



State of West Virginia
Office of the Attorney General

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Attorney General

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**WRITTEN DETERMINATION REGARDING THE APPOINTMENT OF OUTSIDE COUNSEL
ON BEHALF OF THE WEST VIRGINIA DEPARTMENT OF REVENUE, THE WEST
VIRGINIA LOTTERY COMMISSION & THE WEST VIRGINIA RACING COMMISSION**

The West Virginia Department of Revenue, West Virginia Lottery Commission, and the West Virginia Racing Commission (hereafter collectively the "state clients") are in need of legal representation in the case of *SER The Charles Town Horsemen's Benevolent and Protective Association, Inc., v. The Cabinet Secretary of the West Virginia Department of Revenue, et al.*, Docket No. 13-0673.

More specifically, the state clients are in need of legal representation to respond to a *Petition for a Writ of Mandamus* filed with the Supreme Court of Appeals of West Virginia. The Petition questions the constitutionality of an Interagency Agreement in which the West Virginia Lottery Commission would provide legal services for the West Virginia Racing Commission through the use of in-house counsel, and not the Attorney General's Office.

In accordance with Section O of the Attorney General's Policy on Outside Counsel (Policy #WVAGO-004), the Office of the Attorney General has determined that it must recuse itself from the legal matter in question as a result of a potential conflict of interest. As the legal matter in question directly involves the scope of the Attorney General's constitutional authority, the Office of the Attorney General could be required to intervene as an adverse party to the state clients. As such, the Office of the Attorney General cannot implement in good faith the selection of outside counsel through the Office's competitive bidding policy.

Consequently, the state clients are hereby authorized to seek outside counsel legal representation pursuant to Section O of Policy #WVAGO-004.

A handwritten signature in blue ink, appearing to read "Daniel W. Greear", written over a horizontal line.

Daniel W. Greear
Chief Counsel

Date Signed: July 16, 2013