



# NEBRASKA AUDITOR OF PUBLIC ACCOUNTS

Mike Foley  
State Auditor

Mike.Foley@nebraska.gov  
P.O. Box 98917  
State Capitol, Suite 2303  
Lincoln, Nebraska 68509  
402-471-2111, FAX 402-471-3301  
www.auditors.nebraska.gov

July 22, 2013

John Munn, Director  
Department of Banking & Finance  
Commerce Court, Ste. 400  
1230 'O' Street  
Lincoln, NE 68508-1402

RE: Legal Fees of Department Employees

Dear Director Munn:

In connection with the fiscal year 2013 Comprehensive Annual Financial Report (CAFR) audit, the Auditor of Public Accounts (APA) learned that the Department of Banking & Finance (Department) has been paying the legal fees of four of its employees in a manner inconsistent with State statute.

Neb. Rev. Stat. §§ 84-304(3) and (9) (2013 Neb. Laws LB 40, § 3) direct the APA to function in accordance with the Government Auditing Standards published by the Comptroller General of the United States of America. Sections 4.02(c) and 4.19 of the 2011 Revision of those standards require the APA to report upon, among other things, “noncompliance with provisions of laws.”

In adherence with the applicable provisions of the Government Auditing Standards, the APA is issuing this management letter – the purpose of which is to detail the APA’s findings with regard to certain compliance issues pertaining to the payment of employee legal fees by the Department.

We noted certain internal control or compliance matters related to the activities of the Department or other operational matters that are presented below. The comment and recommendation, which has been discussed with the appropriate members of the Department and the Agency’s management, is intended to improve internal control or result in other operating efficiencies.

This issue is reported in connection with the fiscal year 2013 State of Nebraska’s CAFR audit.

Our consideration of internal control was for the limited purpose described in the first paragraph and was not designed to identify all deficiencies in internal control that might be material weaknesses or significant deficiencies and, therefore, material weaknesses or significant deficiencies may exist that were not identified.

Draft copies of this letter were furnished to the Agency to provide them an opportunity to review the letter and to respond to the comment and recommendation included in this letter. The formal response received has been incorporated into this letter. The response has been objectively

evaluated and recognized, as appropriate, in the letter. A response that indicates corrective action has been taken was not verified at this time, but will be verified in the next audit.

**Background**

On June 13, 2011, Robert R. Bennie, Jr., a financial advisor in Lincoln, Nebraska, filed suit in the U.S. District Court for the District of Nebraska (Case Number 4:11-cv-03089) against the following four employees of the Department.

<b>Name of Department Employee</b>	<b>Employee Position</b>
John Munn	Director of Department
Jack E. Herstein	Assistant Director of Bureau of Securities
Rodney R. Griess	Investigation and Compliance Unit Supervisor for Bureau of Securities
Jackie L. Walter	Securities Examiner for Bureau of Securities

The complaint, which was filed against the Department employees in both their official and individual capacities, alleges that the defendants violated Mr. Bennie’s rights to equal protection and free speech under the First and Fourteenth Amendments to the U.S. constitution, as well as under Article 1, section 3, of the Nebraska Constitution.

The complaint also alleges intentional interference by the defendants with Mr. Bennie’s business relationships.

The complaint seeks \$6,880,000.00 in compensatory damages and an unspecified amount in punitive damages. Additionally, because the allegations are actionable under 42 U.S.C. § 1983, a federal law that allows lawsuits for violations of constitutional rights, Mr. Bennie, if successful, would also be entitled to recover his attorney’s fees.

During discussions with the APA, the Department emphasized that its employees have denied all of the allegations against them and have been actively defending the case. According to the Department, after initial discovery, an unsuccessful mediation conference was held in December 2012. The Department pointed out also that, despite a pending continuance motion, a trial date is currently scheduled for 2014. Thus, though initiated in 2011, the case’s litigation remains in the discovery stage – which indicates that considerable additional legal costs are likely to be incurred by both parties before the matter is finally resolved.

As of May 24, 2013, the Department has spent \$174,467.02 for the legal expenses of the four defendants in the present case. The expenses were recorded in the Nebraska Information System EnterpriseOne (E1) and were all paid from Fund 21920, Business Unit 19220001, Object Account 541500. The detail of those expenditures from E1 is set out in the following table.

