

STATE OF INDIANA)
)SS:
COUNTY OF MARION)

IN THE MARION SUPERIOR COURT
CIVIL DIVISION, ROOM 13
CAUSE NO: 49D13-1007-PL-031572

STATE OF INDIANA *EX REL*)
ADAM LENKOWSKY)
Relator,)
)
vs.)
)
CHRISTOPHER E. HARVEY, *et al.*,)
Respondents.)

FILED

265 APR 05 2011

Elizabeth J. White
CLERK OF THE MARION CIRCUIT COURT

ORDER ON PENDING MOTIONS

Background

On July 19, 2010, Relator-Plaintiff, Mr. Lenkowsky, (hereinafter "Mr. Lenkowsky") filed this Complaint on behalf of the State of Indiana against the Defendants-Respondents Christopher Harvey and various other prosecutors throughout the State of Indiana (hereinafter the "Prosecutors") via a *qui tam action* or Indiana False Claims Act, seeking to recover money forfeited to law enforcement agencies from forfeiture actions. Mr. Lenkowsky believes those monies should have instead been deposited into the common school fund pursuant to the Indiana Constitution. Soon thereafter, some of the county prosecutors were dismissed because Mr. Lenkowsky avers those parties dismissed did not conduct any forfeiture actions during the two year time period covered in his Complaint.

The Indiana Attorney General's office declined to accept the *qui tam* action and entered an Appearance on behalf of the Prosecutors in late December 2010.

APR 05 2011

Contemporaneously, the Attorney General's office filed a Motion to Dismiss alleging, among other defenses, lack of subject matter jurisdiction. Mr. Lenkowsky subsequently requested that the Attorney General be ordered to certify its election not to intervene to the Inspector General and later that the Appearance of the Attorney General and his Motion to Dismiss be struck.

QUI TAM

Mr. Lenkowsky chooses to pursue this matter via a qui tam action. Qui Tam actions, having some of their history dating back to the government being sold bad mules, have been codified under the Indiana False Claims Act which closely tracks the federal False Claims Act. The general idea of the statute is to encourage whistleblowers to report those making false monetary claims against the government.¹

Indiana Code 5-11-5.5-7, Indiana's False Claim Statute, identifies the prerequisites for pursuing a claim in this manner. In particular, the Court finds that :

- 1) The information complained of by Mr. Lenkowsky was known to the State at the time this action was filed; and
- 2) A court's entry of judgment or a civil forfeiture action does not meet the meaning of the term "claim" under Indiana Code 5-11-5.5-1(1).

Thus, this Court does hereby ORDER, ADJUDGE and DECREE that this matter is DISMISSED. Thus, Mr. Lenkowsky's other motions are deemed MOOT or DENIED.

LAW ENFORCEMENT COSTS

While Mr. Lenkowsky may have chosen the wrong legal mule to ride here to pursue this issue, the merits of the issue at the heart of the matter do not

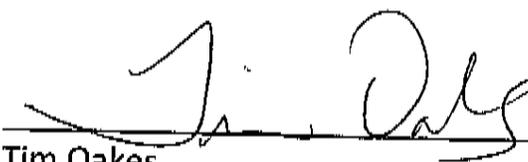
¹ For a short history of qui tam actions see *Vermont Agency of Natural Resources v. United States ex rel. Stevens*, 529 U.S. 765 (2000).

deserve to be ignored. Troubling to this Court is the relative lack of any logic or consistency in the assessment of law enforcement costs across the state if not in Marion County. Little, if any, logical assessment, much less consistent assessment, appear to enter the Prosecutors' minds as they determine their take for pursuing the forfeiture actions.

On a deeper level, despite an Attorney General Opinion and some precedent in this state, this Court's simple reading of Article 8, Section 2 of the Indiana Constitution would indicate that it applies to all forfeitures. Past scholars have focused on the history of fines for penal violations and the placement of the forfeiture section after the phrase "fines assessed for breaches of the penal laws of the State" in our Indiana Constitution. However, both clauses seem to be set off by semicolons making each independent of the other. Thus, the phrase "from all forfeitures which may accrue" would appear to have few, if any, limits.

Nonetheless, we remain bound by precedent. Perhaps more importantly, the constitutionality of the actions currently in practice in our state and the interpretation of this section of our Indiana Constitution are not before this Court today. Those considerations may be better addressed by our legislature and another Court at another day.

SO ORDERED this 5th day of April, 2011.



Tim Oakes
Judge
Marion Superior Court
Civil Division, Room 13