INSPECTOR GENERAL REPORT

2012-09-0227

September 11, 2012

ATTORNEY GENERAL CONTINGENCY FEE CONTRACT

Inspector General Staff Attorney Kristi Shute, after examination and review, reports as follows:

The purpose of this Report is to fulfill the statutory requirements of I.C. 4-6-3-2.5 regarding contingency fee contracts. The Indiana General Assembly directed the Office of the Inspector General ("OIG") to review contingency fee contracts for possible conflicts of interest and code of ethics violations through Public Law 101, which became effective in July 2011.

On September 7, 2012, the Office of the Attorney General ("AG") notified the OIG that it wished to enter into a contingency fee contract with two law firms, one in Chicago, Illinois and one in Philadelphia, Pennsylvania. The contract's purpose is to pursue claims through settlement or litigation regarding antitrust actions in the Federal District Court of New Jersey. The AG explained in its request that it recently became aware of the litigation and that participation in the matter may produce a monetary recovery on behalf of the State and other Indiana governmental units as defined in I.C. 34-6-2-110. Specifically, in January 2012,

the Federal Trade Commission filed Complaints against the three largest United States suppliers of ductile iron pipe fittings, which are used in water systems throughout the nation, including Indiana.

Pursuant to I.C. 4-6-3-2.5(b), the AG is required to make a written determination before entering into the contract that contingency fee representation is cost effective and in the public interest. The AG made such a determination and explained its reasoning. The AG advised that the financial and legal resources within its office are assigned to other essential duties and that it is not prudent to shift resources and cause the disruption of other essential duties within the office to pursue the opportunity presented by the antitrust matter. The only feasible alternative is to employ outside counsel to pursue the monetary recovery of funds.

In addition, the AG noted that there is a significant chance that substantial amounts of time and labor, both within Indiana and out of state, will be necessary to achieve a successful result. I.C. 24-1-1-5.1 became law in 2008, providing a new, and as yet unused, cause of action for monetary recovery. Due to the novelty of the matter and the complexity of antitrust litigation, the matter will likely raise difficult and complex questions of law. The expertise and experience required in this matter includes not only antitrust and class action expertise, but also experience in the Federal District Court of New Jersey. This expertise can most efficiently and effectively be provided by outside counsel. In this case, the outside counsel chosen has the needed experience.

Furthermore, I.C. 4-6-3-2.5(d) requires the AG to request proposals from private attorneys wishing to provide services on a contingency fee basis, unless the agency, in this case also the AG, determines in writing that requesting proposals is not feasible under the circumstances. In its request the AG explained that, since the initial filing by the Federal Trade Commission, ten direct purchaser class action suits and nine indirect purchaser class action suits have been filed in the U.S. District Court of New Jersey. On May 14, 2012, these actions were consolidated. On June 7, 2012, the court issued an Order requiring an Amended Consolidated Complaint which was to be filed by July 11, 2012. The next likely step is for the defendants to file motions to dismiss. Given the quick pace of the pending legal proceedings and the need for substantive pleadings to be filed on behalf of the State and other Indiana governmental units to preserve and protect an opportunity for monetary recovery, it is important for the AG to proceed quickly and that the legal services needed in this matter are employed as soon as possible. For these reasons, the AG determined that it is not feasible, or sufficiently timely, to request proposals for legal services from private attorneys wishing to provide services on a contingency fee basis.

After examination and review, the OIG has determined that the contract will not violate the code of ethics or any statute or agency rule concerning conflicts of interest. First, the contract is with two law firms located out of state. Therefore, it does not appear that either law firm employs any state employees. Likewise, there is no information to indicate that any AG employee or immediate

family member has a financial interest in either law firm or the contract itself. Because of that, it also does not appear that any AG employee is contracting with nor will be supervising the work of a business entity in which a relative is a partner, executive officer or sole proprietor.

Based on the information provided, it has been determined 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 this 11th day of September, 2012.

APPROVED BY:

/s/ David O. Thomas, Inspector General