

Conflict of Interest Convictions

by Raymond Beach

I doubt that there's a police department in the U.S. that isn't at least suspected of having an "unspoken" requirement for their officers to issue a certain number ("quota") of traffic tickets each day. The primary purpose of this "traffic ticket quota" is to generate tax revenue for their cities. Presumably, this ticket quota is imposed by city administrators who "encourage" police officers to satisfy their "unspoken ticket quotas" is by "unspoken" promotion policies. Officers who write lots of tickets (and generate lots of tax revenue) tend to be promoted; officers who write relatively few tickets tend to languish at the same rank or suffer termination. If so, the traffic police have a conflict of interest that subtly compromises the pretense of impartial law enforcement since they tend to profit (through promotions) for writing tickets. However, Mr. Beach discovered that, at least in Alabama, police officers not only have a personal financial interest in writing tickets (and also charging misdemeanors and felonies), but also in securing convictions.

In early 1994, Raymond Beach was stopped and ticketed by the City of Hueytown, Alabama police for driving with an expired Drivers License. After a great deal of courthouse wrangling and appeals, on August 15, 1997, Hueytown finally charged Mr. Beach a \$25.00 Fine and \$42.50 "Court Cost Payment" for his traffic violation.

Mr. Beach paid the \$67.50, but

later began to investigate the true nature of his \$42.50 "court costs". He discovered that \$3.00 of his "court costs" went to the retirement fund of the Alabama police officers who charge people with traffic offenses – and even more for misdemeanors and felonies. In other words, Alabama police have a personal, financial interest in not only charging people with traffic offenses, misdemeanors, and felonies, but also in convicting them since innocent people and "not guilty" verdicts generate no "court costs" and therefore no contributions to the Alabama police officers retirement fund.

As a result, it appears that Alabama police officers not only "profit" by being promoted for issuing tickets, they also profit from "enhancing" their testimony and evidence in court to insure that those charged are absolutely convicted. The police officers' personal financial interest in convictions contradicts any presumption of impartial law enforcement and at minimum, creates the "appearance of impropriety".

Although the following information applies specifically to Alabama, I'd be surprised if similar "financial incentives" didn't exist in other states to "motivate" police officers to both charge and convict the maximum number of defendants. Based on the following laws, Mr. Beach wrote a letter to a number of government officials. The footnotes are my comments.

Alabama state code § 36-21-66. Alabama peace officers' annuity and benefit fund created; purpose and official designation; composition generally; investment, expenditure, etc., of moneys therein.¹

A special fund is hereby established and placed under the management of the board for the purpose of providing retirement allowances and other benefits under the provisions of this article for members of the fund.² The fund shall be known as the Alabama peace officers' annuity and benefit fund, by and in which name all of its business³ shall be transacted, all of its funds invested and all of its cash and securities and other property held in trust for the purposes for which received. All amounts received by the board pursuant to the provisions of this article shall be paid into the fund. The board shall have such control⁴ of the fund as shall not be inconsistent with the provisions of this article and with the laws of the state. All moneys of the board shall either be covered into the state treasury or deposited in a special trust account or accounts in any bank or banks in the state, each of which shall have a combined capital and surplus of not less than \$2,000,000.00 and may be withdrawn therefrom by vouchers or checks signed by the executive director pursuant to authorization given by the board. All investments of moneys in the fund shall be either deposited with the state treasurer for safekeeping upon

receipt of the state treasurer therefor or deposited with any such bank in a custodial account. The board shall have authority to expend moneys in the fund in accordance with the provisions of this article and to invest any moneys so received pending other needs therefor in any investments which are legal investments for insurance companies under the laws of the state. No member of the board shall have any interest in any such investment or receive any commission with respect thereto. (Acts 1969, No. 999, p. 1855, § 5; Acts 1971, No. 1210, p. 2104, § 5.)

§ 36-21-67. Imposition of additional court costs in certain criminal and in quasi-criminal proceedings; remittance of proceeds to executive director.

