

**STATE OF LOUISIANA
DIVISION OF ADMINISTRATIVE LAW**

BOARD OF ETHICS

*** DOCKET NO. 2009-3472-ETHICS-A**

IN THE MATTER OF

CRAIG WEBRE

*** AGENCY TRACKING NO. 2007-527**

DECISION AND ORDER

The Louisiana Board of Ethics (Board) issued charges against Lafourche Parish Sheriff Craig Webre claiming he improperly received things of economic value because AEMS, a company in which he had a controlling interest, had an exclusive distribution agreement with Smart Start of Lafourche (SSL), which provided vehicle ignition interlock devices to residents of, or persons convicted in, Lafourche Parish for DWI. The Board also charged Sheriff Webre with improperly referring people seeking the device to SSL.

We dismiss the charges, finding that Sheriff Webre did not receive any thing of economic value for services rendered by AEMS or SSL; that the business of leasing, installing, and servicing the devices was not "devoted substantially" to the responsibilities, programs and operations of the Lafourche Parish Sheriff's Office; and that Sheriff Webre did not improperly refer potential customers to SSL.

APPEARANCES

On October 23, 2009, a public hearing was conducted in Baton Rouge, Louisiana, before the Ethics Adjudicatory Board, Panel A, consisting of Administrative Law Judges Robert N. Aguiluz, John O. Kopynec and Debra K. Basile. Appearing at the hearing were:

Sheriff Craig Webre, Respondent; Mary Olive Pierson, Counsel for Respondent; and

Michael Dupree, Counsel for the Louisiana Board of Ethics. These witnesses gave testimony: Corey Leblanc, Sheriff Craig Webre, and Brandon Acosta.

STATEMENT OF THE CASE

This adjudication is conducted in accordance with the Code of Governmental Ethics, LSA-R.S. 42:1101, *et seq.*, the Administrative Procedure Act, LSA-R.S. 49:950, *et seq.* and the Division of Administrative Law Act, LSA-R.S. 49:991, *et seq.*

After conducting and concluding a private investigation, the Board issued charges against Respondent alleging violations of LSA-R.S. 42:1111(C)(1)(a) of the Code of Governmental Ethics [LSA-R.S. 42:1101, *et seq.*] resulting from Respondent's alleged:

(1) provision of ignition interlock devices to residents of Lafourche Parish, from 2003 through 2007, by way of an exclusive distribution agreement entered into between "Smart Start of Louisiana," a company in which Respondent has a controlling interest, and "Smart Start of Lafourche," while Respondent served as Sheriff of Lafourche Parish; and

(2) provision of ignition interlock devices to persons convicted of misdemeanor and felony driving offenses by Lafourche Parish criminal courts, from 2003 through 2007, by way of an exclusive distribution agreement entered into between "Smart Start of Louisiana," a company in which Respondent has a controlling interest, and "Smart Start of Lafourche," while Respondent served as Sheriff of Lafourche Parish.

The Board also alleged that Respondent violated LSA-R.S. 42:1112 of the Code of Governmental Ethics resulting from Respondent's:

referring persons convicted of misdemeanor and felony driving offenses by Lafourche Parish criminal courts, who have as a condition of bail that they receive interlock ignition devices installed in their vehicles, to purchase their interlock ignition devices from "Smart Start of Lafourche" which had an exclusive distribution agreement with "Smart Start of Louisiana," a company in which Respondent has a controlling interest at a time that he served as Sheriff of Lafourche Parish.

FINDINGS OF FACT

Our decision to dismiss the charges filed against Sheriff Webre is based on a careful review of the following facts proven at the public hearing:

1.

Respondent has served in the elected position of Sheriff of Lafourche Parish since 1992.

2.

In Sheriff Webre's professional capacity, he is responsible for oversight of the Criminal Department of the Lafourche Parish Sheriff's Department, which performs criminal enforcement functions, including arresting persons who have violated the conditions of bail, bond, probation, or an order issued by a judicial court.