G/L Date	Document Number	Invoice Number	Explanation Alpha Name	Explanation -Remark-	Amount
10/4/2011	21997745	125011	FRASER STRYKER PC LLO	NDBF VS ROBERT BENNIE JR.	\$ 1,923.00
10/5/2011	22002093	125635	FRASER STRYKER PC LLO	NDBF VS BENNIE, THROUGH 8/31/11	\$ 15,231.55
12/7/2011	22320098	125949, 126733	FRASER STRYKER PC LLO	NDBF VS BENNIE, THROUGH 11/30/11	\$ 11,834.08
2/8/2012	22775628	127828	FRASER STRYKER PC LLO	NDBF VS BENNIE, THROUGH 12/31/11	\$ 3,311.00
3/1/2012	22989679	128176	FRASER STRYKER PC LLO	NDBF VS BENNIE THROUGH 1/31/12	\$ 8,625.50
4/5/2012	23440227	128894	FRASER STRYKER PC LLO	NDBF VS BENNIE THROUGH 2/29/12	\$ 5,502.10
5/10/2012	23750113	129491	FRASER STRYKER PC LLO	NDBF VS BENNIE THROUGH 3/31/12	\$ 10,292.10
5/10/2012	23750127	129599	FRASER STRYKER PC LLO	NDBF VS BENNIE THROUGH 4/30/12	\$ 13,284.50
7/3/2012	24073799	130427	FRASER STRYKER PC LLO	NDBF VS BENNIE THROUGH 5/31/12	\$ 12,869.70
8/1/2012	24222108	130905	FRASER STRYKER PC LLO	NDBF VS BENNIE, THROUGH 6/30/12	\$ 5,385.60
8/24/2012	24360740	131409	FRASER STRYKER PC LLO	NDBF VS BENNIE, THROUGH 7/31/12	\$ 9,254.70
10/3/2012	24604584	132262	FRASER STRYKER PC LLO	NDBF VS BENNIE THROUGH 8/31/12	\$ 3,554.60
11/16/2012	24822830	132797	FRASER STRYKER PC LLO	NDBF VS BENNIE THROUGH 9/30/12	\$ 26,701.45
12/18/2012	24993076	133302	FRASER STRYKER PC LLO	NDBF VS BENNIE THROUGH 10/31/12	\$ 21,384.00
2/14/2013	25407251	134378	FRASER STRYKER PC LLO	NDBF VS BENNIE THROUGH 12/31/12	\$ 11,360.35
3/12/2013	25782525	134774	FRASER STRYKER PC LLO	NDBF VS BENNIE THROUGH 1/31/13	\$ 3,081.30
4/2/2013	26017766	135374	FRASER STRYKER PC LLO	NDBF VS VENNIE THROUGH 2/28/13	\$ 7,382.54
5/2/2013	26339367	136126	FRASER STRYKER PC LLO	NDBF VS BENNIE THROUGH 3/31/13	\$ 919.20
5/24/2013	26447777	136275	FRASER STRYKER PC LLO	NDBF VS BENNIE THROUGH 4/30/13	\$ 2,569.75
<b>TOTAL</b>					<b>\$174,467.02</b>

Note: The Department had incorrectly entered the Explanation-Remark in E1, as the Department has no case on file against Bennie; the case is Bennie vs. the employees of the Department.

**Appointment of Legal Counsel by Attorney General**

Neb. Rev. Stat. § 81-8,239.06(1) (Reissue 2008) permits the Attorney General to provide, upon written request, legal representation to a State officer or employee sued as a result of any “act or omission in the course and scope of employment.” That statute provides, in relative part:

*If any civil action is brought against any state officer or employee, such state official or employee may file a written request for counsel with the Attorney General asserting that such civil action is based in fact upon an alleged act or omission in the course and scope of employment . . . . The Attorney General shall thereupon appear and defend or represent that person unless after investigation he or she finds that the claim or demand does not arise out of an alleged act or omission occurring in the course and scope of employment or that the act or omission complained of amounted to malfeasance in office or willful or wanton neglect of duty, in which case the Attorney General shall give that person written notice that defense of the claim or representation before the tribunal has been rejected.*

