



INVESTIGATIVE REPORT

Lori Torres, Inspector General

OFFICE: INDIANA OFFICE OF THE ATTORNEY GENERAL

TITLE: CONTINGENCY FEE CONTRACT

CASE ID: 2019-03-0074

DATE: March 25, 2019

After examination and review, Inspector General Staff Attorney, Heidi Adair, reports as follows:

The purpose of this Report is to fulfill the statutory requirements of Ind. Code § 4-6-3-2.5 regarding contingency fee contracts. This statute requires the Inspector General (IG) to review contingency fee contracts for possible conflicts of interests and potential Code of Ethics violations. Under this statute, an agency may not enter into a contingency fee contract unless the IG has made a written determination that entering into the contract would not violate the Indiana Code of Ethics set forth in Ind. Code 4-2-6 and 42 IAC 1-5 (Code of Ethics) or any statute or agency rule concerning conflicts of interests.

On March 20, 2019, the Indiana Office of Attorney General (OAG) notified the IG that it wished to enter into a contingency fee contract with two law firms: the Mike Moore Law Firm located in Flowood, Mississippi, and Horn Aylward & Bandy, LLC, located in Kansas City, Missouri. The purpose of this contract is to obtain assistance in the OAG's continuing efforts to reunite the lawful owners and beneficiaries of bonds with the money they are entitled

to receive from the federal government. The Firms will represent Indiana in negotiations and possible litigation with the federal government. The State will compensate the Firms through contingency fees that do not exceed the maximum percentages permitted by Ind. Code § 4-6-3-2.5(g).

Previously, in December of 2015, the OAG requested that the IG review the OAG's contingency fee contract to ensure there were no conflicts of interests or Code of Ethics violations. The IG issued Investigative Report # 2015-12-0238, which found that a proposed contingency fee contract between the OAG and the Mike Moore Law Firm and Walters Bender Strohben & Vaughn of Kansas City, Missouri would not violate the Code of Ethics or violate any statute or agency rule concerning conflicts of interests.¹ That contract expired on January 31, 2018.

The OAG submitted a memo to the IG explaining that the attorneys' efforts in this matter are still ongoing. This memo provides that a lead attorney on behalf of the State has left the Walters Bender firm and joined Horn Aylward & Bandy, LLC. The OAG's memo explains that the attorney is lead counsel for more than ten states in their claims against the U.S. Treasury.

The OAG now wishes to enter into a contingency fee contract with the Mike Moore Law Firm and Horn Aylward & Bandy to continue recovery efforts pursuant to Indiana's escheatment statute.

Pursuant to Ind. Code § 4-6-3-2.5(b), the OAG is required to make a written determination before entering into the contract that the contingency fee representation is cost effective and in the public interest. The OAG must consider five factors when making this

¹ See IG Report [2015-12-0238](#).

determination as outlined by Ind. Code § 4-6-3-2.5(c). The OAG made such a determination and considered all of the factors outlined in the statute.

The OAG's determination explains that the agency does not have sufficient and appropriate legal and financial resources to handle this matter. The OAG notes that in 2015, the General Assembly authorized the OAG to attempt to recover these funds, recognizing that the costs would need to be paid out of any recovery made.² Furthermore, the OAG explains that it does not have a Deputy devoted full-time to its unclaimed property division and the OAG lacks sufficient manpower in its litigation section to devote to this matter.

Also, the OAG's determination explains that all of the litigation and negotiations in this matter will take place in Washington, D.C. with U.S. Treasury Department officials. The OAG notes that to date, the Treasury Department has resisted various states' recovery efforts. The OAG explains that attempts to recover these funds from the Treasury Department is a newer concept and requires expertise in escheated property and federal treasury regulations.

After careful examination and review, the IG has determined that the contract will not violate the Code of Ethics or any statute or agency rule concerning conflicts of interests. According to the OAG, the Law Firms do not employ any state employees, and no OAG employees or immediate family members have a financial interest in the Firms or the contract itself. Furthermore, the OAG provides that no OAG employee is contracting with or will be supervising the work of a business entity in which a relative is a partner, executive officer, or sole proprietor. To the best of its knowledge, neither the Firms nor any member of the Firms have a conflict of interests that would violate either the Code of Ethics or any ethics rules of the Indiana Supreme Court.

² See Ind. Code § 32-34-1-20.5(d)

Based on the information provided, we find that entering into the contract will not violate the Code of Ethics or any statute or agency rule concerning conflicts of interest. This Report is issued in compliance with the above noted statutory requirements.

Dated March 25, 2019.

APPROVED BY:

A handwritten signature in black ink that reads "Lori Torres". The signature is written in a cursive style with a long horizontal stroke at the end.

Lori Torres, Inspector General