musicians, dancers and other artists and groups who

did received monies spent by FAIM during the relevant time period. The \$40,269 spent in 2007 and \$22,820 spent in 2008 certainly benefited some Mississippians, directly and indirectly. Every dollar spent for the purpose of our charities is of benefit, but the Respondents seem to forget that every dollar available, but misspent or not spent for the stated purposes has a reverse and detrimental effect on that same stated purpose. The Respondents argue that their expenditures for non-charitable purposes, their failure to keep records of other expenditures, their misrepresentations in FAIM's official filings and the monies spent on high salaries and expenses should all be forgiven because there were some who benefited from what was left.

The numbers submitted at the hearing also show another picture, a picture of the thousands of dollars that did not go to the charity's stated purpose. The numbers reveal that 97% of FAIM's available money in 2006, 91% in 2007 and 95% in 2008 were not used for the charity's stated purpose. If the money it did spend benefited some, one can imagine the impact possible had it followed the law and used its resources for its stated purpose. Had it followed the law, it could have had roughly fourteen times the financial impact. As an example, the evidence indicated that the bingo operation took in \$4.36 million in 2008 with only \$24,759.00 going to the charity's stated purpose, while Murphy received a salary of between \$141,000.00 and \$155,000.00.

FIDUCIARY DUTIES

What duty is owed by the Respondents? Our statutes are clear, those who operate charities in this state are fiduciaries of the monies they collect and the trust we place in

them. They are not merely employees and officers and directors of the charities that employ them, they are fiduciaries. They are charged under our law to use and distribute the funds they collect for only specific and stated purposes. This duty is to work toward the charity's purpose and place it above their own advantage. Miss Code Ann, Section 79-11-525, makes this clear.

Along with many of our citizens who donate their time and money to charities, there are thousands of Mississippians who work, without and with pay, for and with the charities of this state with passion and devotion both unparalleled. It is rare that the trust we place in them is found wanting or is found not to be deserved. It is only by careful scrutiny and review of the few exceptions, that we honor and encourage those who give so much and work so hard. The very ability of those hard working and diligent charity workers, paid and unpaid, to raise funds and fulfill the purposes of their individual charity is undermined by the few exceptions, those who may, by either neglect or design, fail to honor the purpose for which their charity was organized.

The Secretary of State is charged by statute to oversee our state's many charities. The charity of Mississippian is recognized widely and benefits us all. Our charities improve the lives of all of us who live here. The watchful eye of the Secretary of State adds credibility to the charitable efforts of Mississippians. Knowing that the contributions of Mississippian are watched and monitored as to their intended use may well encourage our contributions and the work of charities across the state.

One of the key measures of the effectiveness of a charity is the ratio or relationship between the amount of money raised by the charity and the amount actually used for the

charity's stated purpose. Each charity is required to be specific on its charitable purpose. Money spent for other reasons, such as fund raising and support must be in line with and compared with the actual benefit provided to the purpose for which the charity was created.

Miss. Code Ann. Section 79-11-525 provides 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.

A fiduciary is one who owes the duties of good faith, trust, confidence, and candor to another. A fiduciary must exercise a high standard of care in managing another's money or property. (Black's Law 8th ed. 2004). Miss. Code Ann. Section 79-11-525 states that every officer, director, trustee or employee who is concerned with the solicitation, collection, or expenditure of money of those contributions shall be viewed as a fiduciary acting in a fiduciary capacity.

With respect to the case at hand, Respondent Murphy was an officer, director, and employee who collected and expended money on FAIM's behalf. Under the Act, he is charged with a fiduciary responsibility and was required to act in good faith and exercise a high standard of care in carrying out FAIM's purpose. It was uncontradicted at the hearing that Murphy failed to exercise this high standard in his management of FAIM:

- Murphy failed to exercise a high standard of care in managing FAIM's financial operations by failing to maintain complete and accurate records of FAIM's financial transactions.

