



**IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA**

<b>THOMAS, MEANS, GILLIS &amp; SEAY, P.C.,</b>	)	
<b>a Domestic Professional Corporation,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	<b>CIVIL ACTION NO.: CV-10-_____</b>
<b>v.</b>	)	
	)	
<b>THOMAS L. WHITE, JR., as Comptroller</b>	)	
<b>of the State of Alabama,</b>	)	
	)	
<b>Defendant.</b>	)	

**COMPLAINT**

**THE PARTIES**

1. Plaintiff, THOMAS, MEANS, GILLIS & SEAY, P.C., is a Domestic Professional Corporation with its principal place of business located at 3121 Zelda Court, Montgomery, Alabama 36106. Thomas, Means, Gillis & Seay is a law firm with offices in Montgomery, Alabama, Birmingham, Alabama and Atlanta, Georgia.

2. Defendant, THOMAS L. WHITE, JR. (“White”), is being sued in his representative capacity as State Comptroller of the State of Alabama. Defendant White may be served at 100 North Union Street, Suite 220, Montgomery, Alabama 36130.

**STATEMENT OF FACTS**

3. The Plaintiff incorporates by reference all of the allegations of preceding paragraphs of this Complaint as if the same were set out fully herein.

4. On or about October 7, 2009, the House of Representatives of the State of Alabama entered into a Professional Services Contract with Plaintiff for Plaintiff to “advise, consult and assist the Joint Legislative Contract Review Committee on any matters that come

before the committee” (see Exhibit 1), hereinafter referred to as “the Subject Contract.” The stated value of the Subject Contract was \$200,000 with a stated rate of compensation of \$195 per hour to be paid out of State funds and a contract term beginning on October 7, 2009 and ending on September 30, 2010. (see Exhibit 1). Greg Pappas, Clerk of the House of Representatives, executed the Subject Contract on behalf of the House of Representatives, and Tyrone C. Means, Managing Partner, executed the Subject Contract on behalf of Thomas, Means. Gillis & Seay, P.C. (see Exhibit 1).

5. On or about October 8, 2009, pursuant to Alabama Code § 29-2-41, the Joint Legislative Contract Review Committee (“the Committee”) reviewed and approved the Subject Contract, with the Committee describing the contract services to be provided as follows: “Advise, consult and assist the Committee including, but not limited to, the matter pertaining to contract between Finance Dept. and Paragon Source” (see Exhibit 1).

6. On or about October 29, 2009, the Plaintiff, as legal counsel to and on behalf of the Committee and its Chairman, Representative Alvin Holmes, filed a “Petition for Declaratory Judgment and Injunctive Relief” against the Alabama Department of Finance, Acting Director of Finance Bill Newton, Governor Riley, Paragon Source, LLC, and two principals of Paragon Source, LLC, in Montgomery County, Alabama Circuit Court (CV-09-901275) (the “underlying litigation”). Plaintiff filed said Petition at the express direction of the Joint Legislative Contract Review Committee.

7. In the months of October, November and December 2009, attorneys and support staff employed with the Plaintiff worked more than SEVEN HUNDRED SIXTY-FOUR (764) hours on the underlying litigation pursuant to the Subject Contract. While the Subject Contract called for a compensation rate of \$195 per hour, Thomas, Means, Gillis & Seay, P.C. actually

billed most of their attorneys' time on the matter at discounted rates of \$125 per hour or \$185 per hour despite no legal obligation to do so.

8. While the Plaintiff and its clients in the underlying litigation matter, the Committee and Chairman Holmes, were dissatisfied and disagreed with the ruling and dismissal of the underlying litigation by that trial court, Plaintiff's clients were very satisfied with the quality of Plaintiff's work in that underlying litigation.

9. On or about November 20, 2009, Plaintiff submitted an invoice to the Clerk of the House of Representatives in the amount of \$45,472.98 for legal services performed in October 2009 (the "October Invoice").

10. On or about December 17, 2009, the State issued payment to Plaintiff for the full amount of the \$45,472.98 October 2009 Invoice (see Exhibit 2).

11. On or about December 9, 2009, Plaintiff submitted an invoice to the Clerk of the House of Representatives in the amount of \$26,740.44 for legal services performed in November 2009 (the "November Invoice").

12. On or about January 5, 2010, Plaintiff submitted an invoice to the Clerk of the House of Representatives in the amount of \$51,614.61 for legal services performed in December 2009 (the "December Invoice").