Neb. Rev. Stat. § 81-8,239.05(3) (Cum. Supp. 2012) requires the Attorney General to notify the Risk Manager that such legal representation is being provided, as follows:

*The Attorney General shall notify the Risk Manager when an official or employee is being represented by the Attorney General or has engaged competent counsel approved by the Attorney General. The reasonable costs of litigation, including appeal bonds, or the reasonable costs of any appearance before any tribunal shall be paid by the Risk Manager from the State Self-Insured Indemnification Fund.*

It is important to note also that § 81-8,239.05(3) specifies that “the reasonable costs of” the litigation undertaken by either the Attorney General or other designated counsel must be paid by the Risk Manager from the State Self-Insured Indemnification Fund (Fund). Created by Neb. Rev. Stat. § 81-8,239.02(3) (Cum. Supp. 2012), the Fund serves the sole “purpose of paying indemnification claims under section 81-8,239.05.” Such claims “include payments for awards,

settlements, and associated costs, including appeal bonds and reasonable costs associated with a required appearance before any tribunal.”

On June 17, 2011, each of the four Department employees wrote to request individual legal representation by the Attorney General. An Assistant Attorney General responded on June 21, 2011, explaining that an investigation would be conducted to determine the petitioners’ eligibility for representation. Almost a month later, on July 22, 2011, the defendants received a final communication from the Attorney General’s office (**Exhibit 1**), stating:

*Unfortunately, a conflict of interest has arisen that prevents us from representing you. Mark Laughlin will be appointed Special Assistant Attorney General to represent you in the lawsuit.*

Pursuant to § 81-8,239.05(3), the Attorney General is obligated to inform the Risk Manager “when an official or employee is being represented by the Attorney General or has engaged competent counsel approved by the Attorney General.” Only after receiving that express notification is the Risk Manager authorized to make payment of attendant litigation costs from the Fund. It appears, however, that the Attorney General did not make the required notification to the Risk Manager regarding the legal representation being provided to the Department employees. Instead, following the notice of appointment of the Special Assistant Attorney General, representatives from the Department contacted the Risk Manager to discuss the pending litigation expenses.

Whether the subsequent meetings between Department representatives and the Risk Manager were sufficient to provide the Risk Manager with constructive notice of the Special Assistant Attorney General’s appointment is unclear. What is certain, however, is that any such indirect notice is insufficient to satisfy the actual notification requirement in § 81-8,239.05(3) – which authorizes the Attorney General alone to notify the Risk Manager.

According to Department representatives, the Risk Manager encouraged the Department to pay the legal expenses of the four employees and await reimbursement of those costs at a later date. The Risk Manager insists that she lacks the authority either to direct a State agency how to expend its funds or to make reimbursements for legal fees without the prior authorization of the Attorney General. Regardless, the employees’ legal fees were paid by the Department.

As a result of inquiries by the APA to the Department, the Risk Manager, and the Attorney General, the Attorney General’s office finally provided the Risk Manager with the formal notification required under § 81-8,239.05(3). Dated June 27, 2013, that letter directs the Risk Manager to “pay for all of the litigation expenses associated with” the lawsuit against the four Department employees. (**Exhibit 1**)

Subsequent to issuance of the Attorney General’s letter, the Department wrote the Risk Manager, on both July 9 and 10, 2013, providing detailed information regarding the litigation expenses paid. (**Exhibit 2**)

#### **Lack of Authority to Pay Legal Fees**

As pointed out already, § 81-8,239.05 and § 81-8,239.06 govern the exclusive method provided in State statute for expending public funds to pay any legal costs incurred when either the

Attorney General or properly appointed counsel represents a State official or employee in a civil suit for an act or omission occurring in the course and scope of employment. Such exclusivity is necessary to safeguard taxpayer dollars by restricting their expenditure, as much as possible, to paying for the legal defense costs of State officials and employees who have not overstepped the boundaries of their respective authority.

By notifying the Department employees that a Special Assistant Attorney General would be appointed to represent them, the Attorney General was, in effect, indicating his belief that they had been acting within the course and scope of their employment; otherwise, in accordance with the provisions of § 81-8,239.06(1), the Attorney General would have refused to provide the requested representation.

