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IN THE DISTRICT COURT OF TULSA COUNTY
STATE OF OKLAHOMA

2010 JAN 26 PM 4:06

DR. JIM SISNEY, an individual

Plaintiffs,

vs.

MIKE RAMPEY, an individual;
DOUGLAS HUDKINS, an individual;
MARY ANN FLIPPO, an individual;
SHARI WILKINS, an individual; and,
SHARON WHELPLEY,

Defendants.

DISTRICT COURT
F I L E D

JAN 26 2010

Case No. CJ-2008-06173

SALLI WITH COURT CLERK
STATE OF OKLA. TULSA COUNTY

**MOTION TO QUASH SUBPOENA DUCES TECUM
AND FOR PROTECTIVE ORDER**

NON-PARTY MOVANT, Representative James M. "Mike" Ritze, D.O., moves the Court pursuant to 12 O.S. §§2004.1 and 3226(C)(1) for a Protective Order and an Order quashing the Subpoena Duces Tecum, attached hereto as Exhibit "A", which Defendants Flippo, Wilkins and Whelpley (collectively "Defendants") attempted to serve on him on January 22, 2010. The Subpoena seeks to compel Rep. Ritze's testimony, as well as various documents, relating to the Broken Arrow School District.

The undersigned has conferred/attempted to confer in good faith by telephone with defense counsel regarding the disputed matters herein, but has been unable resolve this dispute. As will be set forth more fully below, Rep. Ritze has absolute immunity under the Oklahoma Constitution from being questioned about acts that occurred during the legislative process or his motivation for those acts. Further, testimony by legislators as to legislative action is incompetent and cannot lead to admissible evidence.

STATEMENT OF THE CASE

On Friday, January 22, 2010, a man identifying himself as "Darryl" (presumably a process server, hereinafter referred to as "Defendants' Representative") attempted to serve the subject Subpoena Duces Tecum on Representative Mike Ritze. Rep. Ritze is a

physician who maintains his practice in Broken Arrow, Oklahoma. Defendants' Representative attempted to serve the Subpoena at Rep. Ritze's office at around 4:30 p.m., after he had already left for the day. Accordingly, Defendants' Representative left the Subpoena with Dr. Ritze's secretary, Nancy Isbell, who did not sign for the document.

The subpoena contains a laundry list of demands that call for Representative Ritze to produce various records and documents, presumably related to his investigation of the manner in which public funds are being spent by the Broken Arrow School District. These demands call for information that is protected under the Oklahoma Constitution and cannot lead to admissible evidence.

ARGUMENTS AND AUTHORITIES

I. THE SUBPOENA IS INVALID BECAUSE IT WAS NOT PROPERLY SERVED AND SHOULD, THEREFORE, BE QUASHED.

12 O.S. §2004.1(B)(1) provides:

SERVICE. Service of a subpoena upon a person named therein shall be made by delivering or mailing a copy thereof to such person....

In this case, Defendants' Representative served the subpoena on Ms. Isbell, not Representative Ritze, to whom the subpoena was directed. "Service of a subpoena is personal, and must be made in accordance with §2004.1 to the person named therein." Waddle v. Waddle, 1994 OK CIV APP 1, 868 P.2d 751 (Okla.App.1994). Here, service was not effectuated in accordance with §2004.1; hence, service was not good and the Subpoena must be quashed.

II. ARTICLE V, SECTION 22 OF THE OKLAHOMA CONSTITUTION PROVIDES ABSOLUTE IMMUNITY TO REPRESENTATIVE RITZE FROM TESTIFYING OR PRODUCING DOCUMENTS. ACCORDINGLY, THE SUBPOENA MUST BE QUASHED AND REP. RITZE IS ENTITLED TO PROTECTIVE ORDER PROHIBITING THE REQUESTED DISCOVERY.

12 O.S. §2004.1(C)(3)(a) provides:

On timely motion, the court by which a subpoena was

issued shall quash or modify the subpoena if it:...