- Murphy accepted a salary increase from Twenty-Eight Thousand Dollars (\$28,000) to One Hundred Forty-One Thousand Dollars (\$141,000) during a sixteen (16) month period while the charity used much smaller amounts for its claimed purpose.
- Murphy accepted salary increases that exceeded increases in revenue and exceeded the funds given away in furtherance of the charity's purpose.

Murphy harmed the charity and thus its purpose through his failure to abide by the standards of a fiduciary, in violation of Section 79-11-525. This is in addition to the fact that several of Murphy's actions are, on their own, separate violations of the Mississippi Charities Act. By violating the law, Murphy did not act, either by neglect or with purpose, in the charity's best interest.

DISCRETION OF THE SECRETARY OF STATE

The charity's efforts were benign for years until it added a bingo operation as a funding mechanism. The first support from bingo did not flow until 2006. After the bingo operations were underway, the Secretary of State's examiner found numerous violations with the Respondents' bookkeeping and record keeping. The examiners were patient, in allowing the Respondents to explain and promise correction of those deficiencies. Many of those found problems were never address by the Respondents, leading to further examination by that office.

During the hearing on this matter, the Respondents argued that the patience of the Secretary of State's office should be read as some sort of waiver. No valid support was provided for this argument. Like the Respondents' arguments that they were "confused" by the state's law and regulations and that they were never told how much Murphy's salary

could be, these arguments were stated forcefully and eloquently, but for them no legal or factual support was found.

What discretion does the Division have when regulating charities? Miss. Code Ann. Section 79-11-509 imparts both mandatory and discretionary enforcement authority to the Secretary of State. Section 509(1) states that the Secretary of State shall deny, suspend or revoke a registration or exemption for the following reasons:

(c) A document filed with the Secretary of State contains one or more false or misleading statements or omits material facts;

(d) The 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

...

Section 509(4) states that a Secretary of State may, in his or her 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;

(b) Issue an order 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 . . .

Miss. Code Ann. Section 79-11-519 makes it a violation of the Act for any person to commit any unfair or deceptive act or practice; for any charity to engage in a financial transaction which is not related to the accomplishment of a charitable purpose, or which jeopardizes or interferes with the ability of the charitable organization to accomplish its charitable purpose; and for any charity to expend an unreasonable amount of money for solicitation or management.

Section 79-11-509(c) does require the Secretary of State to take enforcement action for certain violations of the Charities Act; although there is discretion within that mandate to deny, suspend or revoke a charitable registration. The specificity of Section 509(c) must be considered in conjunction with the general authority of the Secretary of State, outlined in the Preamble to the Mississippi Charitable Solicitations Act Rules, to regulate charities for the public interest, a goal from which both donors and charities benefit.

At the time of the 2006 exam, FAIM's bingo hall was just beginning operation. To revoke FAIM's registration after such a short period of time would, perhaps, have been in black letter compliance with the Charities Act. However, it would have been counter to the purposes and goals of the statute itself, which are the regulation of charities as well as the growth of responsible charities. Moreover, the Secretary of State's decision not to take administrative action after the 2006 exam does not mean that FAIM's actions leading up to the 2006 exam were compliant with the Charities Act's provisions.

After the follow-up exam in 2008, the Division determined that, not only had FAIM failed to correct its past violations, it also had committed new ones. FAIM was no longer an infant charity acting for the Arts in Mississippi, but rather a mature organization acting contrary to its stated purpose.

MISREPRESENTATION BY OMISSION

It was admitted at the hearing that the Respondents did not have the supporting documentation for many of FAIM's expenditures and had failed to disclose its connections to other entities as required in its filings with the Secretary of State. In addition to being

required under the law, being truthful in its official filings with the State and complete in its record keeping would have benefited the Respondent with its relationship with the Secretary of State and with its own defense at these proceedings.

