

BEFORE THE
TREASURER'S OFFICE
OF
THE STATE OF WEST VIRGINIA

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IN RE: RFI

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BEFORE: DIANA STOUT, General Counsel

HEARING: Thursday, April 12, 2018
11:00 a.m.

LOCATION: State Treasurer's Office
315 70th Street SE
Charleston, WV 25304

Reporter: Caroline Swanson

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A P P E A R A N C E S

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ALSO PRESENT: WILMA HARRISON, LEGAL ASSISTANT

MIKE HOLTSCLAW, BB&T

JOHN BADOVINAC, GRIFFIN, STEVENS & LEE

CONSULTING

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DISCUSSION AMONG PARTIES

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ATTORNEY STOUT: Good morning.

MR. HOLTSCRAW: Good morning.

ATTORNEY STOUT: My name is Diana Stout.

I'm General Counsel to State Treasurer, John Perdue. And we welcome you today on behalf of the Treasurer to deal with the issues that are associated with the request for information. What we're going to do today is generally just hit, kind of an overview of the RFI. And take some informational-base for all of this. Everybody that is present in the room has signed in. So I would ask that everybody on the telephone please state your name, so that we can record that.

MR. BADOVINAC: John Badovinac with Griffin, Stevens & Lee.

ATTORNEY STOUT: Okay. Anybody else on the phone? If not, we'll proceed. We had --- we issued a request for information on March 30th. The purpose of this is pretty well understood, I believe. But we'll just kind of go over it. The state has enacted what we'll refer to as Cannabis Act. It's for medical cannabis. And the purpose of our issue is basically trying to provide a banking function for that. And that

1 doesn't mean it has to be a traditional banking
2 operation. But it has to be something that is lawful.
3 That's the issue of trying to achieve something. Our
4 current banks are really very concerned about how this
5 operates. And today, are basically expressing concern
6 that they do not want to process these loans. Generally,
7 the Bureau of Public Health is the processor. When we
8 issued the RFI, we also issued the attachment of the
9 letter that went out, as well as the enroll committee
10 substitute for Senate Bill 386, which is the enabling
11 legislation that was enacted on April 6, 2017.

12 The Bureau of Public Health has been
13 working on this. They have, in the last week and a half,
14 I guess, issued legislative rules on an emergency basis
15 at this point. Those probably will go into effect in the
16 next 30 days. Generally deals with distributors and
17 growers, et cetera. The banking function still resides
18 with this office. So there are some issues that we're
19 dealing with, with those rules as well because of the
20 banking functions.

21 The deadline for questions was Tuesday.
22 And we received no questions from anybody. This is a
23 non-mandatory meeting. And again, we expressed the
24 purpose of that. We are going to be releasing the

1 addendum tomorrow by 3:00 p.m. The transcript of today
2 will probably not be available yet. But it will be
3 posted on the website as soon as it is available. And
4 the responses are due by 1:00 p.m. on April 20th. Again,
5 there will be no award made from this request for
6 information. The purpose is to try to find a solution or
7 multiple solutions that basically will provide for us the
8 means of banking the money from the cannabis operations,
9 the taxes, et cetera. Any questions anybody has at this
10 point?

11 MR. BADOVINAC: I do have questions. But
12 I can save them.

13 ATTORNEY STOUT: No. Go right ahead.

14 MR. BADOVINAC: One question is you said
15 the Bureau of Public Health is administering this?

16 ATTORNEY STOUT: Correct.

17 MR. BADOVINAC: So will they --- will they
18 have a role or will you interact with them, will the
19 Treasury interact with Public Health in terms of process
20 flow?

21 ATTORNEY STOUT: Absolutely. Yes.

22 MR. BADOVINAC: Okay.

23 ATTORNEY STOUT: I mean, they will be
24 setting the fees. They're set by code. But they'll

1 basically be providing a lot of the documentation that
2 will need to be. Plus the tax department will be
3 collecting the taxes once this is fully operational.
4 Yes?