In all criminal⁵ proceedings for the violation of laws of the state or municipal ordinances including violations of state conservation laws of regulations which are tried in any court or tribunal in this state, wherein the defendant is adjudged guilty or pleads guilty or wherein a bond is forfeited and the result of the forfeiture is a final disposition of the case or wherein any penalty is imposed, there is hereby imposed an additional cost of court in the amount of \$1.00 for each moving traffic violation, \$5.00 in each such proceeding where the offense constitutes a misdemeanor and/or a violation of a municipal ordinance other than moving traffic violations and \$10.00 in each such proceeding where the offense constitutes a felony; provided, however, that there shall be no additional cost imposed for violations relating to parking of vehicles.⁷

. . . . It shall be the duty of the clerk or other authority collecting the said court costs to keep accurate records of the amounts due to the board for the benefit of the fund under this section.⁸ (Acts 1969, No. 999 p. 1855, § 9; Acts 1971, No. 1210, p. 2104, § 9; Acts 1971, No. 2101, p. 3371.)

Based on this law, I wrote the following letter to the STATE OF ALABAMA ETHICS COMMISSION (a copy was also for-

warded to the Alabama Office of Attorney General):

January 9, 1998

Hugh R. Evans, III
Assistant Director General Counsel
c/o Alabama Ethics Commission
100 North Union Street, Suite # 104
Montgomery, Alabama 36103

Office: (334) 242-2997

Fax: (334) 242-0248

RE: Title 36-21-66 & 36-21-67 of the Alabama Code (1975).

Dear Hugh:

On August 15, 1997, I paid a Traffic Citation Fine of \$67.50 to the City of Hueytown.

This letter is being forwarded to you for your response and/or explanation, primarily of Title 36-21-67 of the Alabama Code (1975).

After my conversation with a local attorney, and upon further research into the Alabama Code, I discovered something very disturbing.

My question is very simple: *Is it ethical and/or a conflict of interest for a Police Officer to issue a Traffic Citation, thereby profiting and enhancing his retirement/annuity fund when said fine is paid in Court?*

While it may seem that my \$3.00 "contribution" is insignificant, you should consider that my fine was just one (1) of the thirty-eight (38) "contributions" listed on the page enclosed, taken from the two (2) inch thick Monthly Payment Report (dated August 1, 1997 through August 31, 1997), indicating that there were at least one-hundred fifty (150) pages in the record, from the small community of Hueytown, Alabama. The fact is, that each year there are millions of such "contributions" TAKEN⁹ from individuals such as myself, across the State of Alabama. Clearly, this lucrative incentive plan for Police Officers to issue Traffic Citations to Citizens is extremely alarming.

The conflict of interest and unethical conduct is readily apparent to me. Is it to you?

Since this is a question of profound importance to the Citizens of this

State, I request that you provide an answer to me within ten (10) days. Failing to respond within that time period, I shall conclude that you have no opinion and/or legal position on this controversial issue, and shall act accordingly.

Respectfully,

Raymond H. Beach, Citizen

On January 27, 1998, Hugh Evans III replied to my letter on behalf of the Alabama Ethics Commission and explained in part:

"The Alabama Ethics Commission has no jurisdiction to interpret Title 35, Chapter 21 of the Code of Alabama. Our jurisdiction is limited to Title 35, Chapter 25, which is styled *Code of Ethics for Public Officials, Employees, etc. . . .*"

The Ethics Law is designed to prevent public officials and public employees from using their public office in a manner that might provide a personal gain to themselves, a family member or a business with which they are associated.¹⁰

"In your fact scenario, the activities you complain of are established by statute, and therefore would not appear to be in conflict with the Alabama Ethics Law."¹¹

On February 26, 1998, M.J. Scott of the Alabama Attorney General's Office also replied to my letter:

"The City of Hueytown is acting within its rights to collect any fines that it deems appropriate. This practice is entirely within the laws of Alabama as they currently stand. Our office has not issued any formal opinions on §§ 36-21-66 or 36-21-67. You have the right as a citizen to challenge the constitutionality of the said ordinances in a court of law. If you would like to discuss your legal options, I recommend that you contact a private attorney."