Blaming the Division for the charity's failure to keep records and failure to honestly complete official filing forms flies in direct conflict with the admitted evidence of the patience and support the Division provided to the Respondents during its examinations and attempts to correct the many problems scattered throughout the Charity's records. Miss. Code Ann. Section 79-11-519(7) states that a misrepresentation:

... may be accomplished by words or conduct or failure to disclose a material fact. Regardless of a person's intent or the lack of injury, the above acts and practices are prohibited in the planning, conduct or execution of any solicitation or charitable sales promotion.

Miss. Code Ann. Section 79-11-509(1)(c) provides as follows:

(1) The Secretary of State shall deny, suspend or revoke a registration or an exemption for the following reasons:(c) A document filed with the Secretary of State contains one or more false or misleading statements or omits material facts.

FAIM misled the Division by classifying the money received from MYART as a "donation" not a "loan." When the Division specifically requested copies of all contracts to which FAIM was a party, FAIM did not provide a copy of the Agreement with MYART. At the hearing, FAIM asserted it had since notified MYART that its signed contract was considered by FAIM to be void. Based on the lawsuit pending at the time of this hearing, MYART claimed the contract to be valid and enforceable.

GAMING COMMISSION RULINGS

Our Legislature has given the Secretary of State's office primary oversight over charities and the Gaming Commission over gaming operations when a charity uses bingo for financial support. The Gaming Commission's rulings relate to separate statutes and regulations, while also serving to protect those who are meant to benefit from the operation of charities in this State. The findings of this hearing officer are supported separately by the witnesses and documentary evidence provided by the parties to this separate hearing. The Gaming Commission's findings and ruling are based on the violation of statutes and regulation different that those overseen by the Secretary of State's Office. Regardless, the same actions or failures to act by the Respondents are also prohibited by the law overseen and enforced by the Secretary of State.

SUMMARY OF STATUTORY VIOLATIONS

| Statute | Rule | Violation |
|--------------|------|---|
| 79-11-518 | 213 | Maintain invoices or receipts, document income or expenses from 2001-2006 |
| 79-11-519f | 201e | Provided false information to SOS office. 2005 Form 990m reported \$16,079.00, but examination shows no evidence of any funds expended for charitable purposes |
| 79-11-509 1d | | FAIM paid expenses of Boxcar. 2005, paid 7296.67 of gaming expenses |
| | 213 | Failure to documents financial transactions. |
| | 213 | Unidentified withdrawals from bank account. |
| | 213 | Funds were transferred directly for Murphy's benefit Automobile lease payments, 2001-02, 9327.24 |
| | 213 | Withdrew money without support, 10,632.54 in 12 transactions 2005-6, claimed expense reimbursements without any evidence, 7632.54; Unexplained bank transactions, 6500.00; Murphy received directly or indirectly 33,729.78 |
| 79-11-519 4a | | Paid software firm 7500.00 to improve monthly reporting to the Gaming Commission |

| | |
|--------------|--|
| 79-11-509 1d | Paid expenses associated with Boxcar Bingo; Failed to establish policies or procedures to prevent such violations. |
| 79-11-519 4a | Paid lobbyist 5500 in 2007 and 19000 in 2008 for bingo and contrary to charity's purpose, reducing the amount Boxcar paid to FAIM. |
| 79-11-525 | Violated fiduciary duties by the above. |
| 79-11-519 4b | Persistent and willful pattern of paying bingo expenses 8-12/2006. Payments to I.S. Productions, personal recording company for his musical performances; Car, auto expenses, retirement fund. From 9/06 to 1/08, salary increased by 127,000. |
| 79-11-503(5) | Reporting. Board changes. |

FINDINGS OF FACT

1. The Mississippi Regulation of Charitable Solicitations Act ("Act"), Miss. Code Ann. §75-71-101, et seq. authorizes the Secretary of State to regulate "charitable organizations" that use a charitable appeal in soliciting contributions in or from the State of Mississippi.

