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Otero County Sues Law Firm Over Bonds.

ALBUQUERQUE, N.M. — The Otero County Board of Commissioners is suing a major Albuquerque-based law firm for legal malpractice, breach of fiduciary duty and breach of contract.

The county claimed in district court filings that Sutin, Thayer & Browne provided an inaccurate tax opinion when the firm served as the underwriter for a municipal bond sale in 2002. The bonds were sold by the county to raise money for what is now the Otero County Detention Center, which houses federal detainees and is privately operated.

Specifically, the county claims the law firm issued an opinion letter stating that interest on the bonds would be exempt from federal income tax for those who held the bonds. In 2016, according to the complaint, the Internal Revenue Service made the opposite determination: that the interest was indeed taxable income.

The county wrote in the filings that, "as a result of such negligence, Otero County incurred damages which include, but are not limited to, the costs of responding to the Internal Revenue Service audit, the cost of converting the interest on the bonds to a higher taxable rate as required by the IRS . . . the additional taxable interest costs incurred by the county . . . and such other damages as may be proved at trial."

Ben Thomas, president and CEO of Sutin, Thayer & Browne, denied the allegations and said he was confident the firm's attorneys had acted appropriately.

Daymon Ely, an attorney for the county and a state representative, said the county chose to file the lawsuit now because of issues surrounding the statute of limitations.

The IRS agency determined that the bond interest was taxable because, among other issues, the detention center is operated by the private contractor Management & Training Corp. in a "net profit agreement," according to what appears to be a partial version of an IRS letter included in the filings. Such a relationship results in "private business use" and makes the bonds ineligible for tax exemption, according to the letter.

Management & Training Corp. did not respond to a request for comment late Monday.

The county is seeking unspecified damages, fees, costs and expenses and interest.

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By Marie C. Baca

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