Nevertheless, by acting independently and paying, out of its own funds, the legal costs incurred by the Special Assistant Attorney General appointed to represent the four employees, the Department contravened the plain letter of the law.

No less important, administrative agencies in Nebraska have only the authority either specifically granted to them by statute or that is necessary to carry out a particular legislative directive. Such authority is also strictly construed.

Given that the power of a State agency is defined – and, therefore, restricted – by the express provisions of its incorporating statutes, as well as subject to strict interpretation and application, there appears to be little grounds for arguing that the Department has the authority to pay the legal fees of its employees. This is especially true once the Special Assistant Attorney General had been appointed to provide the requested legal representation. Nowhere in either statute or its own rules and regulations is such prerogative expressly conferred upon the Department; neither is it inferred, at least not so as to satisfy a strict construction.

The delay by the Attorney General in providing the notice required under § 81-8,239.05(3) did not empower the Department to supplant the Risk Manager as the only statutorily designated authority for expending, from the Fund, public money for the legal costs resulting from the representation of State officials or employees by the Attorney General. Section 81-8,239.05(3) is clear that those costs “shall be paid by the Risk Manager from the State Self-Insured Indemnification Fund.”

In paying the legal expenses of the four employees from its own funds, the Department acted outside of both the only available statutory procedure for making such expenditures and its own limited statutory authority.

#### **Mischaracterization of Funds**

While examining the payment records, the APA found that the legal fees in question were being paid from the Securities Act Cash Fund (SACF), which the Department uses to administer and enforce the Securities Act of Nebraska (Act). Moreover, the payments were coded as having being made for the non-existent case of “NDBF v. Bennie,” which incorrectly designates the Department as the plaintiff in the lawsuit.

Though publicly available information, both the nature of the fund source and the erroneous case title give the incorrect impression that the expenditures at issue are related to a regulatory enforcement action, arising under the Act, by the Department against Mr. Bennie – as opposed, in reality, to being payments for legal fees resulting from a civil suit by Mr. Bennie against the Department’s employees.

**Misuse of Securities Act Cash Fund (SACF)**

Another concern relating to the payment of the four Department employees’ legal expenses from the SACF has to do with the statutory purpose of that fund. Neb. Rev. Stat. § 8-1120(6) (2013 Neb. Laws LB 214, § 8) states:

*The Securities Act Cash Fund is created. All filing fees, registration fees, and all other fees and all money collected by or paid to the director under any of the provisions of the act shall be remitted to the State Treasurer for credit to the fund, except that registration fees collected by or paid to the Director of Insurance pursuant to the provisions of the act shall be credited to the Department of Insurance Cash Fund. The Securities Act Cash Fund shall be used for the purpose of administering and enforcing the provisions of the act, except that transfers may be made to the General Fund at the direction of the Legislature. Any money in the Securities Act Cash Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.*

(Emphasis added.) As revealed by the above statutory language, the SACF may be used only to provide the necessary funding for the Department’s administration and enforcement of the Act, which is set out at Neb. Rev. Stat. §§ 8-1101 to 8-1123 (Reissue 2012; 2013 Neb. Laws LB 205, §§ 1-3; 2013 Neb. Laws LB 214, §§ 1-8).

In discussing this matter with the APA, the Department has pointed out that § 8-1120(1) contains the following:

*The director may also employ special counsel with respect to any investigation conducted by him or her under the act or with respect to any litigation to which the director is a party under the act . . . .*

Based upon the above language, the Department claims the statutory authority to pay the employee legal fees at issue out of the SACF. The Department bolsters this assertion by noting that the original complaint filed by Mr. Bennie, along with the first amended version thereof, challenged the constitutionality of the Act, as applied – which, according to the Department, would necessarily make the Director a party to litigation under the Act.

Though not dismissive of the Department’s position, neither is the APA persuaded by it. When the Department employees sought and accepted taxpayer-funded legal representation through the Attorney General, the provisions of § 81-8,239.05 were automatically activated and continue to govern. Section 8-1120(1) does contain, as the Department indicates, a general provision allowing the Director to employ special counsel when party to litigation under the Act. However, § 81-8,239.05(3) is specific in requiring that the “reasonable costs of litigation” incurred by the Attorney General, on behalf of a State employee or official who has requested such representation, “shall be paid by the Risk Manager from the State Self-Insured Indemnification Fund.”