5 ATTORNEY BIBART: My name is Ted Bibart.
6 I'm an attorney from Columbus, Ohio who represents Closed
7 Loop Financial Systems. I think the gentleman on the
8 phone, the question to me seems, in following up to his,
9 is it's clearly the Bureau of Public Health who's
10 administering the program.

11 ATTORNEY STOUT: Correct.

12 ATTORNEY BIBART: But this banking
13 function will be housed and managed by the Treasurer's
14 office.

15 ATTORNEY STOUT: That's correct.

16 ATTORNEY BIBART: And so it seems to me
17 like the major concern right now as it relates between
18 the Bureau of Public Health and the Treasurer's Office is
19 there's about to be fees that are paid for licensing,
20 other elements of the program. And the concern is how do
21 you even take those monies in at this point. Because the
22 banks that generally are the depository for those funds
23 are telling the Office of the Treasury that we won't
24 accept those.

1 Is that correct?

2 ATTORNEY STOUT: That's correct. That's
3 laid out in the RFI.

4 ATTORNEY BIBART: Yeah. That's how I
5 understood it. So I guess my question is it sounds like
6 the solution needs to be up and running and instituted as
7 soon as possible for you even to accept those monies.

8 ATTORNEY STOUT: That's correct.

9 ATTORNEY BIBART: Okay.

10 ATTORNEY STOUT: We are looking for a
11 solution that we can expedite and utilize. Again, as
12 long as it's lawful.

13 ATTORNEY BIBART: Of course.

14 ATTORNEY STOUT: That's the issue that
15 we're really facing.

16 ATTORNEY BIBART: Of course. Is there a
17 timeline that you can give us at all for?

18 ATTORNEY STOUT: We have not established
19 one. But we would hope that as soon as we can --- do
20 this expediently. I mean, if there truly are solutions
21 with regards to this, we will probably be issuing our
22 cure an RFP to basically then select the apparent
23 successful bidder.

24 ATTORNEY BIBART: Okay.

1 ATTORNEY STOUT: Because there can be no
2 award from there, per se.

3 ATTORNEY BIBART: Of course. So is this
4 an appropriate forum to provide information? Or is this
5 merely to just ask questions?

6 ATTORNEY STOUT: This is merely to ask
7 questions about the procurement itself.

8 ATTORNEY BIBART: Great.

9 MR. BADOVINAC: I actually have another
10 question, if I may.

11 ATTORNEY STOUT: Okay.

12 MR. BADOVINAC: So we responded to RFIs
13 before. And usually, we're fairly specific with
14 information. However, in this case, seeing that this is
15 a public document, will be out in the public domain, if
16 you have proprietary information or processes, would you
17 accept more of a vague reference to that than being
18 specific?

19 ATTORNEY STOUT: If you believe that you
20 cannot sufficiently cover that with regards to the
21 exemptions that are specified in the West Virginia code,
22 such as anything that might be trademarked or trade
23 secrets type of activity.

24 MR. BADOVINAC: Right.

1 ATTORNEY STOUT: If it's labeled as that,
2 and we believe that that's what that is, then it will not
3 be disclosed, except pursuant to a court order.

4 MR. BADOVINAC: If it's not?

5 ATTORNEY STOUT: Then that's the issue
6 that ---.

7 MR. BADOVINAC: If it's not trademarked or
8 copywritten?

9 ATTORNEY STOUT: Right. If that's --- if
10 it's not and you choose to be vague about it, that's up
11 to you. It may not provide us with sufficient
12 information to be able to determine whether or not your
13 solution is viable. But that's the issue. We need to
14 find viable, lawful solutions.

15 MR. BADOVINAC: Okay. But it wouldn't be
16 summarily dismissed? If we would reference in there that
17 vague because of the, you know, not copyright written
18 process in a public, you know, public document.

19 ATTORNEY STOUT: As long as anybody that
20 submits a response has proposed something that is
21 potentially viable, the proposal/response will be
22 reviewed.

23 MR. BADOVINAC: Okay. And I'm sorry to
24 ask another question.

1 ATTORNEY STOUT: That's okay.

2 MR. BADOVINAC: But if you do not respond
3 to the RFI and then you subsequently release an RFP, that
4 would not block you from --- prevent you from responding
5 to the RFP?