In other words, I can expect no help from the state's administrative agencies in exposing acts committed by Alabama police which, at least, create the "appearance of impropriety" and

may, in fact, be unethical. Therefore, my remaining option is to challenge the law in court as unconstitutional – and hope that the Alabama courts are better able to “see” impropriety and/or unethical acts than are the state’s Ethics Commission or Attorney General’s Office.

Those of you who focus on traffic laws might do well to study “court fines” and “court costs” and observe the sage advice, “follow the money trail.” The conflict of interest in Alabama might be happening in your state, too. If it is, the validity of a large number of convictions for traffic tickets, misdemeanors, and even felonies might be challenged due to the arresting officer’s beneficial interest in securing convictions and consequent lack of impartiality. However, the Alabama Attorney General Office’s advice (hire a lawyer and challenge the constitutionality of the police retirement funding process) might be disingenuous.

If the Alabama Police Officers Annuity and Benefit Fund is a trust and the police officers are its beneficiaries, then under trust law (heard in courts of equity, not law) they may not serve as trustees who help administer that trust.

Does issuing tickets that generate revenue for the trust constitute an

“administrative” activity? If it does, the police would be in breach of their fiduciary responsibilities under trust law (not the Constitution) if they both issued tickets and stood to receive trust benefits from those tickets. This might mean that all previous tickets could be challenged, and no future tickets could be issued except by police officer who received no retirement benefit from those tickets. But if the problem is trust-related, the challenge will have to be on basis of trust law in a court of equity where the Constitution is irrelevant and even unwelcome.

Further, although Alabama judges and prosecutors do not appear to be members of “POA FU”, I wouldn’t be surprised if some judges and prosecutors in this country also funded their retirement programs with “contributions” derived from court courts generated whenever they secured a conviction.

If anyone in the court room stands to directly profit from a defendant’s conviction, there can’t be an “impartial tribunal”, constitutional guarantees are being ignored, and convictions might be subsequently challenged. In the extreme, there might even be grounds for a defendant who is found guilty (or even arrested) to sue the folks who merely might profit from his conviction.

¹ This appears to be a trust fund.
² “members of the fund” are beneficiaries.
³ including traffic tickets?
⁴ Members of “the board” are the trustees for this trust.
⁵ Law?
⁶ Equity?
⁷ This copy of the law may not be current since it specifies a \$1.00 court cost for the police retirement fund and Mr. Beach was charged \$3.00. If the legal contribution for traffic tickets has increased from \$1 to \$3, it’s likely that the \$5.00/misdemeanor and \$10/felony contributions have also increased. In any case, it’s apparent that the police retirement fund generates more money for misdemeanors than tickets, and more money yet for felonies. This creates a financial incentive for police to: 1) write multiple charges (presumably every charge will generate a separate court cost contribution); and 2) “upgrade” charges whenever possible from traffic violations or misdemeanors to felonies.
⁸ This implies that the court clerk and/or judge are functioning as trustees on behalf of the Alabama police officers fund and its members/beneficiaries - including the police officer who is testifying about a particular ticket or charge.
⁹ “Taken” is a good choice of words since “court costs” implies costs that are incurred in the *immediate* operation of the court. That being so, how can “court costs” include contributions to a police retirement fund which won’t be spent until years later? Perhaps a better word than “Taken” is “extortion” (the taking of money under the color of law).
¹⁰ Clearly, each Alabama police officer who is a member of the retirement fund stands to benefit from each conviction he helps achieve and therefore seems to achieve a “personal gain”. Further, the act creating the retirement fund (§36-21-66) provides that, “. . . all of its *business* shall be transacted” in the fund’s name – if the fund does “business” why shouldn’t it be regarded as a “business” and therefore subject to the Ethics Law? Mr. Hugh Evans III argument seems faulty.
¹¹ I.e., Mr. Hugh III implies that since the police retirement fund was established by statute, whatever follows under that statute must be “ethical” because, surely, the state legislature wouldn’t (couldn’t?) pass an unethical statute. His implicit logic reminds me of former President Richard Nixon’s remark, “If the President does it, that means it must be legal.”

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