Far more important, when the Department employees sought and accepted taxpayer-funded legal representation through the Attorney General, the provisions of § 81-8,239.05 were automatically activated and continue to govern. Section 8-1120(1) does contain, as the Department indicates, a general provision allowing the Director to employ special counsel when party to litigation under the Act. However, § 81-8,239.05(3) is specific in requiring that the “reasonable costs of litigation” incurred by the Attorney General, on behalf of a State employee or official who has requested such representation, “shall be paid by the Risk Manager from the State Self-Insured Indemnification Fund.”

A fundamental rule of statutory interpretation holds that, to the extent a conflict exists between two statutes on the same subject, the specific statute controls over its more general counterpart. In this instance, § 81-8,239.05(3) mandates specifically how to pay costs of legal representation incurred by the Attorney General – or “competent counsel approved by the Attorney General” – as the result of representing a State employee or official. Therefore, in light of the facts at hand, § 81-8,239.05(3) must control over the more general provisions of § 8-1120(1).

Because the provisions of § 81-8,239.05(3) control with regard to the litigation costs incurred by the Special Assistant Attorney General appointed to represent the four employees, the Department’s reliance upon § 8-1120(1) appears to have been misguided, and the legal fees at issue should not have been paid out of the SACF.

#### **Reimbursement of Department Expenditures**

As explained previously, the Attorney General responded to the APA’s inquiry with a June 27, 2013, letter that directed the Risk Manager to “pay for all of the litigation expenses associated with” the lawsuit against the four Department employees. Thus, after some two years of litigation and the payment of \$174,467.02 in legal fees by the Department, the Risk Manager is now authorized – having finally received the formal notice mandated by § 81-8,239.05(3) – to begin paying those expenses out of the Fund.

Along with the other issues addressed herein, the Risk Manager’s reimbursement of the legal costs paid already by the Department gives rise to another concern. In compensating the Department for past expenses, the Risk Manager must take care to ensure not to exceed the appropriate budget authority for the 2012 and 2013 fiscal years in which the Department paid its employees’ legal costs. The above table shows the cumulative legal costs paid in both of the two fiscal years.

Depending upon the Risk Manager’s budget authority for either of the fiscal years, it may be necessary to seek additional appropriation(s) from the Legislature in order to reimburse the Department fully for paying its employees’ legal expenses.

#### **The following comment and recommendation have been identified:**

The Department was wrong to pay the \$174,467.02 in legal expenses incurred by the Special Assistant Attorney General in representing its employees against Mr. Bennie’s civil suit.

The compliance issues addressed in this management letter are primarily the result of two coinciding factors:

- 1) The Attorney General's delay in providing the Risk Manager with notification of legal representation, as required by § 81-8,239.05(3); and
- 2) The Department's acting beyond the parameters of its own legitimate authority by paying, out of the SACF, the legal expenses incurred by the Special Attorney General in defending the four employees. In addition, the Department did not record the correct payment information into E1.

Although the Attorney General has recently issued the formal notification needed for the Risk Manager to assume responsibility for the legal fees incurred, potential problems still exist in reimbursing those litigation costs paid in prior fiscal years.

We recommend that the Department refrain from paying any further legal fees for employees being represented by the Attorney General or counsel approved thereby. Instead, should a situation arise in which other such employee legal fees are incurred, we recommend that the Department work directly with the Attorney General to ensure that the Risk Manager is provided immediately with the proper notification of legal representation, which will allow those expenses to be paid per statute. We recommend also that the Department continue working with the Risk Manager to obtain full reimbursement of the litigation costs paid from the SACF. Finally, the Department should take steps to ensure the accuracy of information recorded in E1.