13. By letter dated February 11, 2010, Defendant White wrote to the Alabama House of Representatives refusing payment of Voucher Number 00223000167 to Thomas, Means, Gillis & Seay, P.C., and stating that "[f]or reasons discussed in this letter, the above referenced voucher cannot be paid and is hereby returned, as it is an obligation undertaken by an instrumentality of the state without authority to do so and therefore cannot be paid from the State Treasury.... Nowhere in its enabling legislation is the Committee expressly vested with the

power to sue, nor can that power be implied from the limited directive that it review and comment on contracts submitted to it. As the instigation of a lawsuit in its name and the name of its Chairman exceeds the authority of the Committee, any expenses incurred for that purpose are not legally incurred obligations of the State and cannot be paid from the State Treasury.” (see Exhibit 3).

14. Contrary to the reason expressly stated by Defendant White for denying payment to Plaintiff for its November and December 2009 invoices, the House of Representatives definitively had the power to contract with the Plaintiff under the Subject Contract. Nowhere in the Alabama Constitution is the House of Representatives expressly limited or prohibited from contracting with outside legal counsel for any purpose. Accordingly, the House of Representatives had the power and authority to contract with Plaintiff for the purpose expressed in the Subject Contract. See Hart v. deGraffenried, 388 So. 2d 1196, 1198 (Ala. 1980) (“The Legislature is laden with a broad form of governmental power which is plenary in character, and subject only to those *express limitations* appearing in the Constitution.”); County Board of Education v. Taxpayers & Citizens, 163 So. 2d 629, 634 (Ala. 1964) (“There are no limits to the legislative power of state governments save those written into its constitution. All that the legislature is not forbidden to do by the organic law, state or federal, it has full power to do.”). Defendant White’s denial of payment to Plaintiff, which was done without any due process protections for the Plaintiff, and which was based on Defendant White’s own personal opinion, or more likely, based on that of Defendant Riley, that the House of Representatives was without authority to contract with Plaintiff, clearly infringes on the powers of the House of Representatives, and the judicial branch as well, and is an impermissible violation of the separation of powers doctrine as provided in § 43 of the Alabama Constitution (1901) in that the

Executive branch is trying to exercise both legislative and judicial powers by limiting the powers of the House of Representatives and by interpreting (incorrectly) the laws of the State of Alabama, which is the province of the Judicial branch.

### **COUNT 1 – MANDAMUS RELIEF**

15. The Plaintiff incorporates by reference all of the allegations of preceding paragraphs of this Complaint as if the same were set out fully herein.

16. Once the House of Representatives legally contracted with Plaintiff under Alabama law for services and then accepted such services, the State of Alabama became legally obligated to pay for the services accepted in accordance with the terms of the Subject Contract.

17. Plaintiff has completed its portion of the Subject Contract and presented proper invoices to the State of Alabama. While the State of Alabama properly paid Plaintiff's October 2009 Invoice, the State of Alabama, by and through Defendant White, has failed and refused to pay Plaintiff for the work described in Plaintiff's November 2009 and December 2009 Invoices, totaling \$78,355.05, thereby causing a breach of the Subject Contract. Defendant White's failure and refusal to pay the contract amount owed to Plaintiff was made in bad faith, was a willful action contrary to State law, and was beyond his authority and discretion.

18. The payment of that \$78,355.05 amount, a contractually specified debt that was properly earned and billed by the Plaintiff, would be only a ministerial act that Defendant White did not have the discretion to avoid. See Ala. DOT v. Harbert Int'l, Inc., 990 So. 2d 831 (Ala. 2008); State Highway Dep't v. Milton Constr. Co., 586 So. 2d 872 (Ala. 1991); and State Board of Administration v. Roquemore, 117 So. 757 (Ala. 1928).

19. Plaintiff is entitled to a writ of mandamus compelling Defendant White to perform the ministerial act of issuing payment to Plaintiff for the \$78,355.05 owed to Plaintiff under the Subject Contract. See Ala. DOT v. Harbert Int'l, Inc., 990 So. 2d 831 (Ala. 2008); State Highway Dep't v. Milton Constr. Co., 586 So. 2d 872 (Ala. 1991); and State Board of Administration v. Roquemore, 117 So. 757 (Ala. 1928).

20. Plaintiff is also entitled to interest on said amount due, pursuant to Alabama Code § 41-16-3, because Defendant White unjustifiably failed to make such payments within thirty (30) days of being presented with Plaintiff's invoices.

