



ATTORNEY GENERAL OF MISSOURI
JEFFERSON CITY
65102

JOSHUA D. HAWLEY
ATTORNEY GENERAL

P.O. Box 899
(573) 751-3321

May 18, 2018

Nicole Galloway
Missouri Auditor
301 W High St # 880
Jefferson City, MO 65101

Dear Auditor Galloway:

It has been widely reported that the Office of the Governor has retained—at taxpayer expense—at least two private attorneys to defend Governor Greitens in potential upcoming impeachment proceedings. Public statements made by those attorneys seem to indicate that they represent the Office of the Governor rather than Governor Greitens individually. My Office was never consulted regarding the retention of those attorneys and has never consented to their hiring. I understand that your Office is currently reviewing various issues relating to the retention of those attorneys. I write to advise you that, absent express statutory authorization, the Office of the Governor lacks authority to retain private counsel to participate in connection with any adversarial proceeding without the Attorney General’s consent.

The Missouri Constitution “vests the office [of Attorney General] with all of the powers of the attorney general at common law.” *State ex rel. Nixon v. Am. Tobacco Co.*, 34 S.W.3d 122, 136 (Mo. banc 2000). The Attorney General may exercise all common-law powers of the attorney general except when “restricted by a statute enacted specifically for the purpose of limiting his power.” *Id.* At common law, “[t]he Attorney General was the law officer of the Crown, and its only legal representative in the courts.” *Darling Apartment Co. v. Springer*, 22 A.2d 397, 403 (Del. 1941). As a result, a state attorney general with common-law constitutional authority is “clothed not only with the power but also the duty to represent the State and its several departments in all litigation where the public interests are concerned, and to advise the Executive and other State officers and agencies when called on by them for legal advice in their official capacities.” *Id.* Missouri statutes reinforce this broad conception of the Attorney General’s authority, contemplating that he or she will control litigation on behalf of state entities and officers. *See, e.g.*, §§ 27.050, 27.060, RSMo. Under Missouri law, “[i]t is for the attorney general to decide where and how to litigate issues involving public rights and duties and to prevent injury to the public welfare.” *State ex rel. Igoe v. Bradford*, 611 S.W.2d 343, 347 (Mo. App. W.D. 1980).

Thus, it is clear that the Missouri Constitution designates the Attorney General as the presumptive legal counsel of state Executive entities and officers—including the Office of the Governor—in connection with adversarial proceedings, absent an express statutory provision to the contrary. *Am. Tobacco*, 34 S.W.3d at 136.¹ The General Assembly has expressly authorized certain state entities and officials to retain separate counsel under various circumstances. For example, the General Assembly has authorized the Department of Conservation and the Department of Transportation to retain separate counsel in cases covered by the Legal Expense Fund. § 105.716.1, RSMo. Similarly, the General Assembly has expressly authorized the Public Service Commission to retain separate counsel to represent the Commission in litigation and other adversarial proceedings. § 386.071, RSMo.

Here, the private impeachment counsel are purporting to act as attorneys for the Office of the Governor, and we understand that their legal fees are to be paid from taxpayer funds. No authority exists for the Office of the Governor to retain those attorneys. The General Assembly has not enacted any statutory authorization for the Office of the Governor to retain private counsel at taxpayer expense to participate in impeachment proceedings. *See, e.g.*, Chapter 26, RSMo. And the Attorney General has not consented to the retention of those attorneys. Thus, under Missouri law, the Office of the Governor lacks authority to retain private impeachment counsel, and those attorneys lack authority under Missouri law to act on behalf of the Office of the Governor.

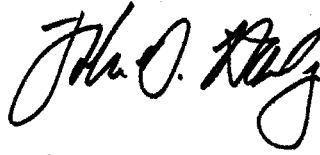
The importance of these principles is particularly clear in this case. By all appearances, the private impeachment counsel seem focused on advancing the *individual interests* of Governor Greitens rather than the *institutional interests* of the Office of the Governor. The impeachment and removal of a governor does not impinge on the power of the Office of the Governor but instead affects the identity of the individual who wields that power. It appears that the private counsel retained by the Office of the Governor are simply advancing the private interests of the individual who happens to currently occupy that Office, rather than the constitutional interests of the Office itself. Under Missouri law, the duly elected Attorney General—not private attorneys retained without the authorization of the General Assembly or the Attorney General—has the duty and authority to safeguard the institutional interests of the Office of the Governor. *See Igoe*, 611 S.W.2d at 347.

In light of these considerations, I ask that your ongoing review consider that the Office of the Governor lacks authority to retain private impeachment counsel and that those private attorneys who purport to represent the Office of Governor at taxpayer expense are acting without authority

¹ Pursuant to his or her constitutional authority, the Attorney General also may authorize and consent to outside counsel acting on behalf of the State, its officers, and its agencies. *Am. Tobacco*, 34 S.W.3d at 136.

under Missouri law. Please do not hesitate to contact my Office if you wish to discuss this matter further.

Sincerely,

A handwritten signature in black ink, appearing to read "Joshua D. Hawley". The signature is written in a cursive, flowing style.

Joshua D. Hawley
Missouri Attorney General

cc: Hon. Todd Richardson, Speaker of the House of Representatives
Hon. Gail McCann Beatty, Minority Floor Leader of the House of Representatives
Hon. Ron Richard, President Pro Tem of the Senate
Hon. Gina Walsh, Minority Floor Leader of the Senate
Hon. Eric Schmitt, Missouri State Treasurer