3.

A judicial court has the power and authority to set or to revoke bail, bond or probation; the Lafourche Parish Sheriff's Department does not. The Sheriff's Department has no authority to arrest an individual accused of violating the terms and conditions of bail, bond, probation, or any other court order, without the issuance of a warrant for arrest by a judge of a judicial court. The Sheriff's Department cannot refuse to make the arrest pursuant to the warrant. The arrest pursuant to warrant may be made by the Lafourche Parish Sheriff's Department, or by any arresting agency in the jurisdiction where the accused is found.

4.

La. C.Cr.P. Art. 336.2 mandates that persons arrested for a second or subsequent driving while intoxicated offense must have an ignition interlock device (IID) installed in their vehicles as a condition of bail. Judges have discretion to require installation of an IID as a condition of

bail for a first offense DWI.

5.

An IID is a device that is installed in a vehicle and requires the driver to submit a breath sample to determine whether he has consumed alcohol. If he has, the vehicle will not start, and a report is automatically sent to the driver's probation officer or pertinent court personnel.

6.

The Lafourche Parish Sheriff's Department provides no services related to IIDs; it does not install, monitor, or maintain IIDs. These services are not provided by any Sheriff's Department in Louisiana.

7.

The appropriate court or administrative personnel either give persons needing IID services a list of area providers or direct them to a website with this information.

8.

Sheriff Webre is the controlling shareholder in a private company, Advanced Electronic Monitoring Systems (AEMS), d/b/a Smart Start of Louisiana. When he started the company in 2002, he owned 51% of the company and Corey Leblanc owned 49%. In 2007, AEMS added Josh Becnel as a shareholder and redistributed the company's stock. Sheriff Webre now owns 34% of the company, and the two other shareholders, Corey Leblanc and Josh Becnel, each own 33%. A two-thirds vote is required to reach a majority decision.

9.

AEMS obtained its franchise for Smart Start IIDs from Smart Start, Inc., of Texas (SSTx). AEMS leases the IIDs from SSTx for \$30.00 per IID, plus state and local tax of \$2.55, for a sum of \$32.55 per unit. AEMS has the exclusive franchise to lease Smart Start IIDs in

Louisiana.

10.

Since its inception, AEMS has not and does not provide IID installation or services to persons convicted in Lafourche Parish or to Lafourche Parish residents convicted in another parish (“Lafourche Group”).

11.

Except for Lafourche Parish, AEMS installs and services IIDs statewide for persons required to have an IID installed in their vehicles pursuant to a condition of bail, probation, or court order, or pursuant to Department of Public Safety administrative requirements for reinstatement of a driver’s license or the granting of a hardship license. Customers pay an installation fee, a monthly service fee, and a removal fee.

12.

In 2002, prior to forming AEMS, Sheriff Webre sought an advisory opinion from the Louisiana Board of Ethics, asking whether the services he sought to offer were permitted by the Code of Governmental Ethics. The Board issued an advisory opinion concluding that Sheriff Webre’s company could not provide IID services to:

(a) any person, resident or nonresident, convicted by a court in Lafourche Parish,

and

(b) any Lafourche Parish resident convicted in another parish.

The Board specifically examined the provisions of LSA-R.S.42:1111(C)(1)(a) to reach its opinion.

13.

After receiving the 2002 Board's opinion, Sheriff Webre and Corey Leblanc consulted an attorney to determine whether the opinion prohibited AEMS shareholder Corey Leblanc from starting a business to provide IID services to the two groups prohibited by the Board's advisory opinion. The attorney concluded this would not violate the advisory opinion, provided that Sheriff Webre did not receive any thing of economic value from Corey Leblanc's separate business.

14.