**WHEREFORE, PREMISES CONSIDERED**, Plaintiff respectfully demands a writ of mandamus compelling Defendant White to issue payment to Plaintiff in the amount of \$78,355.05 plus interest, costs and attorney fees.

Respectfully submitted this 29<sup>th</sup> day of March 2010

s/ Thomas T. Gallion, III

Thomas T. Gallion, III (GAL010)  
Attorney for the Plaintiff

**OF COUNSEL:**

Constance C. Walker  
**Haskell Slaughter Young & Gallion**  
305 S. Lawrence Street (36104)  
Post Office Box 4660  
Montgomery, Al 36103-4660  
(334) 265-8573

Defendant may be served at the following address:  
Thomas L. White, Comptroller  
Department of Finance  
State of Alabama  
100 North Union Street, Suite 220  
Montgomery, Alabama 36130-2602

74041-001  
#324,506



Professional Services Contract

This contract is made by and between the House of Representatives and Tyrone Means and the law firm of Thomas, Means, Gillis & Seay, P.C. - 3121 Zelda Court Road, Montgomery, Alabama 36106 ("Contractor").


Contractor shall advise, consult and assist the Joint Legislative Contract Review Committee on any matters that come before the committee.


The House of Representatives agrees to pay Contractor \$195 per hour not to exceed \$200,000.00.


The contract shall become effective on October 7, 2009 and shall terminate on ~~October 7, 2010.~~  
Sept. 30 DBH

This contract may be terminated by either party upon the giving of thirty (30) days written notice to the other party.

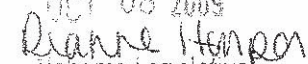
In Witness Whereof, the parties hereunto have executed this contract as of the 7th day of October, 2009.

  
Mr. Tyrone Means  
Thomas, Means, Gillis & Seay, P.C.

  
Mr. Greg Pappas  
Clerk, House of Representatives

  
Representative Alvin Holmes  
Chairman, Joint Legislative Contract Review Committee

Reviewed by Contract  
Review Committee

OCT 08 2009  
  
Alabama Legislative  
Dianne Harper, Clerk  
10CLC7008

Plaintiff's Exhibit

Contract Review Permanent Legislative Oversight Committee  
Alabama State House  
Montgomery, Alabama 36130

**LEGAL SERVICES CONTRACT REVIEW REPORT**

(Separate review report required for each contract)

Name of State Agency: House of Representatives

Name of Contractor: THOMAS, MEANS, GILLIS + SCALI

Contractor's Physical Street Address (No P.O. Box) 321 Zelda Court Rd Montgomery AL  
City ST

Is Contractor Registered with Alabama Secretary of State to do Business as a Corporation in Alabama?  
YES  NO  If Yes, in what State is Contractor Incorporated? \_\_\_\_\_

Is Act 2001-955 Disclosure Form Included with this Contract? YES  NO   
Was a Lobbyist/Consultant Used to Secure this Contract? YES  NO

If Yes, Give Name: \_\_\_\_\_

Contract Number: 10CLEG008

Contract/Amendment Total: \$ 200,000 (estimate if necessary)

Rate of Compensation: \$ 195 (If over \$85/hr, attach Governor or Attorney General approval)

Amount of Retainer: & \_\_\_\_\_ Is this Contract for Litigation? YES \_\_\_\_\_ NO \_\_\_\_\_  
Is this a Contingency Contract? YES \_\_\_\_\_ NO

Attorney Assigned Work: TURONE MEANS  
Is Contractor Appointed by Attorney General? YES \_\_\_\_\_ NO \_\_\_\_\_ (If yes, attach copy of appointment letter)

% State Funds:  % Federal Funds: \_\_\_\_\_ % Other Funds: \_\_\_\_\_ \*\*

\*\*Please Specify Source of Other Funds (Fees, Grants, etc.) \_\_\_\_\_

Date Contract Effective: Oct 7, 2009 Date Contract Ends: Sept. 30, 2010

Type Contract: NEW:  RENEWAL: \_\_\_\_\_ AMENDMENT: \_\_\_\_\_

If AMENDMENT, Complete A through C:

(A) Original contract total \$ \_\_\_\_\_

(B) Amended total prior to this amendment \$ \_\_\_\_\_

(C) Amended total after this amendment \$ \_\_\_\_\_

Summary of Contract Services to be Provided: Advise, consult and assist the  
Committee including, but not limited to, the matter  
pertaining to contract between Finance Dept. and Aragon  
Source

Why Contract Necessary AND why this Service cannot be performed by Merit Employee:  
Legal representative for Joint Legislative  
Contract Review Committee

I certify that the above information is correct.