*Department's Response: Thank you for the opportunity to review a draft of the APA management letter. To the extent that the APA management letter does not incorporate or reference our earlier discussions and communications, the Department respectfully continues to disagree with certain of the statements and conclusions contained in the APA management letter. The Department acted in good faith in making the payments. However, the Department commits to continue working with the State Risk Manager to obtain full reimbursement of the litigation costs paid from the Securities Act Cash Fund. The State Risk Manager has established a protocol for payment of future legal fees which the Department is committed to following. The Department will take steps to ensure that the case titles of any future litigation are recorded correctly in E1.*

**APA Response: The APA evaluated carefully, as well as endeavored to implement herein, each valid consideration presented during the earlier discussions and communications with the Department. By seeking reimbursement from the Risk Manager, the Department appears to be tacitly concurring with the APA's conclusion regarding the payment of the employee legal fees.**

\* \* \* \* \*

Our audit procedures are designed primarily on a test basis and, therefore, may not bring to light all weaknesses in policies or procedures that may exist. Our objective is, however, to use our knowledge of the Agency and its interaction with other State agencies and administrative departments gained during our work to make comments and suggestions that we hope will be useful to the Agency.

This report is intended solely for the information and use of the Agency, the Governor and State Legislature, others within the Agency, Federal awarding agencies, pass-through entities, and management of the State of Nebraska and is not intended to be and should not be used by anyone other than the specified parties. However, this report is a matter of public record and its distribution is not limited.

**SIGNED ORIGINAL ON FILE**

Mike Foley  
State Auditor

Enclosures



STATE OF NEBRASKA  
**Office of the Attorney General**

2115 STATE CAPITOL BUILDING  
LINCOLN, NE 68509-8920  
(402) 471-2682  
TDD (402) 471-2682  
FAX (402) 471-3297 or (402) 471-4725

RECEIVED

JUN 28 2013

RISK MANAGEMENT

**JON BRUNING**  
ATTORNEY GENERAL

**DALE A. COMER**  
ASSISTANT ATTORNEY GENERAL  
CHIEF, LEGAL SERVICES BUREAU

June 27, 2013

Shannon Anderson  
Risk Management Administrator  
DAS – Risk Management  
301 Centennial Mall South, Mall Level  
Lincoln, NE 68509

Re: *Robert B. Bennie v. John Munn, et al.*, 4:11CV3089

Dear Ms. Anderson:

It has come to our attention that you had not previously received the attached letters. Please have Risk Management pay for all the litigation expenses associated with the above referenced case.

If you have any questions, please do not hesitate to contact the undersigned.

Sincerely,

JON BRUNING  
Attorney General

Dale A. Comer  
Assistant Attorney General  
Chief, Legal Services Bureau

Enclosures

cc: Stephanie Caldwell

05-464-30



STATE OF NEBRASKA  
**Office of the Attorney General**

2115 STATE CAPITOL BUILDING  
LINCOLN, NE 68509-8920  
(402) 471-2682  
TDD (402) 471-2682  
FAX (402) 471-3297 or (402) 471-4725

STEPHANIE CALDWELL  
ASSISTANT ATTORNEY GENERAL

**JON BRUNING**  
ATTORNEY GENERAL

July 22, 2011

RECEIVED

JUN 28 2013

RISK MANAGEMENT

Rodney R. Gries  
Securities Investigation and Compliance Unit Supervisor  
State of Nebraska Department of Banking and Finance  
P.O. Box 95006  
Lincoln, NE 68509-5006

RE: Robert R. Bennie, Jr. v. John Munn, et. al.

Dear Mr. Gries:

On June 21, 2011, we sent you correspondence indicating we would investigate whether we would represent you in the above referenced lawsuit. Unfortunately, a conflict of interest has arisen that prevents us from representing you. Mark Laughlin will be appointed Special Assistant Attorney General to represent you in the lawsuit. Mr. Laughlin will contact you shortly to discuss his representation. Please let me know if you have any questions. Thank you.

Sincerely,

JON BRUNING  
Attorney General

Stephanie Caldwell  
Assistant Attorney General



STATE OF NEBRASKA  
**Office of the Attorney General**

2115 STATE CAPITOL BUILDING  
LINCOLN, NE 68509-8920  
(402) 471-2682  
TDD (402) 471-2682  
FAX (402) 471-3297 or (402) 471-4725

STEPHANIE CALDWELL  
ASSISTANT ATTORNEY GENERAL

JON BRUNING  
ATTORNEY GENERAL

July 22, 2011

Jackie L. Walter  
Securities Examiner  
State of Nebraska Department of Banking and Finance  
P.O. Box 95006  
Lincoln, NE 68509-5006

RECEIVED

JUN 28 2013

RISK MANAGEMENT

RE: Robert R. Bennie, Jr. v. John Munn, et. al.