In 2002, Corey Leblanc started a sole proprietorship, Corey Leblanc, d/b/a Smart Start of Lafourche (SSL), which provided IID services to the Lafourche Group. In 2007, Mr. Leblanc added a partner, Josh Becnel, and formed CoJo, Inc., d/b/a Smart Start of Lafourche.

15.

Since its inception in 2002, SSL has operated from the same location as AEMS and used the same equipment and personnel. SSL pays no rent or overhead to AEMS for use of the location, equipment and personnel. SSL lists as its accounts receivable 100% of the fees for providing IID services to the Lafourche Group.

16.

Although AEMS has the exclusive franchise to market Smart Start IIDs in Louisiana, SSTx, the owner of the IIDs, granted AEMS' request to allow SSL to provide the IID services to Lafourche Group.

17.

AEMS obtains the IIDs from SSTx for Smart Start of Lafourche and pays SSTx a \$32.55 lease fee for each IID. SSL reimburses AEMS for the lease fee payments to SSTx.

18.

To provide services to the Lafourche Group, SSL uses AEMS invoices titled "Smart Start Ignition Interlock Device Lessor Agreement" indicating the lessor as "Advanced Electronic Monitoring Systems, Inc, *d/b/a* Smart Start Ignition Interlock of Louisiana." However, on these IID lease agreements, SSL identifies the lessee as "LAFOURCHE" at the top of the invoices, notes on the invoice that "Lafourche Div. E 17th" is the reason for the IID, and highlights in yellow pertinent client identifying information, lease costs, fees, and payments. SSL instituted these procedures to designate the prohibited groups as SSL clients.

19.

SSL maintains a separate bank account from AEMS and deposits all Lafourche Group fees into SSL's account. When Mr. Leblanc operated SSL as a sole proprietorship, he did not have the capability to accept credit cards. AEMS accepted credit card charges for Lafourche Group clients serviced by SSL and then issued checks for the full amount of those charges to SSL, which were deposited into SSL's bank account. AEMS retained none of the amounts charged by Lafourche Group clients.

20.

Sheriff Craig Webre did not receive any thing of economic value from AEMS or SSL, in his individual capacity, in his capacity as Sheriff of Lafourche Parish, or in his capacity as a shareholder in AEMS, for IIDs installed or serviced by SSL.

21.

Brandon Acosta, a member of the Lafourche Group, testified that when he was released from the Lafourche Parish Jail after being arrested for DWI, he asked a deputy for information regarding whom he needed to contact to have an IID installed. The Deputy referred him to

Trapp Chevrolet, a retail automobile dealership which installed IIDs. The dealership had no connection to Sheriff Webre's company. A representative of Trapp Chevrolet told Mr. Acosta that the company no longer provided the service and gave him Sheriff Webre's cell phone number. Mr. Acosta phoned Sheriff Webre, who told him to contact SSL.

STANDARD OF PROOF

The Ethics Adjudicatory Panel assigned to conduct the public hearing of a matter is charged with determining the validity of the charges against Respondent, whether a violation occurred, and what penalties or sanctions, if any, will be imposed.¹ The standard of proof in a hearing under the Louisiana Code of Governmental Ethics is that the evidence must be "clear and convincing."² Clear and convincing evidence is an intermediate standard of persuasion, which requires more than a preponderance of the evidence, but less than proof beyond a reasonable doubt; the existence of the disputed fact must be much more probable than its nonexistence. *Louisiana State Bar Association v. Edwins*, 329 So.2d 437 (La.1976).

CONCLUSIONS OF LAW

Having detailed many factual findings, we now determine whether these facts, when applied to the law, prove that Sheriff Webre committed the alleged ethical violations. We conclude that he did not.

I. Charge - Violation of LSA-R.S. 42:1111(C)(1)(a)

The first two charges are based on the language of LSA-R.S. 42:1111(C)(1)(a) which provides:

¹ LSA-R.S. 42:1141(C)(4)(d)(ii).

² LSA-R.S. 42:1141(C)(4)(e).

