

OP 21-0125
OP 21-0173

FILED

04/18/2021

Bowen Greenwood
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Case Number: OP 21-0125

AUSTIN KNUDSEN



STATE OF MONTANA

April 18, 2021

FILED

APR 18 2021

Bowen Greenwood
Clerk of Supreme Court
State of Montana

Dear Justices of the Montana Supreme Court,

As you are aware, the Legislature has subpoenaed each of you to produce documents, narrow in scope, to the Special Joint Select Committee on Judicial Transparency and Accountability on Monday, April 19, 2021, at 3:00 p.m., unless responsive documents are produced sooner.

Last Friday, April 16, 2021, this Court entered an Order, improperly conjoining OP 21-0125 and OP 21-0173, which have always been and remain fundamentally unrelated in substance and in parties. In its Order, the Court goes further and attempts to "temporarily stay" Legislative subpoenas directed at its seven individual members, who are not parties to either Original Petition, have no standing in either matter to seek relief from the Court, and have not sought relief.

On page five, paragraph five of the Order, the Court states, "until the issues raised in this proceeding can be presented and adjudicated *in the course of due process*...." The Court here lays claim to sole authority over provision of due process for all branches of government, which is ludicrous. The statement implies that the Legislature is not capable of providing a forum in which due process may be had by subjects of Legislative inquiry. This statement is wholly outside the bounds of rational thought, given that all branches and levels of government are bound to provide due process to citizens in every action taken, and which the Executive and Legislative branches do every day. The entirety of a legislative session is one giant exercise in due process as citizens are provided the opportunity to weigh in on the making of laws that impact them. Judges are included in this opportunity, but concerning judges, their opportunity is limited by their special duty of impartiality in decision-making. And this is the question the Legislature seeks clarity on.

The Legislature has issued valid subpoenas. The Legislature has provided notice and an opportunity to be heard by those subject to the subpoenas. This is the essence of due process and comports fully with Title 5, Chapter 5, Part 1.

DEPARTMENT OF JUSTICE

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STATE OF MONTANA

The purpose of this letter is to provide a process for the subpoenaed justices to produce the subpoenaed documents prior to the hearing, if so desired.

The Order signals, though not clearly, that not all of the justices intend to respond in the same manner. It appears that five of you intend to ignore the subpoena. The Order specifically states that Justice Rice's subpoena is not stayed. Justice Baker has not joined paragraph five, but without indication of an alternative intent.

The undersigned observes that none of you are party to either Original Petition pending. The undersigned also observes that none of you have provided any notice that you are represented by counsel. As individuals subject to subpoena, you are not required or expected to respond or act as a group, and I find no authority that allows such action. Each of you must answer his or her subpoena individually, unless we can come to an agreement otherwise. Therefore, I am authorized by the Legislature to speak to each of you individually regarding whether and/or how you intend to respond to your subpoena, and to facilitate such response.

I may be reached at khansen@mt.gov or at 406-475-5650 (c) or 406-444-5862 (o). Failing these, please call the DOJ main number at 444-2026 and the receptionist will notify me.

Sincerely,

Kristin Hansen

Lieutenant General

Montana Attorney General

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