

IN THE  
**Supreme Court of Indiana**

No. \_\_\_\_\_

**Court of Appeals Cause No. 49A02-0711-CV-987**

|                                     |   |                       |
|-------------------------------------|---|-----------------------|
| FOUNDATIONS OF EAST CHICAGO, INC.,  | ) | Appeal from the       |
| successor by merger to EAST CHICAGO | ) | Marion Superior Court |
| COMMUNITY DEVELOPMENT               | ) |                       |
| FOUNDATION, INC. and TWIN CITY      | ) | Cause No.             |
| EDUCATION FOUNDATION, INC.,         | ) | 49D13-0705-PL-019348  |
|                                     | ) |                       |
| Appellant (Plaintiff Below),        | ) | The Honorable         |
|                                     | ) | S.K. Reid, Judge      |
| v.                                  | ) |                       |
|                                     | ) |                       |
| CITY OF EAST CHICAGO,               | ) |                       |
|                                     | ) |                       |
| Appellee (Defendant Below), and     | ) |                       |
|                                     | ) |                       |
| STATE OF INDIANA,                   | ) |                       |
|                                     | ) |                       |
| Appellee (Intervenor-Defendant      | ) |                       |
| Below).                             | ) |                       |

**MOTION TO STRIKE *AMICUS CURIAE* BRIEF OF THE INDIANA GAMING COMMISSION IN SUPPORT OF THE PETITION TO TRANSFER**

Appellee the State of Indiana, by counsel, respectfully requests that this Court strike the *Amicus Curiae* Brief of the Indiana Gaming Commission in Support of Petition to Transfer. In support of this Motion, the State asserts the following:

1. On May 3, 2007, the Foundations of East Chicago, Inc. (“FEC”) filed its Complaint for Declaratory Judgment, Preliminary and Permanent Injunction in this matter, naming as defendants the City of East Chicago and the Indiana Gaming Commission (“Commission”). Appearances were filed on behalf of the

Commission by Deputy Attorney General Heather L. Hagan on August 13, 2007, and Solicitor General Thomas M. Fisher on August 20, 2007. At no other point in this litigation has any other attorney appeared on the Commission's behalf.

2. On September 12, 2007, FEC stipulated to the dismissal of the Commission from the lawsuit. That same day, the State of Indiana, by counsel Thomas M. Fisher and Heather L. Hagan, moved to intervene in the matter as of right for the purpose of defending the constitutionality of the statute being challenged by FEC. On September 13, 2007, the trial court granted the State's motion to intervene.

3. Since its dismissal from the lawsuit, the Commission has remained uninvolved in this matter, and did not seek leave to appear as an *amicus curiae* in either the trial court or the Court of Appeals.

4. On May 28, 2009, without consulting the Office of the Attorney General, the Commission filed a Motion to Appear as *Amicus Curiae* and for Permission to File an *Amicus Curiae* Brief in support of FEC's Petition to Transfer, which is currently pending before this Court. Accompanying the Motion was the Appearance of Norman T. Funk and Rori L. Goldman, from the law firm of Hill, Fulwider, McDowell, Funk & Matthews, on behalf of the Commission.

5. The Attorney General intended to file an objection to this motion by the rule-imposed deadline of June 12, 2009. *See* Ind. Appellate Rule 34(C) (providing that "[a]ny party may file a response to a motion within fifteen (15) days after the motion is served). The Court, however, granted the motion only 5 days

after it was filed, well before the Attorney General had an adequate opportunity to file its objection.

6. The Attorney General is charged with the responsibility of defending the State and its officers and employees when sued in their official capacities. Ind. Code § 4-6-2-1. *See also, State ex rel. Sendak v. Marion County Superior Court*, 373 N.E.2d 145, 149 (Ind. 1978) (holding that the legislature has chosen to vest the responsibility for the legal representation of the State in the Attorney General). No State agency is permitted to hire another attorney to perform legal services unless the Attorney General renders his written consent. Ind. Code § 4-6-5-3.

7. The Attorney General has not provided written consent to the Commission to hire outside counsel in this matter and does not now consent to the use of outside counsel. Accordingly, Mr. Funk and Mr. Goldman are statutorily precluded from representing the Commission in this lawsuit.

8. The Attorney General intends to file a brief on behalf of the State of Indiana in response to the Petition for Transfer by the June 22 deadline. It is the Attorney General's responsibility to harmonize the interests of all state government agencies and officials and to reach a decision as to litigation policy that the Attorney General deems to be in the best interests of the State as a whole. The Attorney General will carry out that responsibility in this matter.

WHEREFORE, the State of Indiana respectfully requests that this Court STRIKE the *Amicus Curiae* Brief of the Indiana Gaming Commission in Support of Petition to Transfer.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of June, 2009, a copy of the foregoing was served via First Class United States mail, postage pre-paid to the following:

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