Dear Ms. Walter:

On June 21, 2011, we sent you correspondence indicating we would investigate whether we would represent you in the above referenced lawsuit. Unfortunately, a conflict of interest has arisen that prevents us from representing you. Mark Laughlin will be appointed Special Assistant Attorney General to represent you in the lawsuit. Mr. Laughlin will contact you shortly to discuss his representation. Please let me know if you have any questions. Thank you.

Sincerely,

JON BRUNING  
Attorney General

Stephanie Caldwell  
Assistant Attorney General



STATE OF NEBRASKA  
**Office of the Attorney General**

2115 STATE CAPITOL BUILDING  
LINCOLN, NE 68509-8920  
(402) 471-2682  
TDD (402) 471-2682  
FAX (402) 471-3297 or (402) 471-4725

STEPHANIE CALDWELL  
ASSISTANT ATTORNEY GENERAL

**JON BRUNING**  
ATTORNEY GENERAL

July 22, 2011

Jack E. Herstein  
Assistant Director  
State of Nebraska Department of Banking and Finance  
P.O. Box 95006  
Lincoln, NE 68509-5006

RECEIVED

JUN 28 2013

RISK MANAGEMENT

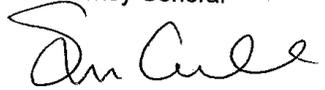
RE: Robert R. Bennie, Jr. v. John Munn, et. al.

Dear Mr. Herstein:

On June 21, 2011, we sent you correspondence indicating we would investigate whether we would represent you in the above referenced lawsuit. Unfortunately, a conflict of interest has arisen that prevents us from representing you. Mark Laughlin will be appointed Special Assistant Attorney General to represent you in the lawsuit. Mr. Laughlin will contact you shortly to discuss his representation. Please let me know if you have any questions. Thank you.

Sincerely,

JON BRUNING  
Attorney General

  
Stephanie Caldwell  
Assistant Attorney General



STATE OF NEBRASKA  
**Office of the Attorney General**

2115 STATE CAPITOL BUILDING  
LINCOLN, NE 68509-8920  
(402) 471-2682  
TDD (402) 471-2682  
FAX (402) 471-3297 or (402) 471-4725

STEPHANIE CALDWELL  
ASSISTANT ATTORNEY GENERAL

JON BRUNING  
ATTORNEY GENERAL

July 22, 2011

John Munn  
Director  
State of Nebraska Department of Banking and Finance  
P.O. Box 95006  
Lincoln, NE 68509-5006

RECEIVED

JUN 28 2013

RISK MANAGEMENT

RE: Robert R. Bennie, Jr. v. John Munn, et. al.

Dear Director Munn:

On June 21, 2011, we sent you correspondence indicating we would investigate whether we would represent you in the above referenced lawsuit. Unfortunately, a conflict of interest has arisen that prevents us from representing you. Mark Laughlin will be appointed Special Assistant Attorney General to represent you in the lawsuit. Mr. Laughlin will contact you shortly to discuss his representation. Please let me know if you have any questions. Thank you.

Sincerely,

JON BRUNING  
Attorney General

Stephanie Caldwell  
Assistant Attorney General



STATE OF NEBRASKA  
DEPARTMENT OF BANKING AND FINANCE

DAVE HEINEMAN  
GOVERNOR

JOHN MUNN  
DIRECTOR

July 9, 2013

HAND-DELIVERED

Shannon M. Anderson  
State Risk Manager  
Administrative Services - Risk Management  
301 Centennial Mall South  
Lincoln, NE 68509-4974

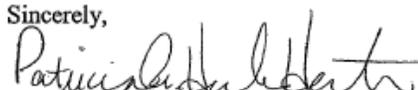
RE: *Robert R. Bennie v. John Munn, et.al.*

Dear Shannon:

In accordance with our telephone conversations relating to the payment of litigation expenses for the above-entitled matter, enclosed please find copies of the billing statements from Fraser Stryker PC LLO, Omaha, Nebraska, from August 2011 through April 30, 2013. Information covered by the attorney-client privilege and work product privilege has been redacted. You will also find enclosed copies of the Department of Banking and Finance's vouchers showing that the Department has paid all of these bills.