[Signature]  
Signature of Agency Head

Printed Name

[Signature]  
Signature of Contractor

Printed Name

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- Spending
- Disclaimer
- Contacts
- FAQ's
- Glossary

### Payee Detail More

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#### Payments by Payee


**Payment Fiscal Year:** 2010  
**Payment Date:** December 17, 2009  
**Payee:** THOMAS,MEANS,GILLIS & SEAY PC  
**Category:** SERVICES  
**Sub-Category:** LEGAL- PROFESSIONAL

Total Payments: **\$45,472.98**

Transaction Number	Agency Name	Fund Name	PO# or Contract#	BFY	AFY	Amount Paid
PV 022 00223000137	LEGISLATURE	GENERAL FUND	PO 022 C0022H002	2010	2010	\$45,472.98

Search by: [Category](#) | [Payee](#) | [Agency](#)

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 MONTGOMERY COUNTY, ALABAMA  
 MELISSA RITTENOUR, CLERK





BOB RILEY  
Governor

BILL NEWTON  
Acting Director of Finance

STATE OF ALABAMA  
DEPARTMENT OF FINANCE  
OFFICE OF THE STATE COMPTROLLER

RSA UNION  
100 North Union Street, Suite 220  
Montgomery, Alabama 36130-2602  
Telephone (334) 242-7050  
FAX (334) 242-2440

THOMAS L. WHITE, JR.  
CPA (Inactive)  
State Comptroller

February 11, 2010

Alabama House of Representatives  
Attn: Mr. Greg Pappas, Clerk of the House  
11 South Union Street  
Alabama State House  
Montgomery, Alabama 36104

Dear Mr. Pappas:

RE: Voucher Number 00223000167 – Thomas, Means, Gillis & Seay, PC

For the reasons discussed in this letter, the above referenced voucher cannot be paid and is hereby returned, as it is an obligation undertaken by an instrumentality of the state without authority to do so and therefore cannot be paid from the State Treasury.

Before the Division of Control and Accounts can issue a state warrant on the State Treasury, it must perform its duties, which are set forth in Section 41, Chapter 4, Article 3 of the Code of Alabama as follows:

Section 41-4-50 (4) To preaudit and determine the *correctness and legality* (emphasis added) of every claim and account submitted for the issuance of a warrant ... before any warrant on the State Treasury shall be issued ...

After consultation with our legal counsel, this office cannot find support in the law for the legal authority of the Contract Review Legislative Oversight Committee (the “Committee”) to cause a lawsuit to be brought in its own name and that of its Chairman. From §29-2-41, it appears that the Committee’s responsibility is limited to “... reviewing contracts for personal or professional services ... to be paid out of appropriated funds, federal or state, on a state warrant ...”. The review and comment must occur “... within a reasonable time not to exceed 45 days after the department has submitted the contract ... to the committee”.

Plaintiff's Exhibit

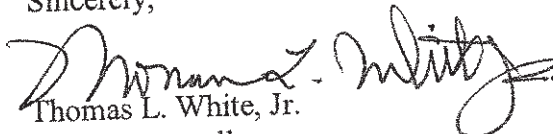
Mr. Greg Pappas  
Page 2  
February 11, 2010

The code section further provides that the Committee is directed to "... review and comment where necessary ..." on a contract. It does not appear that the Committee has any additional power, including the power to terminate, modify or otherwise interfere with the execution of a contract. Should the Committee not approve of a contract, it can only delay it from being effective by "holding it" for the balance of a period of 45 days from the day the contract is submitted to the Committee.

Nowhere in its enabling legislation is the Committee expressly vested with the power to sue, nor can that power be implied from the limited directive that it review and comment on contracts submitted to it. As the instigation of a lawsuit in its name and the name of its Chairman exceeds the authority of the Committee, any expenses incurred for that purpose are not legally incurred obligations of the State and cannot be paid from the State Treasury.

If further discussion on this matter is necessary, please contact me.

Sincerely,

  
Thomas L. White, Jr.  
State Comptroller

TLWjr/dt

Enclosure

1. Voucher Number 00223000167