

Report on the

**Alabama Family Trust Board
State of Alabama
Vestavia, Alabama**

October 1, 2014 through September 30, 2019

Filed: September 10, 2021



**Department of
Examiners of Public Accounts**

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Rachel Laurie Riddle, Chief Examiner



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Honorable Rachel Laurie Riddle
Chief Examiner of Public Accounts
Montgomery, Alabama 36130

Dear Madam:

An examination was conducted on the Alabama Family Trust Board, Vestavia, Alabama, for the period of October 1, 2014 through September 30, 2019, by Examiners Manuel Anthony and Steven Grant. I, Manuel Anthony, served as Examiner-in-Charge on the engagement, and under the authority of the *Code of Alabama 1975*, Section 41-5A-19, I hereby swear to and submit this report to you on the results of the examination.

Respectfully submitted,

A handwritten signature in blue ink that reads 'Manuel V. Anthony'.

Manuel Anthony
Examiner of Public Accounts

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Table of Contents

	<i>Page</i>
Summary	A
Contains items pertaining to state legal compliance.	
Comments	C
Contains information pertaining to agency operations and other matters.	
Schedule of State Legal Compliance and Other Findings	G
Contains detailed information about findings pertaining to state legal compliance and other findings.	
Exhibit #1 Board Members and Official – a listing of the Board Members and Official.	1



Department of
Examiners of Public Accounts

SUMMARY

**Alabama Family Trust Board
October 1, 2014 through September 30, 2019**

The Alabama Family Trust Board (the “Board”) operates under the authority of the *Code of Alabama 1975*, Sections 38-9B-1 through 38-9B-7. The general purpose of the Board is to encourage, enhance, and foster the provision of medical, social, or other supplemental services for persons with a mental or physical impairment.

This report presents the results of an examination of the Board and a review of the Board’s compliance with applicable laws and regulations of the State of Alabama. This examination was conducted in accordance with the requirements of the Department of Examiners of Public Accounts under the authority of the *Code of Alabama 1975*, Section 41-5A-12. Our examination was performed for the purpose of determining whether the public officers, agents, and employees of the Board properly and lawfully accounted for all money and other public assets, or resources received, disbursed, or in the custody of the Board. Our examination included determining compliance by the Board with state laws and regulations that pertain to financial transactions; safeguarding of state-owned assets, property, and resources; information dissemination, processing, and retention; and official actions, rulemaking procedures, and meetings. As a part of our examination, we also reviewed internal control policies and procedures relating to the areas listed above. Our examination did not encompass managerial and operational matters, such as whether the Board accomplished its mission or its regulatory, enforcement, investigative, or other oversight activities in an efficient, fair, timely, or legal manner.

FINDING

The following instance of noncompliance with State laws and regulations and other matters was found during the examination, as shown on the Schedule of State Legal Compliance and Other Findings and it is summarized below.

- ◆ 2019-001 relates to the Board not establishing and filing rules and regulations with the Legislative Services Agency as required by their code section and the Administrative Procedures Act.

EXIT CONFERENCE

Executive Director of the Alabama Family Trust Board was invited to an exit conference held on August 18, 2021. Individuals in attendance were: Melanie Bradford Holliman, Executive Director; Lesley Byars, Chief Financial Officer; and Shannon Brubaker, Chief Administrative Officer. Also in attendance were representatives of the Department of Examiners of Public Accounts: Leovetta Childrey, Audit Manager; Manuel Anthony, Examiner-in-Charge; and Steven Grant, Examiner.