2. The Fine Arts Institute of Mississippi ("FAIM") is a Mississippi non-profit corporation and is registered with the Division as a "charitable organization" and has therefore, voluntarily submitted to the jurisdiction of the Division. The Fine Arts Institute of Mississippi ("FAIM") and Bill Murphy, the Respondents did not contest jurisdiction in this matter and stipulated that this Hearing Examiner has the jurisdiction and authority to make its findings from the submissions of the parties and the hearing held on March 2, 2010.

3. FAIM's stated charitable purpose is the "promotion of fine arts education and performance by youth and adults in Mississippi" and fundraises through charitable gaming. As a registered charity which fundraises through charitable gaming, FAIM is regulated by

both the Securities and Charities Division of the Mississippi Secretary of State's Office and the Mississippi Gaming Commission.

Failure to Maintain Books and Records

4. On September 14, 2006, the Division performed an examination of FAIM and noted several issues, including improper record keeping; providing false information to the Division; and paying bingo expenses out of charity proceeds. The record keeping issues included undocumented transactions from 2001 through July 2006, the failure to track certain loans allegedly made to the charity and repaid to Murphy, and questioned certain automobile lease payments. The Division notified FAIM of the deficiencies by letter dated February 20, 2007. Between 2001 and 2006, FAIM incurred expenses for which it did not provide documentation to the Division. This deficiency was noted in the exam deficiency letter from the Division to FAIM dated February, 2007.

5. FAIM, as a charitable organization, is required to maintain certain books and records pursuant to Miss. Code Ann. Section 79-11-518. Mississippi Charities Act Rule 213 also requires FAIM to maintain accurate books and records, and lists the exact records which must be maintained. In its response to the Division's 2006 Findings (March, 2007), FAIM acknowledged that it was not keeping adequate records of its financial transactions and assured the Division that it had taken the necessary steps to prevent this type of violation from reoccurring.

6. The Division's March 2008 exam again revealed similar financial transactions for which there were no supporting documentations available for review, in violation of

Miss. Code Ann. Section 79-11-518. Subsequent to the on-site exam, FAIM provided explanations, but not documentation, for two (2) examples of undocumented transactions provided by the Division in its Findings.

Charitable Contributions Not Being Used for the Charitable Purpose

7. In its 2006 exam, FAIM was found to have used charitable funds to pay bingo related expenses. FAIM was notified that it could not use its share of the proceeds from its charitable bingo operation to pay bingo related expenses. Miss. Code Ann. Section 79-11-509(1) required the Secretary of State to “deny, suspend or revoke” FAIM’s charitable registration if the 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.

8. Total revenues received from a bingo operation constitute “gross receipts.” Miss. Code Ann. Section 97-33-53(m). The term “adjusted gross receipts” is defined as all revenue from bingo operations after payment of fees assessed by the Mississippi Gaming Commission and after payment of prizes. The Mississippi Gaming Commission defines “net proceeds” as the gross amount collected from participants less actual prizes paid, the actual costs of conducting the bingo games, any administrative penalties imposed by any state agency, and any other expense authorized by Charitable Bingo Law or regulation (Miss. Code Ann. Section 97033053(s)). By letter received by the Division in March 2007, FAIM acknowledged that it was aware of this violation and again assured the Division that it had taken the steps necessary to prevent this violation from reoccurring.

9. The Division's second examination revealed that FAIM was continuing to pay expenses, associated with the operation of Boxcar Bingo, out of FAIM's share of the proceeds generated by the gaming operation, in violation of Miss. Code Ann. Section 79-11-501(1)(d). In its response to the exam Findings, FAIM agreed to repay Eight Thousand Dollars (\$8,000.00) of bingo-related expenses.

10. The 2008 examination/audit focused on \$7,500.00 paid for computer software to improve bingo reporting; hiring a lobbyist to lobby the Mississippi Legislature on bingo related laws; and the compensation paid to Murphy as executive director of FAIM. FAIM does not dispute that it expended \$7,500 toward a \$15,000 computer program to improve its bingo reporting to the Gaming Commission. The testimony of Murphy confirmed the payment and its purpose.

