



OFFICE OF THE LEGISLATIVE AUDITOR
STATE OF MINNESOTA • James Nobles, Legislative Auditor

May 12, 2008

The Honorable Lori Swanson
Minnesota Attorney General
102 State Capitol
St. Paul, MN 55155

Dear Attorney General Swanson:

The Office of the Legislative Auditor (OLA) has received allegations concerning the consent judgment that resulted from a complaint filed by Attorney General Mike Hatch against Capital One. The judgment was signed by you, as Solicitor General, and filed with the Ramsey County District Court on February 13, 2006. It provided for the distribution of money to the Legal Aid Society (\$250,000), the Minnesota Association of Community Organizations for Reform Now—ACORN—(\$249,999), and the State of Minnesota (\$250,000).

OLA is conducting a preliminary assessment of the settlement's compliance with *Minnesota Statutes* 2007, 16A.151, which regulates the distribution of proceeds from litigation or settlements. OLA's review is authorized by *Minnesota Statutes* 2007, 3.971, subdivision 6, which says in part:

The legislative auditor shall see that all provisions of law respecting the appropriate and economic use of public funds are complied with and may, as part of a financial audit or separately, investigate allegations of noncompliance by employees of departments and agencies of the state government

To help OLA assess the allegations, I request your response to the following concerns and questions:

- *Minnesota Statutes* 2007, 16A.151, subdivision 1(b) says: "A state official may not commence, pursue, or settle litigation, or settle a matter that could have resulted in litigation, in a manner that would result in money being distributed to a person or entity other than the state." An exception is provided in subdivision 1(e) if the settlement amount is less than \$750,000. It is alleged that the Attorney General's office sought a judgment of \$749,999 to avoid the prohibition of subdivision 1(b). Is that true? If not, please explain why the Attorney General's office sought a \$749,999 judgment.
- It is alleged that the distribution of money to Minnesota ACORN was connected to ACORN's endorsement of Mike Hatch for Governor on March 8, 2006. Please address the allegation and explain the basis for the distribution of \$249,999 to ACORN, a political advocacy organization.
- The consent judgment stipulated that ACORN was to use the \$249,999 from the Capital One consent judgment for "supporting financial advocacy, education and assistance in Minnesota." What monitoring or other mechanisms did the Attorney General's office employ to ensure that ACORN fulfilled this requirement? What is your understanding of how the money was used?

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Finally, to help OLA understand the context in which the Capital One settlement occurred, I request copies of any and all other settlement agreements signed by the Office of the Attorney General within the time period from January 1, 2005, through December 31, 2007, in which a company was required to pay all or part of the money judgment to an entity or entities other than the State of Minnesota. My request includes agreements that resulted from either civil or administrative complaints in which the Attorney General acted on behalf of the State of Minnesota. It does not include personnel settlements with state employees, nor does it include settlements of consumer protection complaints if money was distributed solely to individual consumers.

I request your response by May 16, 2008, and please note that your cooperation is required by *Minnesota Statutes* 2007, 3.978, subdivision 2, which says:

All public officials and their deputies and employees, and all corporations, firms, and individuals having business involving the receipt, disbursement, or custody of public funds shall at all times afford reasonable facilities for examinations by the legislative auditor, make returns and reports required by the legislative auditor, attend and answer under oath the legislative auditor's lawful inquiries, produce and exhibit all books, accounts, documents, data of any classification, and property that the legislative auditor may need to inspect, and in all things aid the legislative auditor in the performance of [his] duties.

I thank you in advance for your prompt attention to this matter.

Sincerely,



James Nobles
Legislative Auditor



STATE OF MINNESOTA

OFFICE OF THE ATTORNEY GENERAL

LORI SWANSON
ATTORNEY GENERAL

May 19, 2008

102 STATE CAPITOL
ST. PAUL, MN 55155
TELEPHONE: (651) 296-6196

Mr. James Nobles
Legislative Auditor
Room 140 Centennial Building
658 Cedar Street
St. Paul, MN 55155-1603

Dear Mr. Nobles:

I thank you for your correspondence dated May 12, 2008.

You raise several questions concerning the State's settlement with Capital One. As you know, the Capital One lawsuit and settlement both occurred during the administration of former Attorney General Mike Hatch. Accordingly, I provided a copy of your correspondence to him. I believe the attached letter from Mr. Hatch addresses your questions about the settlement.

You also ask for copies of any other settlement agreements between January 1, 2005 and December 31, 2007 signed by the Office of the Attorney General in which a company was required to pay money to an entity other than the state of Minnesota or injured victims. Because two years of the requested period covered former Attorney General Hatch's administration, I inquired as to his recollection of any such settlements. I also asked staff members in this Office to conduct a review for any such settlements.

I attach an Assurance of Discontinuance and Order Approving Restitution Plan with Coldwell Banker Burnet dated December, 2006 that appears responsive to your request. That case settled with a payment into a restitution fund of \$375,000, with all but less than \$30,000 being distributed to injured homeowners and the rest to be distributed on a prorata basis to five nonprofit entities. I should also note that in December, 2007, the United States Department of Justice (DOJ) and this Office entered into a joint Consent Judgment with a wireless company relating to a civil contempt motion that resulted in \$745,000 being paid to this Office and \$580,000 being paid to the DOJ. DOJ was the lead counsel on the case. The DOJ insisted that, except for the reimbursement of investigative costs (which were nominal), the funds paid to this Office be used for the *cy pres* purpose of assisting rural counties in Southern Minnesota in developing communications technology. (The wireless company subject to the Consent Judgment operated in rural counties in Southern Minnesota.) In accordance with Minn. Stat. § 16A.151 (2006), this Office agreed to such a distribution. The Consent Judgment, however, makes no reference to a *cy pres* distribution. Accordingly, I instructed that DOJ be advised that this Office would not participate in a *cy pres* distribution absent a court order referencing a *cy pres* distribution. We are currently discussing this matter with DOJ, and it appears preliminarily

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that DOJ will want to seek an order authorizing the funds to be distributed for purposes of assisting rural counties in Southern Minnesota in developing communications technology.

If you have any other questions, please let me know.

Sincerely,

A handwritten signature in black ink that reads "Lori Swanson". The signature is written in a cursive style with a long, sweeping underline.

LORI SWANSON
Attorney General

Enclosures