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COMMENTS

**Alabama Family Trust Board
October 1, 2014 through September 30, 2019**

The Alabama Family Trust Board (the “Board”) operates under the authority of the *Code of Alabama 1975*, Sections 38-9B-1 through 38-9B-7, provides for the establishment of the Alabama Family Trust Board of Trustees (AFT Board), the Alabama Family Trust Corporation (the “AFT Corporation”), the Alabama Family Trust (the “AFT Trust”), and the Alabama Family Trust Charitable Trust (the “AFT Charitable Trust”). The AFT Board is an instrumentality of the State of Alabama. The AFT Board establish and administers the AFT Corporation, which is a private entity classified as a not-for-profit corporation pursuant to Section 501(c)(3) of the United States Internal Revenue Code. The AFT Corporation established the AFT Trust and the AFT Charitable Trust. The AFT Board administers the AFT Trust and the AFT Charitable Trust through the AFT Corporation.

The AFT Board consists of eleven members comprised of the following: two individuals who represent the interests of persons with mental illness; two individuals who represent the interests of persons with intellectual or developmental disabilities; two individuals who represent the interests of persons with physical impairments; and five persons who are recognized for their expertise in general business matters and procedures. The Governor appoints nine of the Board members, and the Presiding Officer of the Senate and Speaker of the House of Representatives appoint one member each. The Board members serve until their successors are appointed and confirmed by the Senate. The Commissioner of the Alabama Department of Mental Health (ADMH) recommends persons for appointment to the AFT Board. The Board members do not receive compensation for their services. As of the end of our examination period, some members’ terms had expired but reappointments had not yet been made. The Chair of the Board had submitted to the Commissioner of the ADMH a list of eligible persons by category from which to make recommendations to the Governor, Presiding Officer of the Senate and Speaker of the House.

The Executive Director is responsible for promoting AFT to the public, overseeing staff and volunteers, and assisting the Board to ensure the trust is operating in compliance with state and federal rules and regulations.

The AFT Trust allows families and friends of persons with a mental or physical impairment to supplement, but not replace, the basic support provided by state government and other governmental programs. The AFT Trust is comprised of individual trusts established by family members or friends (contributor) for the benefit of a designated life beneficiary. Each individual trust is established through a signed trust agreement that states the name of the contributor, designates a life beneficiary (person that receives the benefits), and designates a co-trustee of the trust. This agreement also stipulates the rules governing the trust pursuant to the *Code of Alabama 1975*, Sections 38-9B-1 through 38-9B-7.

The AFT Charitable Trust is used for the benefit of beneficiaries of AFT individual trusts who have needs that cannot be met from funds available to such life beneficiaries from their AFT individual trusts. The Board of Trustees shall determine annually the amount of AFT Charitable Trust income to be used to provide benefits and the nature and type of benefits to be provided for each AFT life beneficiary while taking into account the individual's eligibility for government benefits. The AFT Board is allowed to accept contributions to the AFT Charitable Trust from any source and must adhere to all rules and regulations under the United States Internal Revenue Code that govern the acceptance of charitable contributions.

As of September 30, 2019, the AFT Board maintained ten accounts:

- ◆ The AFT Charitable Trust Account consists of donated funds or funds that are due to the corporation upon death of the life beneficiary pursuant to the *Code of Alabama 1975*, Section 38-9B-5(c)(4)(ii).
- ◆ The AFT Escrow Account was created to enable the Board to deposit trust funds immediately while awaiting the set-up of the individual life beneficiary trust accounts.
- ◆ The AFT Operations Account was established to deposit administrative fees charged to the trust accounts. The *Code of Alabama 1975*, Section 38-9B-5(c)(2) allows for the Board to charge administrative fees and expenses directly to the trust accounts so long as these fees do not exceed the income allocated to the accounts. Custodial fees are charged directly to the operations account. In addition to administrative fees, the Operations Account is also used to deposit the set-up fees, annual maintenance fees, and tax preparation fees.
- ◆ The AFT Board Restricted Fund is used as a rainy-day fund and is managed by Warren Averett Asset Management (WAAM) with Charles Schwab Brokerage as custodian.
- ◆ The AFT Disbursements Accounts (2) are used as a clearing accounts where trust funds are transferred in and out according to approved disbursement requests.
- ◆ The AFT Flex Account is used for checks paid to medical, dental and vision benefits providers for AFT Corporation employees.
- ◆ The AFT General Operating Account is used for day-to-day general operating expense of the AFT Corporation.

