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House of Representatives

Commonwealth of Pennsylvania

November 30, 2016

COMMITTEES

CHILDREN AND YOUTH
CONSUMER AFFAIRS
GAMING OVERSIGHT
JUDICIARY

COMMISSIONS

PENNSYLVANIA COMMISSION ON SENTENCING

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The Honorable Ronald Marsico, Majority Chairman
Pennsylvania House Judiciary Committee
Room 315J, Main Capitol
PO Box 202105
Harrisburg, PA 17120

Chairman Marsico:

The Courts subcommittee has concluded our investigation pursuant to HR 659. A majority of the Subcommittee members have issued the attached report of our findings and recommendations.

Notably, we have recommended ten areas for future legislative review and/or changes to help protect the people of Pennsylvania from the type of troubling conduct we found Kathleen Kane committed during the course of our investigation.

These changes include providing additional avenues and greater protections for whistleblowers to report wrongdoing without endangering their own careers as well as changes to the Commonwealth Attorneys Act clarifying the duties and responsibilities of attorneys representing the Commonwealth of Pennsylvania through the Office of Attorney General.

With regard to impeachment, while a majority of the subcommittee members believe that the evidence presented at the hearing detailed conduct which would meet the definition of "misbehavior in office", we have decided that the conviction in a criminal court of the Attorney General accomplishes the objectives of impeachment, i.e., removal from office *and* a ban on holding any other office of trust in the Commonwealth. Given those circumstances, it would not be prudent at the present time to expend taxpayer funds for further impeachment proceedings. If Attorney General Kane would become eligible to serve in a position of public trust due to a change in circumstances, impeachment proceedings may well be appropriate.

I appreciate the opportunity to lead this investigation and look forward to working next session to address some of the legislative deficiencies our investigation found.

Sincerely Yours,

A handwritten signature in blue ink that reads "Todd Stephens".

Todd Stephens, Majority Chairman
Courts Subcommittee

cc: Speaker Michael Turzai
Majority Leader Dave Reed
Members of the Judiciary Committee



Report Regarding House Resolution 659

November 30, 2016

**By: Rep. Todd Stephens, Majority Chairman, Courts Subcommittee
Rep. Garth Everett
Rep. Tarah Toohil
Rep. Tedd Nesbit**

Background and Investigation

The Pennsylvania Attorney General became an elected office in 1980. In the 36 years since Leroy Zimmerman took office as the first elected Attorney General, ten others have served as Attorney General or acting Attorney General through election, succession to a vacancy in the office, or appointment by the governor. During this brief period, on two occasions the elected Attorney General has resigned as a result of a criminal conviction while in office. Most recently, Kathleen Kane served as Attorney General from January 2013 until her resignation on August 16, 2016 following a jury verdict finding her guilty of perjury and other offenses the day before.

In January 2016, following the filing of the criminal charges which eventually led to her conviction, the Judiciary Committee of the House of Representatives voted unanimously (26-0) to report House Resolution 659 to the full House of Representatives. House Resolution 659 authorized the House Judiciary Committee to investigate the conduct of the Attorney General and determine whether there was sufficient evidence to make her liable to impeachment. On February 10, 2016 the Pennsylvania House of Representatives adopted the resolution by a vote of 170-12.

The Resolution directed the Judiciary Committee to designate its Subcommittee on Courts to conduct the investigation. Specifically, the Resolution authorized the Subcommittee to “take testimony, review documents or other materials and interview witnesses for the use of the Judiciary Committee”. The Subcommittee was further empowered to serve subpoenas for the compulsory attendance of witnesses and production of documents to facilitate its investigation. Additionally, the Subcommittee was authorized to “prepare and file pleadings and other legal documents” necessary to its investigation and to “make recommendations to the Judiciary Committee”.

The standard for impeachment of an elected official in the Commonwealth requires proof that the official engaged in “misbehavior in office”. “Misbehavior” is a broad term and goes beyond conduct which constitutes a criminal offense. It includes conduct which involves an abuse of power, dereliction of duty, and the use of the office and its resources to promote a personal rather than public agenda.