- (C) Payments for nonpublic service
- (1) No public servant shall **receive any thing of economic value for any service**, the subject matter of which:
 - (a) **Is devoted substantially** to the responsibilities, programs or operations of the agency of the public servant and in which the public servant has participated; . . .
(emphasis added)

Sheriff Webre Did Not Receive Any Thing of Economic Value for Services Rendered by AEMS or SSL.

The Board failed to introduce a scintilla of evidence that Sheriff Webre received, in his individual capacity, in his capacity as Lafourche Parish Sheriff, or in his capacity as the controlling shareholder of AEMS, any thing of economic value. The Board did not produce any records and failed to elicit any testimony proving that Craig Webre received any thing of economic value that would violate LSA-R.S. 42:1111(C)(1)(a).

Corporate identity is separate and distinct from the identity of its shareholders.³ The Board of Ethics did not prove by clear and convincing evidence that AEMS is the “instrumentality” or “alter ego” of individual shareholder Craig Webre. AEMS is not wholly owned and controlled by Sheriff Webre so that the actions of the corporation can be imputed to him.⁴

Further, the Board urges too narrow a construction of the phrase “receive any thing of economic value for any service.” The evidence proved that the actions of SSL were not the actions of AEMS, and were not services provided by AEMS to the groups restricted by the advisory opinion of the Board of Ethics. AEMS may have “received” funds from credit card charges from some Lafourche Group clients, as well as reimbursements from SSL for the lease of the IIDs from SSTx, but these funds were not intended for AEMS, and AEMS did not retain

³ LSA-R.S. 12:91, *et seq.*

⁴ Compare *Glazer v. Commission on Ethics for Public Employees*, 431 So.2d 752 (La. 1983).

the funds or receive any economic value from them. SSL clearly monitored the Lafourche Group clients so that they would remain distinct from AEMS, in compliance with the Board's advisory opinion. All fees paid by Lafourche Group clients were ultimately deposited into SSL's bank account. The evidence established that AEMS did not provide services to persons convicted by a court of the 17th Judicial District Court in Lafourche Parish or to Lafourche Parish residents convicted in a court of another parish.

The Installation of Ignition Interlock Devices Are Not "Devoted Substantially" to the Responsibilities, Programs or Operations of the Lafourche Parish Sheriff's Department.

The Lafourche Parish Sheriff's Department arrests persons accused of crimes, and who violate the terms and conditions of bail, bond, probation or a court order, including DWI convictions. The Board seeks to establish that these arrests prove a substantial relationship between the installation of IIDs by AEMS, by way of SSL, and Sheriff Webre's department. They do not.

The Sheriff's Department does not have authority to initiate the arrest of persons who disobey the requirement to have an IID installed. Before any arrest can be made, there must be a court proceeding in which a judge finds a violation of the bail, bond, probation, or court's own order. The Court then makes a finding of contempt and issues an arrest warrant. The Sheriff's Department may not make an arrest prior to the Court's issuance of the arrest warrant, and the Department may not refuse to make the arrest ordered by the warrant. The arrest can be made not only by the Sheriff's Department, but by any arresting agency in the jurisdiction where the accused is found.

The evidence established that Sheriff Webre cannot increase AEMS' business by the discretionary use of his office to increase the number of arrestees requiring AEMS' services. The installation of IIDS are not "devoted substantially" to the responsibilities, programs or operations

of Sheriff Webre's department. Testimony also established that it is not a function of the Lafourche Parish Sheriff's Department to provide any services related to the installation and servicing of IIDs. No sheriff's department in Louisiana provides IID services.

The Board of Ethics has failed to prove by clear and convincing evidence that Sheriff Webre violated LSA-R.S. 42:1111(C)(1)(a).