- ◆ The AFT Holding Account is used to handle returned items and small, miscellaneous bank charges.
- ◆ The AFT Payroll Account is used to handle payroll expenses.

The combined receipts and disbursements for fiscal year 2018-2019 for the five operating funds (Servis1st Flex, General Operating, Holding, Operations and Payroll Accounts) are as follows:

<u>Income</u>	
Admin Fees - Charitable Trust	\$ 60,831.96
Admin Fees - Trust Portfolio	429,303.34
AFT Tax Prep Cost Recovery	389,864.49
Annual Maintenance. Cost Recovery	238,500.00
Closing Costs/AFT Fiduciary Fee	55,132.15
Interest Income	18,459.17
Set Up Fees - New Trusts	146,400.00
Total Income	1,338,491.11
<u>Expenses</u>	
Benefits - Insurance	38,356.46
Benefits - IRA Match	14,262.58
Board Meeting Meals	2,810.50
Board Mileage	2,453.43
Books and Subscriptions	630.00
Cell Phone Reimbursements	4,800.00
Computer Services	21,011.60
Computer Software	19,001.15
Depreciation Expense	11,387.00
Insurance Expense	16,831.00
Internet/Wi-Fi	2,612.88
Legal and Accounting Fees	2,708.48
Marketing	33,593.31
Memberships and Dues	428.00
Miscellaneous Expense	860.67
Office Services	4,651.23
Office Supplies	3,302.07
Payroll	501,752.81
Payroll Taxes	35,670.35
Postage	2,754.00
Printing Services	4,031.66
Rent Expense	14,400.00
Sick Leave	5,905.65
Telephone	2,555.26
Training/Seminars	10,054.48
Travel Expense - AFT Executive	3,236.91
Travel Expense - AFT Staff	2,535.28
Warren Averett - Admin Fee BR Fund	2,976.49
Warren Averett Admin Fees	201,118.61
Total Expense	966,691.86
Net Income	\$ 371,799.25

The balances of these accounts at the end of the fiscal years were as follows:

Account	FY 2019	FY 2018	FY 2017	FY 2016	FY 2015
Servis1st Flex	\$ 6,286.36	\$ 8,370.04	\$	\$	\$
Servis1st General Operating	9,920.29	16,727.61			
Servis1st Holding	3,526.55	3,514.23			
Servis1st Operations	671,125.22	589,226.96			
Servis1st Payroll	10,807.84	20,752.98			
Board Restricted Fund	549,617.91	216,179.99	213,225.18	210,801.36	
Escrow Funds Servis1st	333,178.33	14,963.25			
Flex Employee Receivable	2,065.32	1,603.80	1,407.66	888.48	
BXS Flex			13,576.27	6,211.12	10,267.99
BXS General Operating			42,130.47	35,454.44	37,355.89
BXS Holding			4,032.48	2,591.60	65,098.13
BXS Operations			354,543.04	256,955.99	261,418.17
BXS Payroll			30,995.21	927,978.83	21,823.50
Escrow Funds BXS			13,810.14	282,484.93	110,547.59
BXS Restricted RE-Closing				969.53	40,001.88
Totals	<u>\$1,586,527.82</u>	<u>\$871,338.86</u>	<u>\$673,720.45</u>	<u>\$824,336.28</u>	<u>\$546,513.15</u>

Note that the AFT Corporation changed banks from BancorpSouth (BXS) to Servis1st in Fiscal year 2018.

The following are the year end balances for the Charitable Trust and the individual life beneficiary accounts.