11. FAIM admitted paying Software Firm, LLC Seven Thousand Five Hundred Dollars (\$7,500.00) for the creation/design of a computer program to improve the monthly reporting of its charitable gaming operation, Boxcar Bingo, to the Mississippi Gaming Commission.

12. Evidence conclusively established that in February 2008 FAIM paid \$7,500 from its charity account for a computer program to be used for session reports, inventory tracking and monthly reporting to the Commission for Boxcar Bingo. Money spend for this computer program violated Miss. Code Ann. Section 79-11-509(1)(d) which provides as follows:

- (1) The Secretary of State shall deny, suspend or revoke a registration or an exemption for the following reasons:

(d) The 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.

This is also a violation of Miss. Code Ann. Section 79-11-519(4)(a) which provides in pertinent part:

(4) It shall be a violation of Sections 79-11-501 through 79-11-529 for any charitable organization:

(a) To engage in any financial transaction which is not related to the accomplishment of its charitable purpose . . .

13. Since the Summary Cease and Desist Order and Notice of Intent to Revoke Registration and Impose Administrative Penalty was issued, FAIM has represented to the Division that Boxcar Bingo has reimbursed FAIM for this expense, but has not provided documentation of this reimbursement.

14. The Respondents admitted that they failed to disclose to the Division the existence of the MYART Asset Sharing Agreement. See Miss. Code Ann. Sections 79-11-509(1); 79-11-519(3), (4), (7); Mississippi Charitable Solicitations Act Rule 213. FAIM's acts of misrepresentation are a violation of Section 79-11-519(3), which makes it unlawful for any person:

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

(f) To make any false or misleading statement on any document required by Sections 7-11-501 through Section 79-11-529 or any rule or order thereunder; . . .

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

(j) To employ any device, scheme or artifice to defraud;

(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 statement made, in light of the circumstances under which they are made, not misleading;

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

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

15. FAIM admits paying Twenty-Four Thousand Five Hundred Dollars (\$24,500) in 2007 and 2008 to lobby for reform of the Charitable Bingo Law.

16. The proof also shows that FAIM paid a lobbyist \$5,500 in 2007 and \$19,000 in 2008 to lobby the Mississippi Legislature, on behalf of Boxcar Bingo, for reform of the Charitable Bingo Law. The payment of a lobbyist for this purpose violated both Miss. Code Ann. Section 79-11-509(1)(d) and Miss. Code Ann. Section 79-11-519(4)(a) set out above as the payment was for reform of the Charitable Bingo Law and was not a charity expense and cannot be characterized as an expenditure which furthers FAIM's charitable purpose to promote fine arts education and performance by youth and adults in Mississippi. Lobbying, in and of itself, is not included in FAIM's charitable purpose. However, if FAIM was lobbying the legislature to increase funding for the arts in Mississippi educational institutions, that lobbying effort might fall within FAIM's stated charitable purpose. Reform of the Mississippi Bingo Law to the detriment of the charity was not in FAIM's purpose and cannot be construed to promote fine arts education and performance by youth and adults in Mississippi.

False Information Provided to the Division

17. In the 2006 exam, FAIM was found to have filed an IRS FORM 990 with the Division which contained false figures for program services in violation of Miss. Code Ann. Section 79-11-509(1). Specifically, FAIM listed program services as Sixteen Thousand Seventy-

Nine Dollars (\$16,079) when in reality they were One Thousand Dollars (\$1,000). FAIM acknowledged that it had filed a false report with the Division in violation of Miss. Code Ann. Section 79-11-509(s).

