

From: Haley, Nikki <govhaley@gov.sc.gov>
To: Pisarik, HollyHollyPisarik@gov.sc.gov
CC: Patel, SwatiSwatiPatel@gov.sc.gov
Date: 9/23/2015 8:40:15 AM
Subject: Re: Attorney Client Privileged Communication - DOT Suit

Ok thanks.

Sent from my iPad

On Sep 23, 2015, at 12:35 AM, Pisarik, Holly <HollyPisarik@gov.sc.gov> wrote:

Governor,

Some time back, Swati briefed you on two suits filed on July 1, 2015, both related to the DOT and your authority to appoint the Secretary of Transportation. On Sept. 3, the S.C. Supreme Court agreed to hear these cases, and answers are due on Oct. 5. The Governor is not named as a Defendant in either case.

Suit 1 -

The first suit was filed against the Lt. Gov as Pres of the Senate, the Speaker of the House, and the State. As background, Act 114 of 2007 terminated the Governor's authority to appoint the Secretary of DOT effective July 1, 2015 and upon termination transferred the authority to the Commission. As you know, proviso 84.18 of the current Appropriations Act suspended this provision for the current fiscal year, allowing you to maintain the authority to appoint the Secretary. This suit alleges that Proviso 84.18 is not germane to the Appropriations Act and thus violates the one-subject rule. Plaintiff requests the Court to declare the proviso null and void. Obviously, if the Court granted this relief, you would lose the authority to appoint the Secretary.

Suit 2 -

The second suit was filed against the same Defendants with the addition of the Chairman of the Commission of the DOT. This suit alleges that if the relief in suit 1 is granted, the Commission's authority to appoint the Secretary would violate the separation of powers constitutional mandate. Essentially, Plaintiffs argue that the DOT is an executive branch function and because the Legislature appoints 7 of 8 commissioners and the Commission would appoint the Secretary, the legislative branch would exercise control of an executive function. Plaintiff requests the Court to enjoin the Commission from appointing a Secretary. If relief was granted in suits 1 and 2, no one would have the authority to appoint a Secretary until the Legislature amended the statute.

After these suits were filed, Senator Leatherman asked and the court granted permission to join in the lawsuit. I have spoken with Ken Moffitt who will represent Leatherman and Emory Smith with the AGs office who will represent the State and the Lt. Gov. Both Ken and Emory plan to vigorously defend the Legislature's authority to include provisos such as 84.18 in the Appropriations Act. And, they both plan to argue that it's not necessary for the Court to decide suit 2 because proviso 84.18 is constitutional and thus you maintain the authority to appoint. Swati and I discussed whether we should seek permission to join the lawsuit, but I would advise that we do not at this time for two reasons. 1) At issue in this case is the authority of the Legislature. It would be odd for us to join a lawsuit to defend the actions of the Legislature. 2) We care about you maintaining the authority to appoint the Secretary under proviso 84.18, and both Ken and Emory plan to vigorously defend its constitutionality. Essentially, they will make the arguments that we would make if we joined the case, so I think our interests are adequately represented.

Please let me know if you disagree with our decision not to intervene in this case or if you have questions. I will be in Charleston Wednesday and Thursday at a mediation with DSS and Butch for the class action lawsuit. I think you have a meeting with Christy Hall on Thursday on another matter, but let me know if I can provide

additional information for this meeting.

Holly G. Pisarik
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