Following the adoption of House Resolution 659, staff and members of the Subcommittee from both political parties conducted interviews with past and current employees of the Office of Attorney General (OAG) and reviewed numerous documents provided by the current Attorney General, Bruce Beemer, and other publicly available information. This included information from several civil complaints filed by present and former employees against the OAG, and the Attorney General herself in her personal and official capacity. In addition, the Subcommittee utilized information that had been published by various media outlets to develop additional areas of inquiry.

Though the Judiciary Committee was authorized to retain counsel and staff to assist it in its investigation, to minimize costs to the taxpayers, most of the work of the Subcommittee during this investigation was conducted by House members and staff. During the course of its investigation, however, the Subcommittee contacted several potential witnesses who were current employees of the OAG. Because of Attorney General Kane’s history of retaliation against those who she perceived as a threat, several witnesses expressed a desire to cooperate but were reluctant to participate for fear Attorney General Kane would retaliate against them.

In an attempt to assuage their concerns, as early as June 2016, the Majority Committee and Subcommittee Chairs sought authority to secure a protective order from the courts to prevent Attorney General Kane from retaliating against these witnesses. While the House retained outside counsel, the authority of that outside counsel to act required the joint authorization of the Majority and Minority Chairs of the Judiciary Committee in consultation with the Majority and Minority Chairs of the Subcommittee. Though the Majority Committee Chair was supportive, the Minority Committee Chair would only authorize counsel to advise the Subcommittee on the issue but refused to authorize counsel to file pleadings and litigate in court for a protective order. In accordance with these limitations, the Committee retained counsel and expended \$38,000 for legal research and advice prior to Attorney General Kane's trial and conviction. Since a protective order was not secured, however, the Subcommittee was unable to interview certain individuals until Governor Wolf appointed Attorney General Beemer to the office following Attorney General Kane's resignation in August, thereby assuring there would be no adverse consequence. Others agreed to be interviewed but only on the assurance that their identities be protected.

On November 14, 2016, the subcommittee conducted a public hearing into the matter to provide a forum for the witnesses to present their experiences serving under Attorney General Kane. At that hearing, the Subcommittee received testimony from Attorney General Beemer as well as current and former employees of the OAG who provided first-hand accounts of the operation of the office during the term of Attorney General Kane. Former Attorney General Kathleen Kane was given the opportunity to testify at the hearing but, through her attorney, declined to do so.

This report summarizes facts adduced from the public hearing. A copy of the hearing transcript accompanies this report as Appendix A. Though a majority of the subcommittee members believe that the evidence presented at the hearing detailed conduct which would meet the definition of "misbehavior in office", a majority of the subcommittee members have decided that the conviction in a criminal court of the Attorney General accomplishes the objectives of impeachment, i.e., removal from office *and* a ban on holding any other office of trust in the Commonwealth. Given those circumstances, it would not be prudent at the present time to expend taxpayer funds for further impeachment proceedings. If Attorney General Kane would become eligible to serve in a position of public trust due to a change in circumstances, impeachment proceedings may well be appropriate. Accordingly, we recommend that any further impeachment proceedings be deferred unless and until such time a future House of Representatives finds it necessary to pursue them.

Findings of the Subcommittee's Investigation

After interviewing over a dozen witnesses and reviewing countless documents, civil suits, and media reports, the subcommittee found Kathleen Kane managed the OAG through fear and intimidation. Several witnesses described an atmosphere where employees feared retaliation or retribution for simply performing their jobs. Not only did Kathleen Kane manage in this manner but those closest to her who she placed in positions of power and authority did as well.

The committee also heard from several witnesses that because of this pervasive feeling of intimidation, they were fearful to come forward with information concerning wrongdoing they witnessed. Employees consistently stated they felt they had nowhere to turn to alleviate their fears and address the wrongdoing they were witnessing.

Specifically, the Subcommittee's investigation revealed many concerning instances of Attorney General Kane's conduct including:

