



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

December 18, 2008

Via Facsimile & U.S. Mail

Edward M. Genson
Genson & Gillespie
53 W. Jackson Blvd., Suite 1420
Chicago, IL 60604
Fax: (312) 939-3654

Dear Mr. Genson:

I have received your December 16, 2008 letter requesting that the Attorney General appoint and the State pay for counsel of Governor Blagojevich's choice to represent him in the criminal case, the impeachment investigation and the Illinois Supreme Court action. Specifically, you have requested that the State pay for you, Sheldon Sorosky and Eli Rosenbloom to defend Governor Blagojevich in the following proceedings:

1. United States v. Rod R. Blagojevich, Criminal Complaint filed in the Northern District of Illinois on December 9, 2008 (the "Criminal Action").
2. In re: House Resolution 1650, appointment of a Special Committee to investigate Governor Rod R. Blagojevich (the "Impeachment Investigation").
3. People v. Rod Blagojevich, No. 107698, Original Action in the Illinois Supreme Court, filed on December 12, 2008 (the "Original Action").

For the following reasons, your request, based on Section 4 of the Attorney General Act, 15 ILCS 205/4 (2006), is denied.

1. The Criminal Action.

Your letter asks the Attorney General to appoint Special Assistant Attorneys General, paid by the state, to represent Governor Blagojevich in the federal criminal

case. The Attorney General, whose duties include prosecuting criminal matters on behalf of the People of the State of Illinois, has no constitutional or statutory duty to defend any individual in a criminal case. Section 4 of the Attorney General Act, on which you rely, states that the Attorney General has the duty "[t]o defend all actions and proceedings against any State officer, *in his official capacity*, in any of the courts of this State or the United States." (Emphasis added.) A suit is against a state official in his "official capacity" when the State, *not the individual*, is the "real party in interest." *Doe v. Calumet City*, 161 Ill. 2d 374, 400 (1994); *Smith v. Jones*, 113 Ill. 2d 126, 130-32 (1986); *Hudgens v. Dean*, 75 Ill. 2d 353, 355-57 (1979); *Sass v. Kramer*, 72 Ill. 2d 485, 492 (1978); *City of Elmhurst v. Kegerreis*, 392 Ill. 195, 203 (1946); *Schlicher v. Board of Fire and Police Comm'rs of Village of Westmont*, 363 Ill. App. 3d 869, 883 (2d Dist. 2006). That is not the case in a criminal suit, which is a proceeding against a person as *an individual*. Moreover, your reliance on *Ware v. Illinois*, 37 Ill. Ct. Cl. 43 (1985), is misplaced, as the decision in *Ware* is clearly erroneous and should not be followed. The State is the real party in interest only as the *prosecution* in a criminal case. It is absurd to suggest that taxpayers must finance the defense of a criminal action against Governor Blagojevich who is accused of corruptly betraying the public trust for personal and financial gain. As the Illinois Supreme Court has stated: "No official of public government should be encouraged to engage in criminal acts by the assurance that he will be able to pass defense costs on to the taxpayers of the community he was elected to serve." *Wright v. City of Danville*, 174 Ill. 2d 391, 403 (1996) ("The types of individuals who are drawn to these corrupt practices should not be given any incentive to seek public office."). Further, Court of Claims decisions have no precedential value. *Lohan v. Walgreens Co.*, 140 Ill. App. 3d 171, 174 (1st Dist. 1986).

2. The Impeachment Investigation

Section 4 of Attorney General Act also has no application to the Impeachment Investigation because it is not an action or proceeding against Governor Blagojevich "in his official capacity, in any of the courts of this State or the United States." 15 ILCS 205/4 (2006). The General Assembly is a legislative body, and the Impeachment Investigation is not a proceeding against Governor Blagojevich in his official capacity.

3. The Original Action.

Yesterday, the Illinois Supreme Court denied the petition to file the Original Action. As a result, it is not necessary to consider your request to be appointed and

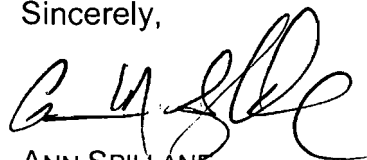
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paid by the State to represent the Governor in this action.¹

4. The Claimed Conflict of Interest.

Your letter also asserts that in connection with these proceedings, the Attorney General has a disqualifying conflict of interest because she filed the Original Action as attorney for the People of the State of Illinois. This assertion is meritless, and, in any event, incorrectly assumes that the Criminal Action and the Impeachment Investigation are against Governor Blagojevich in his official capacity, and that the Attorney General therefore would normally be responsible to represent him. As explained above, however, that is clearly not the case in these proceedings.

Sincerely,



ANN SPILLANE
CHIEF OF STAFF

cc: Sheldon Sorosky

¹ Your letter notes that our office appointed Special Assistant Attorneys General in the Original Action. You fail to note, however, that they provided their services to the People of the State of Illinois on a *pro bono* basis.