18. In its Findings, the Division questioned a Three Thousand Dollar (\$3,000) payment to Murphy. In its exam response, FAIM provided documentation to support reimbursing Murphy for a loan to FAIM. FAIM asserted that in August of 2006, Murphy claims a Three Thousand Dollar (\$3,000) loan to FAIM was for the purpose of FAIM loaning that amount to Boxcar Bingo. To support this examination, FAIM provided copies of its Quick Book entries purportedly showing an August 2006 "loan" from FAIM to Boxcar Bingo (check number 1007 dated August 22, 2006). It also provided a Quick Books entry purportedly showing a Three Thousand Dollar (\$3,000) repayment of this loan from Boxcar Bingo to FAIM in December 2006. A third Quick Books entry was provided showing FAIM's repayment of the initial August 2006 loan of Three Thousand Dollars (\$3,000) to Murphy.

19. However, the Quick Books entry dated August 22, 2006, for check number 1007 purportedly recording a transfer of Three Thousand Dollars (\$3,000) from FAIM to Boxcar Bingo is contradicted by the actual check. FAIM's bank statements show the payee on check number 1007 dated August 22, 2006 as Bill Murphy, not Boxcar Bingo.

20. In 2005, FAIM entered into an Asset Sharing Agreement with MYART. The Twenty-Five Thousand Dollar (\$25,000) loan from MYART was classified as a "donation" on reports filed with the Division. FAIM did not provide the Asset Sharing Agreement with MYART to the Division.

Excessive Compensation

21. When a charity designates a purpose, that purpose defines the direction of the charity. As fiduciaries, those who lead charities are to make fulfilling that purposes their goal. One correct measure as to the efficiency of a charity is the comparison of the total amount collected with the money actually spent fulfilling the charity's purpose. Charities do not exist to perpetuate themselves or jobs for their employees and officers, they exist to fulfill their purpose. Answering the question of whether or not those who give to a charity are getting their money's worth is often answered by looking at how much of the money raised is spent in direct support of a charity's purpose.

22. There are no hard and fast rules for this ratio, but common sense and reasonableness are certainly available buoys to guide us. In this instance, the reasonableness of Murphy's compensation must be judged in light of the surrounding circumstances. The chart below shows Murphy's salary in comparison to the money remitted to FAIM by Boxcar Bingo and the amount FAIM actually spent on program services.

| | 2006 | 2007 | 2008 |
|------------------------------------|---------------------------------------|-------------------|-------------------|
| Money from Boxcar To FAIM | \$ 34,000 | \$ 431,000 | \$ 436,650 |
| Money Spent on Program Services | \$ 1,000 | \$ 40,269 | \$ 22,820 |
| Murphy's Salary | \$ 28,000 (2/06) \$ 98,000 (12/06) | \$ 125,000 (3/07) | \$155,000 (12/07) |

23. Mr. Murphy testified to a salary of One Hundred Forty-One Thousand Dollars (\$141,000.00) in 2008. FAIM's board minutes also show increases in Mr. Murphy's compensation as Executive Director from Twenty-Eight Thousand Dollars (\$28,000.00) to One Hundred Fifty-Five Thousand Dollars (\$155,000.00) in sixteen (16) months. Murphy was

also compensated Sixteen Thousand Dollars (\$16,000) for songwriting, performances, and producing music. This compensation was paid by FAIM to Murphy's company, I.S. Productions, Inc. of the money raised by Boxcar Bingo and transferred to FAIM in 2008.

CONCLUSIONS OF LAW

24. FAIM violated Miss. Code Ann. Section 79-11-518 in that it did not keep true and correct books and records of its solicitation activities.