6 ATTORNEY STOUT: Absolutely not. Anybody
7 would be able to propose or submit for either document,
8 either request for information or the request for
9 proposal/quotations. There will be no --- there's no
10 pre-qualification in this at this point.

11 MR. BADOVINAC: Okay.

12 MR. HOLTSCRAW: It's non-traditional, but
13 lawful.

14 ATTORNEY STOUT: Uh-huh (yes.)

15 MR. HOLTSCRAW: And in this RFI, it
16 illustrates 102 percent collateral. It illustrates the
17 following the standards and practices that banks are used
18 to. So given that, and given forms such as 1196, is
19 there room to make changes and remove those requirements
20 since this is a different, a non-standard relationship?

21 ATTORNEY STOUT: If that is something that
22 you would like to propose, we would absolutely consider
23 it.

24 MR. HOLTSCRAW: Mike Holtsclaw, BB&T.

1 ATTORNEY BIBART: Referencing the ---.

2 ATTORNEY STOUT: Sorry. She's correct.

3 We need to have you state your name.

4 ATTORNEY BIBART: Okay. I'm sorry.

5 Again, Ted Bibart with Closed Loop Financial. The
6 Treasurer's letter from March 30th had indicated that the
7 solution that the legislation or the legislative body was
8 looking for was to protect medical marijuana patients. I
9 assume that should also include the business enterprises
10 as well.

11 Correct? You're looking for a complete,
12 robust solution that's going to cover the entire program.
13 Not just patient-focused.

14 ATTORNEY STOUT: Our basic concern
15 initially was with regard to the patients because that's
16 really why the legislation was enacted. But clearly, we
17 don't think that anybody should be at risk in the
18 process.

19 ATTORNEY BIBART: Okay.

20 And it had also referenced the idea that
21 banking alternatives similar to other states that have
22 legalized medical marijuana. Are you aware of other
23 banking alternatives or solutions that actually exist in
24 the industry that you are contemplating there?

1 ATTORNEY STOUT: We have examined most of
2 the states that are currently operating a medical
3 marijuana program. As well as some of those that just
4 have a recreational program. So we're aware of what
5 their banking solutions are.

6 ATTORNEY BIBART: Okay.

7 MR. HOLTSCRAW: Mike Holtsclaw. Has the
8 state looked at actually creating a cannabis bank under
9 state law?

10 ATTORNEY STOUT: We are open to consider
11 any and all proposals and responses.

12 ATTORNEY BIBART: Ted Bibart.

13 ATTORNEY STOUT: Yes.

14 ATTORNEY BIBART: Has there been any local
15 banks, particularly those that may be state chartered or
16 credit unions who have expressed a willingness to
17 participate if there was a state-sponsored system that
18 provided them additional protection?

19 ATTORNEY STOUT: I am sure that there has
20 been an interest expressed to somebody. It has not been
21 expressed to me.

22 ATTORNEY BIBART: Okay.

23 ATTORNEY STOUT: But I do know that there
24 has been proposed legislation that did not get enacted

1 during the 2018 legislative session, that would have
2 opened the door with regards to credit unions. But that
3 did not pass. And I guess I would also say that the
4 solution that gets proposed that we actually view as
5 viable or those that are, we may seek legislation to
6 effectuate those from the West Virginia legislation. I'm
7 not saying they're going to pass. But we would probably
8 want to seek that type of authorization.

9 ATTORNEY BIBART: Ted Bibart. So if we
10 were to present solutions that were based on
11 contingencies that would be a function of essentially the
12 same software platform that has been developed to be
13 capable of dropped in to any state that would, for
14 example, work off of the contingencies that the gentleman
15 discussed relative to a state-created financial
16 institution, or for example, a state-created trust
17 corporation, or that would include traditional financial
18 institutions. That if those could be referenced in
19 particularity, based on those contingencies that, as you
20 referenced, would possibly not be known until legislation
21 was passed. Could that response to a prospective RFP be
22 part of then, larger conversations that could address
23 those contingencies that we would not be aware of in just
24 responding to the RFP?

