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Date: 9/28/2015 6:08:21 PM
Subject: Coroner Research - Senator Bennett

Holly,

Below is information regarding whether the Governor has the authority to suspend or remove the Dorchester County Coroner. I touched base with Veldran, and she will send you Senator Bennett's contact information to give him a call tomorrow. Please let me know if you need additional information.

Factual Background:

- In late August 2015, Dorchester County Coroner Chris Nesbit reportedly drew a pistol on a neighbor after having had a few beers on his porch, because his neighbor was in a dispute with a repo man over his car.
- On August 25th, SLED opened an investigation, apparently at Nesbit's request.
- On September 10th, Solicitor David Pascoe charged Nesbit with misconduct in office.
- On September 11th, Nesbit turned himself in to authorities on the misconduct in office charge; the judge gave him \$5,000 PR bond.

Legal Analysis:

The authority to suspend, remove, or appoint a coroner is given to the Governor under certain circumstances via the Constitution and various state statutes.

Suspension: The Governor may suspend a coroner from office upon the following reasons:

- For being indicted for a crime of moral turpitude. *See Art. IV, Sect. 8 (applies to all officers of the state or political subdivisions)* à With regard to appointment, the general law (8-1-100) is superseded by a specific law (17-5-50) so that if a coroner is suspended for being indicted, the chief magistrate shall act as coroner until he is reinstated or another is elected and qualifies at the next general election for coroners, whichever occurs first. à In the case of conviction, the office shall be declared vacant, and the Governor shall make an appointment pursuant to 17-5-50.
- For being indicted in any court of any crime at the Governor's discretion. *See 8-1-100 (applies to all state and county officers)* à With regard to appointment, the general law (8-1-100) is superseded by a specific law (17-5-50) so that if a coroner is suspended for being indicted, then the chief magistrate shall act as coroner until he is reinstated or another is elected and qualifies at the next general election for coroners, whichever occurs first.
- For being probably guilty of embezzlement or misappropriation of public funds shown by affidavit. *See 8-1-110 (applies to all officers)* à With regard to appointment, the Governor shall appoint one in his stead until he shall have been acquitted or convicted. à In the case of conviction, the office shall be declared vacant, and the Governor shall make an appointment pursuant to 17-5-50.
- For being guilty for misappropriation of funds or shifting appropriations from one item to another if the coroner was authorized with disbursing funds appropriated by the General Assembly. The Governor may suspend the officer and shall investigate his conduct. *See 4-11-130 (applies to county officers, county clerks, or other persons charged with disbursing county funds)* à With regard to appointment,

Removal: The Governor may remove a coroner from office upon the following reasons:

- For being guilty of malfeasance, misfeasance, incompetency, absenteeism, conflicts of interest, misconduct, persistent neglect of duty in office or incapacity to the satisfaction of the Governor. The Governor shall inform the officer in writing of the specific charge and shall give reasonable notice to be heard.
See Section 1-3-240 (applies to all state and county officers) With regard to appointment, any vacancy created under 1-3-240 shall be filled pursuant to 17-5-50. See 1-3-270.

Vacancy, in general: With regard to filling a vacancy, the general law (4-11-20) is superseded by a specific law (17-5-50) so that if there is a vacancy (i.e. not due to suspension upon indictment), then the second in command of the coroner's office shall act as coroner until the vacancy is filled by the Governor's appointment who shall serve until the next general election and his successor shall qualify.

Haley Administration Precedent:

The reason for citing the constitutional "indictment for a crime of moral turpitude" provision rather than the statutory "indictment in any court for any crime" provision is that the constitutional provision is the higher law and has always controlled.

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