25. FAIM did not maintain all bills, statements and receipts relating to the business and operation of the organization in violation of Mississippi Charities Act Rule 213 which provides as follows:

Charitable organizations either registered with the Secretary of State or exempt from registration shall maintain accurate books and records of the solicitation activities of the organization for a period of at least three (3) years. Solicitation activities shall include all financial activities of the organization. The records shall be maintained at the offices of the charitable organization and shall be kept in an auditable format. By way of example such records shall include, but not be limited to, the following:

- All check books, bank statements, cancelled checks and cash reconciliations of the organization;
- All bills, statements and receipts (or copies thereof), paid or unpaid, relating to the business and operation of the organization;
- Statements and records of all accounts in which the organization is vested;
- All written agreements (or copies thereof entered into by the organization with any entity, person or otherwise relating to the business of the organization as such;
- General and auxiliary ledgers (or other comparable records) reflecting asset, liability, reserve, capital, income and expense accounts;
- Current minutes of the meetings of the organization's board of directors; and
- Copies of all solicitation materials.

26. Further, it violated Miss. Code Ann. Section 79-11-518 in that its books and records were not open for inspection at all reasonable times by the Secretary of State. Some of FAIM's records of its financial transactions were provided well after the examination.

27. FAIM violated Miss. Code Ann. Section 79-11-509(1) in that it provided untruthful and false information to the Division regarding the amount of money being spent on program services in its 2005 IRS Form 990 filed with the Division.

28. FAIM also provided untruthful and false information to the Division in its May 2008 response to the Division's exam findings when it attempted to explain the Three Thousand Dollar (\$3,000) reimbursement to Mr. Murphy with a false Quick Books entry.

29. Miss. Code Ann. Section 79-11-509(1) requires the Secretary of State to "deny, suspend or revoke" FAIM's charitable registration for the following reasons:

- (c) A document filed with the Secretary of State contains one or more false or misleading statements or omits material facts;
- (d) The 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;
- (g) The applicant or registrant has engaged in the use or employment of dishonesty, fraud, deception, misrepresentation, false promise or false pretense.

30. FAIM misrepresented the beneficiary of its solicitations, as seventy percent (70%) of the proceeds were to be diverted to MYART. FAIM failed to disclose to the Division the existence of the MYART Asset Sharing Agreement. FAIM's misrepresentations and omissions to the Division were part of a deceptive act or scheme to defraud, and did so operate as a fraud upon the State of Mississippi. This was in violation of Miss. Code Ann.

Sections 79-11-509(1); 79-11-519(3), (4), (7); and Mississippi Charitable Solicitations Act Rule 213.

31. FAIM engaged in acts of misrepresentation, in violation of the Act. Miss. Code Ann. Section 79-11-519(3) makes it a violation of Sections 79-11-501 through 79-11-529 for any person:

- (a) To misrepresent the purpose or beneficiary of a solicitation; . . .
- (f) To make any false or misleading statement on any document required by Sections 7-11-501 through Section 79-11-529 or any rule or order thereunder; . . .
- (h) To commit any unfair or deceptive act or practice; . . .
- (j) To employ any device, scheme or artifice to defraud;
- (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 statement made, in light of the circumstances under which they are made, not misleading; .
- ..
- (l) To engage in any act, practice or course of business which operates as a fraud or deceit upon any person; . . .
- (n) To obtain money or property by means of any false pretense, representation or promise;

32. FAIM's failure to disclose the contract with MYART is a misrepresentation as defined by Miss. Code Ann. Section 79-11-519(7) which states that a misrepresentation:

May be accomplished by words or conduct or failure to disclose a material fact. Regardless of a person's intent or the lack of injury, the above acts and practices are prohibited in the planning, conduct or execution of any solicitation or charitable sales promotion.

FAIM violated Miss. Code Ann. Section 79-11-509(1)(d) in failing to use charitable monies for the charitable purpose, the promotion of fine arts education and performance by youth and adults in Mississippi.