(3) requires disclosure of privileged or other protected matter and no exception or waiver applies,

(5) requires production of books, papers, documents or tangible things that fall outside the scope of discovery permitted by Section 3226 of this title.

In this case, the Speech or Debate clause of the Oklahoma Constitution immunizes Rep. Ritze, not only from suit, but also from responding to discovery in this matter. Article V, Section 22 of the Oklahoma Constitution provides, in pertinent part:

Senators and Representatives...for any speech or debate in either House, shall not be questioned in any other place.

In construing this provision, the Oklahoma Supreme Court has established absolute immunity for legislators. In Oklahoma State Senate v. Hetherington, 1994 OK 16, ¶2, 868 P.2d 708, 709 (Okla.1994), the Court ordered an action dismissed against leaders of the Oklahoma Legislature because the Speech or Debate Clause precluded them from being haled into court for acts that occurred while they were acting within the sphere of legitimate legislative activity.

In Brock v. Thompson, 1997 OK 127, ¶ 13, 948 P.2d 279 (Okla.1997), the Court included circulators of an initiative petition with the umbrellas of Speech or Debate protection. In Brock, ¶ 14, the Court used remarkably strong language in articulating the protection afforded lawmakers:

The Speech or Debate Clause of the Oklahoma Constitution, Art. 5, § 22, *absolutely protects* legislators from suit calling for judicial inquiry into their performance "within the sphere of legitimate legislative activity." Legislators may not be haled into court, either to account for acts that occurred in the course of the legislative process or for judicial inquiry into their motivation for those acts. The legislative privilege has never been limited to words spoken in debate. The constitution's immunity shields all enactment-related conduct, whether a legislator be (1) sued personally, (2) in an official capacity, or (3) as the Legislature's leader. The line separating protected from unprotected legislative activities lies in the distinction between "purely legislative activities" and those that are

nongermane “political matters.” [Footnotes omitted].

The Court also noted that Oklahoma’s Speech or Debate Clause was taken directly from the United States Constitution, Article I, Section 6, and that Oklahoma’s clause provides at least as much protection as the immunity granted by the comparable provisions of the Federal Constitution. *Id.*, at 288. Where state law is adopted from its federal counterpart, courts may look to federal case law to aid its interpretation and application. *Fanning v. Brown*, 2004 OK 7, ¶ 20, 85 P.3d 841, 848 (Okla.2004).

The Speech or Debate Clause of the U.S. Constitution is interpreted broadly. *Doe v. McMillan*, 412 U.S. 306, 311 (1973); *Gravel v. United States*, 408 U.S. 606, 617 (1972). The same protection afforded members of Congress extends to state legislators. See *Tenney v. Brandhove*, 341 U.S. 367 (1951) (California state legislators protected from prosecution for alleged civil rights by Speech or Debate privilege).

In the *McMillan* case, *supra*, parents of District of Columbia school children brought an action against members of a House of Representatives committee, federal legislative employees and others for invasion of privacy stemming from a congressional report on the D.C. school system. Despite contentions by the plaintiff that the particular conduct (identifying children) was actionable because it was unnecessary and irrelevant to any legislative purpose, the *McMillan* court found that the Speech or Debate Clause was dispositive with respect to members of Congress, the Committee staff and others involved in the Committee’s work. *McMillan*, at 312.

“Doubtless, also, a published report may, without losing Speech or Debate Clause protection, be distributed to and used for legislative purposes by Members of Congress, congressional committees, and institutional or individual legislative functionaries.” *Id.* The protection is so strong that it immunizes members of Congress and their staffs “even though their conduct, if performed in other than legislative contexts, would in itself be unconstitutional or otherwise contrary to criminal or civil statutes.” *Id.*, at 312-13.