- 1) Engaging in conduct which resulted in her losing the license to practice law in Pennsylvania.
- 2) Appointing someone without a license to practice law in Pennsylvania as a "Special Prosecutor".
- 3) Releasing millions of emails to an unlicensed "Special Prosecutor" without considering whether they contained legally privileged or confidential information.
- 4) Creating a new full time "Solicitor General" position rendering the statutorily-created First Deputy position subordinate to this new official.
- 5) Interfering in an investigation where politically connected individuals were key witnesses.
- 6) Refusing to follow well-established OAG policy concerning Patrick Reese, the head of AG Kane's security detail, who was charged with, tried, and convicted of serious crimes, and allowing him to remain employed as a law enforcement agent.
- 7) Failing to protect female employees of the OAG by refusing to discipline, and in fact promoting, Jonathan Duecker, one of Kathleen Kane's favored OAG employees, after an OAG Human Relations and Office of Professional Responsibility investigation concluded he sexually harassed women working in the OAG.
- 8) Offering the OAG FOP a beneficial contract should one of their members lie to the media by recanting her sexual harassment accusations against Jonathan Duecker, one of Kathleen Kane's favored OAG employees.
- 9) Denying a request to investigate a supervisor who ordered a drug enforcement agent to omit information about a confidential informant's credibility during a drug investigation that resulted in an application for a search warrant and arrest.
- 10) Terminating a career employee because he complied with a lawfully issued subpoena.
- 11) Permitting Jonathan Duecker to terminate an OAG employee because the employee investigated and recommended disciplinary action be taken against Jonathan Duecker for sexually harassing women working in the OAG.

12) Criminal conduct including:

- a. Perjury;
- b. False Swearing;
- c. Obstructing the Administration of Law or Other Function;
- d. Criminal Conspiracy to Commit Obstructing the Administration of Law or Other Function;
- e. Official Oppression.

Recommendations

It is clear that the General Assembly never contemplated many of the issues presented during Kathleen Kane's tenure. Indeed, Attorney General Beemer testified that when researching some of these issues with the National Association of Attorneys General, they could find no other jurisdictions where these issues have arisen. We recommend the General Assembly address the following issues:

- 1) Requiring the Attorney General of Pennsylvania at all times to possess a valid license to practice law in Pennsylvania.
- 2) Requiring anyone who is contracted or employed by the Attorney General's Office to provide legal services possess a valid license to practice law in Pennsylvania.
- 3) Prohibiting attorneys in the Office of Attorney General from maintaining a private law practice.
- 4) Clarifying that the First Deputy shall be at the top of the chain of command and assume any duties the Attorney General cannot fulfill.
- 5) Providing for greater legislative oversight over government agencies to investigate wrongdoing and provide accountability and transparency.
- 6) Providing an avenue for whistleblowers to report wrongdoing outside their own agency.
- 7) Providing greater protections for whistleblowers.
- 8) Providing explicit protections for individuals who cooperate with a legislative investigation.
- 9) Reviewing the provisions concerning Grand Jury secrecy to prevent someone from using it as a shield to prevent accountability and/or transparency.
- 10) Reviewing the use of "non-disclosure" provisions in legal settlements to prevent officials from avoiding accountability and/or transparency for their own conduct.

Conclusion

We recommend that any further impeachment proceedings be deferred unless and until such time a future House of Representatives finds it necessary to pursue them. If Attorney General Kane would become eligible to serve in a position of public trust due to a change in circumstances, impeachment proceedings may well be appropriate.

Though we are recommending against formal impeachment proceedings at this time, the information gleaned from the investigation has identified serious deficiencies in current law. These gaps created extreme difficulties for OAG staff, impeding their abilities to fulfill their duties serving the citizens of Pennsylvania. Additionally, the investigation revealed a need for greater oversight of government agencies, including alternative outlets for whistleblowers to report wrongdoing and protections for those who report such wrongdoing.

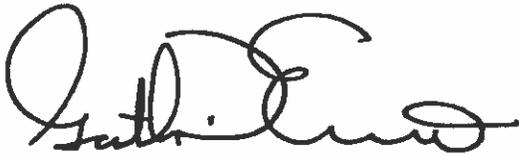
It is clear the General Assembly did not contemplate many of the issues presented during Kathleen Kane's tenure. We credit the dedicated staff in the Attorney General's Office, especially then-First Deputy, and current Attorney General, Bruce Beemer for working diligently to ensure the office functioned as well as it could under the circumstances.

We recommend the legislature consider addressing these issues to ensure the Attorney General's Office in Pennsylvania never experiences the tumult and dysfunction experienced under Attorney General Kathleen Kane.

Respectfully Submitted:



Todd Stephens, Majority Chairman
Courts Subcommittee



Garth Everett, Representative



Tarah Toohil, Representative



Tedd Nesbit, Representative