Account	FY 2019	FY 2018	FY 2017	FY 2016	FY 2015
AFT Charitable Trust Equity Income (*)	\$ 0.00	\$ 0.00	\$ 804,856.54	\$ 694,014.38	\$ 586,984.92
AFT Charitable Trust IMA (*)	\$ 0.00	\$ 0.00	\$ 1,758,951.25	\$ 1,426,919.90	\$ 1,083,981.06
AFT Charitable Trust Total	\$ 3,514,776.56	\$ 2,969,315.70	\$ 2,563,807.79	\$ 2,120,934.48	\$ 1,670,965.98
AFT Pooled Accounts	\$28,943,881.32	\$27,826,829.84	\$28,048,461.09	\$21,378,208.82	\$18,682,765.06

(*) When the Charitable Trust was with Bancorp South, it was divided into two accounts with the Charitable Trust Equity Income Fund share having 87% equity and not bonds. The main account there was approximately 48% equities and 51% fixed income as of 9/30/2017. The Charitable Trust account was divided to track the two investment strategies separately. When the AFT changed custodians and investment advisors in 2018, Warren Averett Asset Management recommended the two trust accounts be merged into one account under management at Schwab.

The AFT Board is required to prepare or cause to be prepared an accounting of funds in the AFT Trust and the AFT Charitable Trust annually and forward a copy to the Governor, the Presiding Officer of the Senate, and the Speaker of the House of Representatives. However, the assets held by the trustee and assets held in the AFT Trust and the AFT Charitable Trust pursuant to this chapter shall not be considered state money, assets of the state, or revenue for any purpose of the *Constitution of Alabama of 1901*, or statute or any other state's constitution or statute. The assets held by the trustee and its income and operations shall be exempt from all state and local taxation, as stipulated in the *Code of Alabama 1975*, Section 38-9B-3(b).

*Schedule of State Legal
Compliance and Other Findings*

Schedule of State Legal Compliance and Other Findings
For the Examination Period Ended September 30, 2019

Ref. No.	Finding/Noncompliance
2019-001	<p><u>Finding:</u></p> <p>The <i>Code of Alabama 1975</i>, Section 38-9B-4(d), provides that the Alabama Family Trust Board of Trustees (the “AFT Board”) “shall establish policies, procedures, and other rules and regulations necessary to implement this chapter.” The <i>Code of Alabama 1975</i>, Section 38-9B-4(a), provides that the AFT Board shall be an instrumentality of the State. As an instrumentality of the State of Alabama, the AFT Board is subject to the Administrative Procedures Act (<i>Code of Alabama 1975</i>, Sections 41-22-1 through 41-22-27).</p> <p>The AFT Board has not established and filed rules and regulations with the Legislative Services Agency as required.</p> <p>Not establishing and filing rules and regulations could leave the AFT Board without written guidance for day-to-day operations, methods of ensuring compliance with laws and regulations and for internal processes.</p> <p><u>Recommendation:</u></p> <p>The AFT Board should establish rules and regulations in accordance with the <i>Code of Alabama 1975</i>, Section 38-9B-4(d), and file these rules and regulations in accordance with the Administrative Procedures Act as applicable.</p>

Board Members and Official
October 1, 2014 through September 30, 2019

Board Members		Term Expires
Hon. Clayton Davis	President	2021
Hon. Lynn Campisi	Vice-President	2021
Hon. Jennifer Griffin	Secretary	2023
Hon. Jimmy Walsh	Treasurer	2023
Hon. Kim Davis	Member	2021
Hon. Wallace Davis, PhD.	Member	2023
Hon. Vance Holder	Member	2022
Hon. John Paluzzi	Member	2020
Hon. David Salter	Member	2021
Hon. Judy Shepura	Member	2022
Hon. Shirley Thames	Member	2019
Hon. Latonya Rhines	Member	2022
Hon. Melanie Bradford	Member	2015
Hon. Karen Coffey	Member	2014
Hon. Bruce Hopper	Member	2017
Hon. Gary Edwards, PhD.	Member	2015

Official

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