33. The payments for the computer program and lobbying efforts cannot be characterized as benefiting FAIM and its stated purpose. Miss. Code Ann. Section 79-11-519(4) states as follows:

(4) It shall be a violation of Sections 79-11-501 through 79-11-529 for any charitable organization:

(a) To engage in any financial transaction which is not related to the accomplishment of its charitable purpose, or which jeopardizes or interferes with the ability of the charitable organization to accomplish its charitable purpose;

34. FAIM expended an unreasonable amount of money for solicitation and management in violation of Miss. Code Ann. Section 79-11-519(4)(b), which provides as follows:

(4) It shall be a violation of Sections 79-11-501 through 79-11-529 for any charitable organization

(b) To expend an unreasonable amount of money for solicitation or management;

35. Murphy's salary was not reasonable in light of his admitted inexperience; in comparison with his supervisory responsibilities; in comparison with the programs he supervised; and in light of the charity's financial condition. The increases in Murphy's salary were disproportionate in comparison with the increases in revenues generated by Boxcar Bingo. The increases in Murphy's salary were disproportionate in comparison with the 2008 decrease in already low program services.

36. Murphy breached his fiduciary responsibility to FAIM in violation of Miss. Code Ann. Section 79-11-525, which provides 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.

37. Murphy, as FAIM's Executive Director, failed to maintain the required books and records of FAIM's financial operations. Murphy, as FAIM's Executive Director, did not maintain appropriate fiscal controls of the charity's operations as evidenced by overdraft fees over a three (3) year period. Murphy, as FAIM's Executive Director, engage in financial transactions which were not related to the accomplishment of FAIM's stated charitable purpose.

38. Murphy, as FAIM's Executive Director, engaged a lobbyist to lobby to reform Charitable Bingo Law, despite the fact that the reform sought was contrary to FAIM's best interest and would have reduced FAIM's income.

39. Murphy, as a board member and FAIM's Executive Director, continued to raise his compensation despite his admitted inexperience, despite FAIM's financially precarious situation, despite the fact that the increases in salary exceeded the increases in revenues, and despite the fact that the increases took place at a time when program services were being reduced.

CONCLUSION

This hearing officer finds that the Division has established either by the admissions of the Respondents or by a preponderance of the evidence, based on the findings of fact and conclusions of law above, as follows:

1. FAIM failed to maintain its books and records of all its financial activities; specifically, FAIM did not maintain all bills, statements, and receipts relating to its business operations for expenses in excess of Forty Thousand Dollars (\$40,000);

2. FAIM did not maintain accurate books and records available for inspection at by the Division;

3. FAIM engaged in financial transactions not related to the accomplishment of its charitable purpose in excess of Forty Thousand Dollars (\$40,000) including Eight Thousand Dollars (\$8,000) in miscellaneous bingo-related expenses which have been repaid; Seven Thousand Five Hundred (\$7,500) for the creation of a computer program to improve monthly reporting to the Mississippi Gaming Commission; and Twenty-Four Thousand Five Hundred (\$24,500) for lobbying;

4. FAIM provided false and misleading information to the Division in its 2005 IRS Form 990 and the Quick Books entry for FAIM's check 1007; and

5. FAIM spent an unreasonable amount of money for management as compared with the money available for its stated purpose.

Any of the separate violations above is sufficient basis for revocation of FAIM's registration with the Secretary of State's Office and for the imposition of administrative penalties.

Further, this Hearing Officer finds by either the admissions of the Respondents or by preponderance of the evidence that Billy Jay Murphy, as Executive Director of FAIM, violated his fiduciary responsibilities to FAIM.

This Hearing Officer therefore recommends to C. Delbert Hosemann, Jr., Secretary of State, that his decision should be to revoke FAIM's registration with the Secretary of State's Office.

Further, the Hearing Officer recommends to the Secretary of State that he impose an administrative penalty against FAIM in the amount of Twenty-Five Thousand Dollars (\$25,000).

Further, the Hearing Officer recommends to the Secretary of State that he impose an administrative penalty against Billy Jay Murphy in the amount of Twenty-Five Thousand Dollars (\$25,000).

Further, the Hearing Officer recommends to the Secretary of State that all costs of the administrative action be imposed against FAIM and Billy Jay Murphy.

This the 5th day of April, 2010.



James D. Holland
Hearing Officer