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Statement by Attorney General Olens on Ethics Commission Matters

My office has received a number of questions regarding the news this week about the Ethics Commission and Holly LaBerge's Memorandum of Record. I want to address as many of them as I can now.

From the outset, though, I want to make clear that many of those questions relate directly to the legal representation this office has provided Ms. LaBerge and the Ethics Commission in the context of litigation. This office is still in an attorney-client relationship with Ms. LaBerge in her official capacity, and that means the full answer to some of the questions you have would require the disclosure of attorney-client privileged information. Yesterday, we formally requested that she waive that privilege so that we could set the record straight, but to date we have not received that waiver. Unless and until that privilege is waived, I am severely limited in the extent to which I can fully answer some questions.

I know this is frustrating to you; I can assure you, I find it even more frustrating.

Ms. LaBerge's memo is dated July 17, 2012. After our office was given the memo in August 2013, our civil trial team reviewed the memo to determine if it was subject to the pending discovery requests. Our chief prosecutor also reviewed it the week we received it to determine if any criminal laws had been violated if the allegations in the memorandum were true. I was made aware of the memo after our chief prosecutor concluded his review and determined that the allegations in the memorandum did not constitute crimes under state law. In addition, our civil lawyers determined it was not responsive to the discovery request in the civil litigation.

In late 2013, federal subpoenas were issued to current and former employees of the Commission. Our office explained to Ms. LaBerge that we did not represent her with respect to responding to the subpoena and explained to her and her private lawyer that the only thing we could tell her is to cooperate fully, and that the memo was responsive.

There have been several questions about the responsiveness of the memo to certain specific discovery requests:

- Ms. Kalberman requested “correspondence” between Ms. LaBerge and the Governor’s Office. The memo is not correspondence; it is a document written by Ms. LaBerge and retained by her. It did not become correspondence when she gave us a copy 13 months later.
- Ms. Streicker requested documents “concerning the violation of any law, rule, or regulation” by Governor Deal, “including all complaints filed with the Defendant, all files concerning the investigation of such complaints, and all documents obtained as part of such investigations.” The memo was not about violations of law, rule, or regulation, it was not a complaint, it was not concerning the investigation of a complaint, and it was not a document obtained as part of an investigation.

I recognize that this may seem like a technical response. Let me be clear – I wish that a request had been issued to which the memorandum was responsive. That would have been easier for the office. But the lawyers in my office represent the State and its agencies, and have a legal duty to do so zealously. Their obligation is to work with our clients to produce all documents responsive to a plaintiff’s request; it is not their obligation to produce documents that plaintiffs haven’t asked for. I also recognize that plaintiffs’ counsel may disagree with our office’s position on this. I am not surprised. Lawyers can and often do disagree about almost anything.

I will say this – it is in the public record that these matters were testified to in some detail by Ms. Murray-Obertein in her deposition (excerpt attached). Following Ms. Murray-Obertein’s testimony, Plaintiffs’ lawyers chose not to ask Ms. LaBerge any questions about this issue either in discovery or at trial.

The news reports of the last day may well have uncovered a different discovery-related problem, however. During the interview of Ms. LaBerge on Fox 5 last night, Ms. LaBerge said that she forwarded text messages from the Governor’s Office to her personal email – and an image of one of those messages was then shown on the screen. That concerns me, because no one in my office was aware that such emails exist. After an agreement with Plaintiffs to produce all work-related emails from Ms. LaBerge’s personal email account, our office turned over to plaintiffs every personal email that Ms. LaBerge provided to us. The text messages in Ms. LaBerge’s email account shown in the interview last night would almost certainly have been responsive and should have been produced. My office is taking immediate steps to learn why we never received the emails.

We have been asked a number of questions about how our office prepared Ms. LaBerge for her testimony with regard to the memo. Any suggestion that any employee of our office advised anyone to testify less than truthfully in any way is categorically false. As much as I want to respond more specifically on this point, attorney-client privilege prevents me from doing so.

I am aware of renewed requests to appoint some sort of independent attorney to investigate these matters. As I have previously stated, two other investigations – one federal, one state – are currently pending. This office has been representing Ms. LaBerge and the Ethics Commission in

related matters. The only reasons to interject this office into the investigations at this point are political.

Xxx

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