1 ATTORNEY STOUT: That's always a situation
2 with something that's novel or new, that you may
3 encounter circumstances. And we would hope that the RFP
4 or RFQ would be sufficiently vague in this area in a way,
5 to allow for things that may occur that we would not be
6 expecting up front.

7 ATTORNEY BIBART: Thank you.

8 ATTORNEY STOUT: Or sufficiently open.
9 Maybe vague is not a pretty good word for it. But
10 sufficient. The contract itself, particularly, would
11 allow for deviations and changes based upon operational
12 matters that were not contemplated when the contract was
13 entered.

14 ATTORNEY BIBART: Excellent. Thank you.

15 MR. HOLTSCRAW: Mike Holtsclaw. Is the
16 state willing to maintain the data rates of all the
17 customers who are depositing into these accounts? And
18 are these accounts going to be specifically related to
19 the fee? Being its licensing and taxes only state-funds.
20 And there's not expectation for marijuana producers or
21 other entities to make deposits to the bank?

22 ATTORNEY STOUT: If that is something you
23 would like to propose, please feel free to do so. We
24 have not made any finite decisions on how we're going to

1 operate this. This is part of the reason why we're
2 issuing the RFI. So that we can take any and all
3 suggestions into consideration. Tax, at a minimum, would
4 have the database of anybody paying taxes. So clearly,
5 there will be some type of databases available. And the
6 Bureau of Public Health has to license certain entities
7 under the Act. So there will be some type of databases
8 of entities in existence.

9 MR. HOLTSCRAW: We also have issues then.

10 ATTORNEY STOUT: No question.

11 MR. HOLTSCRAW: With regard to holding
12 funds and illustrate state banks, is there an openness or
13 willingness to engage third-parties to facilitate holding
14 or transfer those funds?

15 ATTORNEY STOUT: We're open to any
16 suggestion along those lines. Any further questions or
17 issues to be raised today? If not, I thank everybody.

18 MR. BADOVINAC: I ---.

19 ATTORNEY STOUT: Oh, okay.

20 MR. BADOVINAC: I just have a quick format
21 question. I was not able to hear, you know, who was in
22 the room. Are you going to post, you know, who was
23 asking questions?

24 ATTORNEY STOUT: Absolutely. There will

1 be a transcript of today's proceeding that will be
2 published on the website. And we'll release that as soon
3 as it's available. The addendum going out tomorrow
4 basically has no questions. So it really does not
5 contain anything. We may put some type of information in
6 kind of covering the issues generally that were discussed
7 today. But the transcript will be released as soon as
8 it's available. And it, again, ---

9 MR. BADOVINAC: Okay.

10 ATTORNEY STOUT: --- will be posted on the
11 website for anybody that wants to see it. As well as the
12 list of attendees.

13 MR. BADOVINAC: Okay. Very good. Thank
14 you.

15 ATTORNEY STOUT: Sure. Any other issues
16 or questions? Anything else to be raised at this
17 meeting? If not, we thank you all very much for
18 attending and calling in. And we look forward to
19 receiving your responses.

20 MR. HOLTSCRAW: Thank you.

21 MR. BIBART: Thank you.

22 MR. BADOVINAC: Thank you.

23 * * * * *

24 HEARING CONCLUDED AT 11:16 A.M.

1 CERTIFICATE

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3 I hereby certify, as the stenographic reporter,
4 that the foregoing proceedings were taken stenographically
5 by me, and thereafter reduced to typewriting by me or
6 under my direction; and that this transcript is a true and
7 accurate record to the best of my ability.

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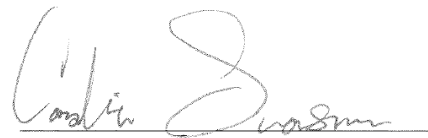
9 I certify that the attached transcript meets the
10 requirements set forth within article twenty-seven,
11 chapter forty-seven of the West Virginia Code.

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Caroline Swanson,

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Court Reporter

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