II. Charge - Violation of LSA-R.S. 42:1112

The Louisiana Board of Ethics charged Respondent with violating LSA-R.S. 42:1112 by:

referring persons convicted of misdemeanor and felony driving offenses by Lafourche Parish criminal courts, who have as a condition of bail that they receive interlock ignition devices installed in their vehicles, to purchase their interlock ignition devices from "Smart Start of Lafourche" which had an exclusive distribution agreement with "Smart Start of Louisiana," a company in which Respondent has a controlling interest at a time that he served as Sheriff of Lafourche Parish.

The facts do not establish that a violation occurred.

LSA-R.S. 42:1112 provides in pertinent part:

A. No public servant . . . shall participate in a transaction in which he has a personal substantial economic interest of which he may be reasonably expected to know involving the governmental entity.

B. No public servant . . . shall participate in a transaction involving the governmental entity in which, to his actual knowledge, any of the following persons has a substantial economic interest:

...

(2) Any person in which he has a substantial economic interest of which he may reasonably be expected to know.

(3) Any person of which he is an officer, director, trustee, partner, or employee.

...

(5) Any person who is a party to an existing contract with such public servant, or with any legal entity in which the public servant exercises control or owns an interest in excess of

twenty-five percent, or who owes any thing of economic value to such public servant, or to any legal entity in which the public servant exercises control or owns an interest in excess of twenty-five percent, and who by reason thereof is in a position to affect directly the economic interests of such public servant.

C. Every public employee . . . shall disqualify himself from participating in a transaction involving the governmental entity, when a violation of this Part would result. . .

The Board failed to cite a specific part of this statute that was violated, but argued that it prohibits a public servant from participating in a transaction under the supervision and jurisdiction of his agency. Counsel argued that Sheriff Webre was sending individuals placed on bail or probation to an entity with which he had a contract, and that he received compensation for the installation of the IIDs.

The evidence did not establish this. Neither Sheriff Webre nor AEMS contracted with the Lafourche Parish Sheriff's Department to provide IIDs for the Department. For the same reasons discussed in section I above, we find that the installation of IIDs are not reasonably related to the programs and operations of the Sheriff's Department, and that the Board produced no evidence that Sheriff Webre was compensated for SSL's services.

The Board asserted that Sheriff Webre referred members of the restricted group, the Lafourche Group, to SSL. The Board's witness, Brandon Acosta, failed to substantiate this assertion. Mr. Acosta testified that when he was released from jail, a Lafourche Parish deputy referred him to Trapp Chevrolet, which in turn referred Mr. Acosta to Sheriff Webre. Only then did Sheriff Webre provide Mr. Acosta with information as to the IID services offered by SSL.

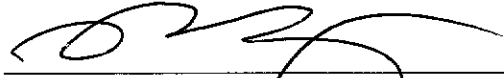
The Board of Ethics failed to prove by clear and convincing evidence that Sheriff Webre violated the mandates of LSA-R.S. 42:1112.

ORDER

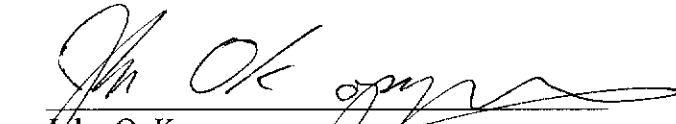
For the foregoing reasons:

IT IS ORDERED that the charges against Respondent are **DISMISSED**.

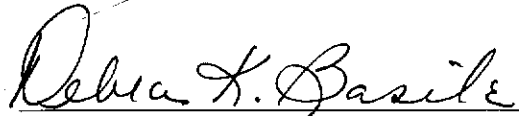
Rendered and signed this 24th day of November, 2009, in Baton Rouge, Louisiana.



Robert N. Aguiluz
Presiding Administrative Law Judge



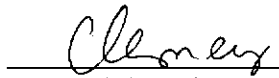
John O. Kopynec
Administrative Law Judge



Debra K. Basile
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have served a copy of this document on all parties to this proceeding or their counsel of record by regular mail, this 24th day of November, 2009.



Administrative Hearings Clerk