

Insights

September Hoosier Banker: Compliance Connection with Partner Brett Ashton

September 2016

By: Brett J. Ashton

As seen in the September 2016 issue of the Indiana Banker Association's Hoosier Banker.

Question: Recently an individual attempted to open a checking account at our bank using identification from the "Moorish Temple Science of the World." When our customer service representative explained that we could not accept the identification, the person threatened to sue the bank for religious discrimination. Does Indiana law require us to accept "religious" identification?

Answer: Banks occasionally encounter attempted fraudulent transactions from a variety of groups commonly referred to as "sovereign citizen" organizations, including among them the Moorish Temple organization, the United Mawshakh Nation of Nuurs and the Washitaw Nation. The premise of the fraud is that these sovereign citizens assert that they are not subject to the U.S. Constitution or to federal and state laws, and accordingly should not be required to produce standard documentation or pay existing debts with U.S. currency.

A variation on the fraud has been seen from some enterprising borrowers in default, asserting their underlying mortgages and notes are invalid by virtue of their use of the consumers' non-sovereign identity and an existing sovereign citizen ownership interest.¹ When sovereign citizens are rebuffed, oftentimes they proceed to file a series of baseless, nonsensical property or tax liens against the bank, or in some instances against the bank employees, in what has become known as "paper terrorism."

The Indiana Constitution² and the U.S. Constitution³ both prohibit religious discrimination, and your bank should ensure it approaches compliance with all state and federal laws without consideration of the religious affiliation of the customer. However, application of a compliance policy or procedure that is required under state or federal law, provided it is applied consistently and without consideration of religious affiliation, should not be found to be discriminatory in nature. Ind. Code § 28-1-2-6.5 incorporates by reference the myriad federal regulatory requirements that your bank adheres to, requiring a financial institution (except for a licensee under the First Lien Mortgage Lending Act or the Indiana Uniform Consumer Credit Code)⁴ to comply with all state and federal money laundering statutes and regulations, including:

- The Bank Secrecy Act of 1970(31 U.S.C. 5311 et seq.);

- The USA PATRIOT Act of 2001 (P.L. 107-56);
- Any regulations, policies, or reporting requirement established by the Financial Crimes Enforcement Network of the U.S. Department of the Treasury; and
- Any other state or federal money laundering statutes or regulations that apply to a financial institution.

There are no specific provisions under Indiana law that dictate exactly what kinds of documentation a bank should or should not take to ensure appropriate compliance with the above-referenced laws. Therefore when faced with an attempt to open an account, you should continue to follow the parameters of your existing Customer Information Program (CIP).

If provided a sovereign citizen form of identification in lieu of the standard documentation required under your CIP, unless your protocol permits any form of photo identification in instances where the customer can provide significant supporting documentation of another kind, do not open the account. If the sovereign citizen decides to pursue claims of religious discrimination, contact your attorney in order to protect your bank and employees from paper terrorism.

¹See *Wells Fargo Bank, NA v. Parrish, Slip Copy (2015)*; *El Bey v. Bank of America, N.A., Not Reported in F.Supp.3d (2014)*; *Wirsche v. Bank of America, N.A., Not Reported in F.Supp.2d (2013)*.

²IN Const. Art. 1, § 3. No law shall, in any case whatever, control the free exercise and enjoyment of religious opinions, or interfere with the rights of conscience.

³U.S.C.A. Const. Amend. I. Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.⁴ Ind. Code §§ 24-4.4, 4.5

This information is provided for general education purposes and is not intended to be legal advice. Please consult legal counsel for specific guidance as to how this information applies to your institution's circumstances or situation.