Representative Ritze cannot be compelled to testify or produce documents

concerning the legislative process. Furthermore, the Speech or Debate Clauses of the United States and Oklahoma Constitutions provides absolute protection to Representative Ritze against testifying about matters within the sphere of legislative activity. Brandhove, 341 U.S. 367 (1951).

In Brandhove, the respondent sued petitioners alleging that, in connection with an investigation by a committee of the California legislature, he had been deprived of rights guaranteed by the federal constitution. The Court held that the privilege of legislators to be free from arrest or civil process for what they do or say in legislative proceedings has been carefully preserved in the formation of both state and national governments. Further, the Court found that the motives of legislators did not destroy the privilege.

In Brandhove, the Court said.

In times of political passion, dishonest or vindictive motives are readily attributed to legislative conduct and as readily believed. [Citation omitted]. Courts are not the place for such controversies. Self-discipline and the voters must be the ultimate reliance for discouraging or correcting abuses.

Brandhove, at 378.

Furthermore, it is not necessary that legislation actually result from the conduct at issue. It is enough that investigations relate to subjects upon which legislation **could** be had. Romer v. Colorado, 810 P.2d 215 (Colo.1991), *citing* Brandhove, 341 U.S. at 377.

Perhaps most instructive is the case of Chapman v. Space Qualified Systems Corp., 647 F.Supp. 551 (N.D. Fla.1986). There, a motion to quash was filed on behalf of an investigator with the General Accounting Office. In that case, a House Committee had received a series of allegations regarding the activities and conduct of the plaintiff. The allegations were made by Space Qualified Systems ("SQS") and included charges that the plaintiff used threats, coercion and extortion in dealing with SQS. Upon receiving notice of the allegations, the chair of the House Committee on Government Operations requested that an investigation be instituted by the GAO. Accordingly, the GAO assigned one of its investigators to the matter.

Subsequently, the plaintiff served a subpoena on the investigator, seeking both to depose him and to compel him to bring to the deposition all documents relating to his investigation of the plaintiff. A motion to quash the subpoena was filed on the basis that it sought testimony and documentary evidence which was privileged by the Speech or Debate Clause of the United States Constitution.

In quashing the subpoena, the Court stated:

The Speech or Debate Clause, in pertinent part, states that "for any Speech or Debate in either House, [Senators and Representatives] shall not be questioned in any other place." The movants contend that the activities of [the investigator] fall within the protection of the Speech or Debate Clause, and that any testimonial or documentary evidence that may be adduced through [the investigator] should be absolutely privileged and immune from discovery. In response, the plaintiff argues that the Speech or Debate Clause does not apply to an investigator of the GAO, and that the policy behind the Speech or Debate Clause does not require the courts to confer immunity upon a GAO officer.

Without exception, the Supreme Court of the United States has read the Speech or Debate Clause broadly to effectuate its purposes, which include the goal of maintaining legislative integrity and insuring the fundamental principles inherent in the separation of powers... In essence, the Speech or Debate Clause insures that "the legislative function the Constitution allocates to Congress may be performed independently."

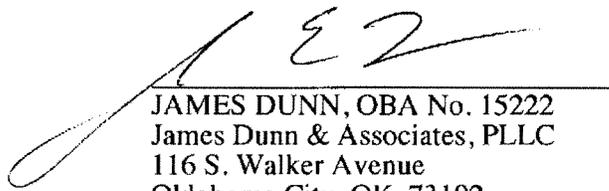
...[T]he question to be resolved is whether Rod Worth's actions as a GAO investigator fall within the "sphere of legitimate legislative activity." If they do, then, assuming that Rod Worth is covered by the Speech or Debate Clause, he "shall not be questioned in any other Place" about those activities, since the Speech or Debate Clause provides an absolute privilege. Although the issue was once contested, it is now well-settled that the power of the Congress to investigate plainly falls within the "sphere of legitimate legislative activity." A legislative body cannot legislative wisely or effectively in the absence of information respecting the conditions which the legislation is intended to affect or change... I find that Rod Worth's activities and conduct in connection with his investigation of Major General Chapman fall directly within the Speech or Debate Clause as they are plainly within the "sphere of legitimate legislative activity." [Internal citations omitted].