If you have any questions relating to the statements, please contact me. If you need to discuss the mechanics of the reimbursement of these payments to the Department, please contact Department Business Manager Margo Sawyer at 402.471.4954 or [margo.sawyer@nebraska.gov](mailto:margo.sawyer@nebraska.gov). Thank you.

Sincerely,

  
Patricia A. Humlicek Herstein  
General Counsel

Enc.

pc w/out Enc.: Margo Sawyer

Location: Commerce Court • Suite 400 • 1230 'O' Street • Lincoln, Nebraska • 68508-1402  
Mailing Address: P.O. Box 95006 • Lincoln, Nebraska • 68509-5006

Financial Institutions Division  
(402)471-2171

[www.ndbf.ne.gov](http://www.ndbf.ne.gov)  
An Equal Opportunity/Affirmative Action Employer

Bureau of Securities  
(402)471-3445



STATE OF NEBRASKA  
DEPARTMENT OF BANKING AND FINANCE

DAVE HEINEMAN

GOVERNOR

July 10, 2013

JOHN MUNN

DIRECTOR

HAND-DELIVERED

Shannon M. Anderson  
State Risk Manager  
Administrative Services - Risk Management  
301 Centennial Mall South  
Lincoln, NE 68509-4974

RE: *Robert R. Bennie v. John Munn, Jack E. Herstein, Rodney R. Griess and Jackie L. Walter, in their official and individual capacities.*  
United States District Court for the District of Nebraska, Case No. 4:11cv3089

Dear Shannon:

This letter is a follow-up to our meeting of July 9, 2013, regarding the payment of litigation expenses for the above-entitled matter. At that time I hand-delivered to you copies of the billing statements from Fraser Stryker PC LLO to the Department of Banking and Finance from August 2011 through April 30, 2013. Information covered by the attorney-client privilege and work product privilege was redacted from the statements. I also delivered copies of the Department's vouchers showing that the Department paid all of these bills.

Please be advised that prior to the Department's payment of each of the billing statements, I determined the legitimacy of such charges. I reviewed each charge for professional services and costs advanced, and resolved any questions prior to authorizing payment (for example, see memo attached to the January 2013 invoice).

The Department has paid a total of \$174,467.02 in this matter. Attached is a summary sheet which shows the payments over the last two fiscal years. If you need additional information, please contact me or Department Business Manager Margo Sawyer. Thank you.

Sincerely,

Patricia A. Humlicek Herstein  
General Counsel

Enc.

pc: Margo Sawyer

Location: Commerce Court • Suite 400 • 1230 'O' Street • Lincoln, Nebraska • 68508-1402  
Mailing Address: P.O. Box 95006 • Lincoln, Nebraska • 68509-5006

[www.ndbf.ne.gov](http://www.ndbf.ne.gov)

Financial Institutions Division  
(402)471-2171

An Equal Opportunity/Affirmative Action Employer

Bureau of Securities  
(402)471-3445

Invoice Date	G/L Date	Gross Amount
08/31/2011	10/04/2011	1,923.00
09/30/2011	10/05/2011	15,231.55
10/14/2011	12/07/2011	11,834.08
01/31/2012	02/08/2012	3,311.00
02/20/2012	03/01/2012	8,625.50
03/28/2012	04/05/2012	5,502.10
04/30/2012	05/10/2012	10,292.10
05/09/2012	05/10/2012	13,284.50
	<b>FY 11/12 Total</b>	<b>70,003.83</b>
06/26/2012	07/03/2012	12,869.70
07/25/2012	08/01/2012	5,385.60
08/20/2012	08/24/2012	9,254.70
09/28/2012	10/03/2012	3,554.60
10/31/2012	11/16/2012	26,701.45
11/30/2012	12/18/2012	21,384.00
01/31/2013	02/14/2013	11,360.35
02/26/2013	03/12/2013	3,081.30
03/26/2013	04/02/2013	7,382.54
04/30/2013	05/02/2013	919.20
05/13/2013	05/24/2013	2,569.75
	<b>FY 12/13 Total</b>	<b>104,463.19</b>
	<b>Total</b>	<b>174,467.02</b>