

# Office of the Prosecuting Attorney



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60<sup>th</sup> Judicial Circuit  
St. Joseph County  
Indiana

October 4, 2010

Andrew Straw  
64711 Apple Ridge Road  
Goshen, Indiana 46526

Re: Inquiry regarding Timothy Wesco "Homestead Exemption"

Dear Mr. Straw:

I received your request for investigation regarding Timothy Wesco's filing for a "Homestead Exemption" for this property located at 11229 Hemlock Drive in Osceola. You had inquired whether any criminal charges could be filed in this regard.

I reviewed the Sales Disclosure Form as well as government records regarding Timothy Wesco's residence history and the applicable statutes, and have concluded that criminal charges are not appropriate in this matter.

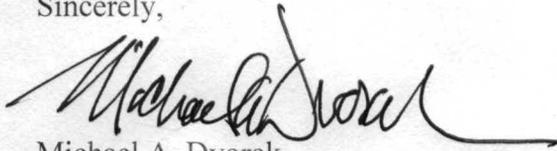
I.C. § 6-1.1-12-44(a) states that a sales disclosure form serves as an application for a deduction, and Timothy Wesco did request a "Homestead Exemption" on the sales disclosure form indicating that the address would be his primary residence. Currently, it appears, and Timothy Wesco has apparently acknowledged, that the Hemlock Drive address is not his primary residence.

I.C. § 6-1.1-5.5-10(a) states that it is a Class C Felony to "knowingly and intentionally" omit or falsify any information required to be provided in a sales disclosure form. Thus, the question for the filing of criminal charges would be whether, when Timothy Wesco filled out the sales disclosure form, he "knowingly and intentionally" provided false information. I.C. § 35-41-2-2(b) defines "knowingly" as engaging in conduct when aware of a high probability that the individual is doing so. I.C. § 35-41-2-2(a) defines "intentionally" as engaging in conduct with the conscious objective to do so. In order for Timothy Wesco's actions to constitute a criminal act, Timothy Wesco must have consciously intended to provide false information when he indicated that he would be making the Hemlock Drive address his primary residence on the sales disclosure form. It is my understanding that Timothy Wesco has stated that he intended to make the Hemlock Drive address his residence, but has been unable to do so because of the need to make improvements. At this time, I have not reviewed any evidence contradicting this explanation.

If Timothy Wesco intended to make the Hemlock Drive address his primary residence at the time of filing the sales disclosure form and subsequently changed his mind, I.C. § 6-1.1-12-37(f) requires that he file a certified statement with the county auditor's office notifying the auditor of the change of use not more than sixty (60) days from the date of the change. The failure to do so subjects the individual to civil penalties, but the statute does not provide for criminal penalties if an individual fails to file the certified statement. As I said above, in light of these statutes and the circumstances here, I do not see any crimes which could be charged.

Thank you for again bringing your concerns to my attention.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael A. Dvorak". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Michael A. Dvorak