

IN THE IOWA DISTRICT COURT
FOR POLK COUNTY

LISA KRAGNES, et. al.,

Plaintiff,

vs.

CITY OF DES MOINES, IOWA,

Defendant.

)
) Law No. CE 49273

)
) AFFIDAVIT OF MARK GODWIN
) REGARDING CLASS
) OPT-OUT PROVISION

STATE OF IOWA)
) ss:
COUNTY OF POLK)

I, Mark Godwin, after first being duly sworn upon oath, do depose and state as follows:

1. At all times material hereto I have been Deputy City Attorney for the City of Des Moines, a lawyer licensed to practice law in the State of Iowa, and the lawyer for the Defendant City of Des Moines in this case.

2. This Affidavit is made of my personal knowledge.

3. Because of the manner of class certification, it appears no opt out provision will be available in this case.

4. I have been a gas and electricity customer of MidAmerican Energy at all times material hereto, and thus a member of the certified class.

5. Requiring an attorney to be a member of a class opposed to the party he is representing violates the attorney's procedural and/or substantive due process rights and the attorney's associational rights under the Federal and State Constitutions.

6. In addition, I am personally opposed to this litigation because of its financial consequences.

7. Also, it may well be a conflict of interest for Plaintiff's attorneys to represent a class that has the defense attorney as a member, as class attorneys can't represent class members with competing interests.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

Mark Godwin
Mark Godwin

Subscribed and sworn to before me this 19th day of August, 2008.

Diane Roscoe
Notary Public



Original filed.

Copies to:

Honorable Joel D. Novak
Judge, Fifth Judicial District


Mr. Brad Schroeder
Hartung & Schroeder LLP
Equitable Building, Suite 100
608 Locust Street
Des Moines, IA 50309
ATTORNEY FOR PLAINTIFF

Bruce H. Stoltze
Stoltze & Updegraff, P.C.
P.O. Box 93295
300 Walnut, Ste. 260
Des Moines, IA 50393
ATTORNEY FOR PLAINTIFF

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing instrument was served upon all parties to the above-entitled cause by transmittal to each of the attorneys of record at their respective addresses disclosed on the pleadings of record on the 19th day of August 2008.

By: U.S. Mail Fax
 Hand-Delivered

Signature: 

OATH OF OFFICE

Date: July 1, 1996

Roll Call No.: 96-2426

State of Iowa)
) ss:
County of Polk)

I, Mark Godwin, of the City of Des Moines, Iowa, do solemnly swear that I will support the Constitution of the United States and the Constitution of the State of Iowa, and that I will faithfully and impartially, to the best of my ability, discharge all of the duties of my office as City Solicitor for the City of Des Moines, Iowa, as now or hereafter required by law.

Mark Godwin

Subscribed and sworn to me by the said above signed, on this 2nd day July, 1996.

Connie Noah
Notary Public in and for Polk County, Iowa



Sec. 2-360. Duties generally.

The city attorney or deputy city attorneys and assistant city attorneys shall have the following duties:

- (1) *Prosecuting and defending suits generally.* To appear for the city, prosecute and defend all causes in all state or federal courts or administrative agencies in which the city is a party or interested.
- (2) *Prosecuting and defending suits upon request.* When requested to do so by the mayor, the city council or the city manager or when the interests of the city require, to appear for the city before any other court or tribunal and prosecute or defend all actions or proceedings in which the city may be a party or interested.
- (3) *Prosecuting and defending suits brought by or against officers and employees.* To prosecute or defend all actions and proceedings brought by or against any city officer in his or her official capacity or any city employee growing out of acts connected with his or her employment as required by law.
- (4) *Giving opinions.* When requested, to give an opinion in writing upon all questions of law submitted by the mayor, by the council or any member thereof, by the city manager or by the director of any city department or office.
- (5) *Drafts of contracts, forms, etc.* When requested, to prepare drafts of contracts, forms and other writings which may be required for use by the city.
- (6) *Preparation of ordinances.* To prepare such ordinances as the council from time to time may direct and to provide in writing to the council whenever so requested an opinion as to the validity of ordinances prior to their final passage by the council.
- (7) *Processing of claims.* To process all claims filed against the city, determine the liability of the city on each, and propose to the city council compromise or payment of such claims where appropriate.
- (8) *Processing of tax sale certificates.* To sign on behalf of the city the notice of expiration of right of redemption from tax sale pursuant to I.C. § 447.9, and the affidavit of service pursuant to I.C. § 447.12.
- (9) *Other duties.* To perform such other and further duties as may be enjoined upon the legal department or the members thereof by this Code or other city ordinances.
(C42, § 14-2; C54, C62, § 2-348; O.8746; C75, C79, § 2-120; O.10,515; C91, § 2-120; O.14,510)