Chapman, at 552-53. In responding to the argument that the Constitutional immunity should not be applied to a GAO investigator, the Court noted that its inquiry on that matter was limited to whether the investigators activities would be protected by the Speech or Debate Clause **if performed by a legislator personally**. The Court concluded that they would be. Id., at 554.

Here, as in Chapman, Representative Ritze was advised of allegations that public funds were being improperly used to pay a vendor to the Broken Arrow School District, as well as to pay unused sick leave to employees of the Broken Arrow School District. Rep. Ritze personally undertook an investigation of those allegations in his capacity as a member of the Oklahoma House of Representatives. These efforts clearly fall within the "legitimate sphere of legislative activity." Neither his motives, nor the results of his investigation, may be "questioned in any other place," including by the defendants in this matter.

Accordingly, Representative Ritze respectfully requests that the Subpoena, requiring his testimony and the production of documents related to his investigation on January 29, 2010, be quashed and that a Protective Order be entered that the requested discovery not be had.

Respectfully submitted,



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Attorney for Movant,
Representative James M. Ritze, D.O.

CERTIFICATE OF MAILING

This is to certify that on this 25 day of November, 2010, a true and correct copy of the above and foregoing was mailed, postage prepaid, to the following named counsel of record, to-wit:

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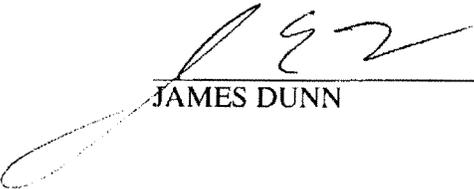
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JAMES DUNN

IN THE DISTRICT COURT IN AND FOR TULSA COUNTY
STATE OF OKLAHOMA

DR. JIM SISNEY, an individual,)
)
) Plaintiff.)
)
 vs.) Case No. CJ-2008-06173
)
 MIKE RAMPEY, an individual;)
 DOUGLAS HUDKINS, an individual;)
 MARYANNE FLIPPO, an individual;)
 SHARI WILKINS, an individual; and)
 SHARON WHELPLEY,)
)
) Defendants.)

DEPOSITION SUBPOENA IN A CIVIL CASE

TO: Mike Ritze
18574 E. 101st St. S.
Broken Arrow, OK 74011

GREETINGS:

YOU ARE COMMANDED to appear and give your stenographic discovery deposition (testimony) on behalf of the Defendants Maryanne Flippo, Shari Wilkins and Sharon Whelpley on January 29, 2010, at 2:00 p.m. at the law offices of HALL, ESTILL, 320 South Boston Avenue, Suite 200, Tulsa, OK 74103, continuing thereafter until completed, before a certified reporter or other person authorized to administer oaths. You are further commanded to bring with you to the deposition those documents listed on Exhibit "A" to this subpoena.

Phyllis L. Walta

Phyllis L. Walta OBA # 9331
WALTA & WALTA
120 East Oklahoma
Hennessey, Oklahoma 73742
(405) 853-2346
(405) 853-2462 (Facsimile)



TO THE DEPOSITION SUBPOENA OF MIKE RITZE

All documents received from or sent to Jim Sisney, including but not limited to e-mails.

All documents received from or sent to Lee Sisney, including but not limited to e-mails.

All documents in your possession related to the Broken Arrow School District, Maryanne Flippo, Shari Wilkins, Sharon Whelpley, Douglas Hudkins, Mike Rampey, Air Assurance, Gary Gerber, or Cheryl Kelly, including but not limited to e-mails.

All documents provided to you related to the payment of sick leave by the Broken Arrow School District.

Any legal memorandums or other correspondence from Doug Mann or the firm of Rosenstein, Fisk and Ringold in your possession