



STATE OF MICHIGAN
OFFICE OF THE GOVERNOR
LANSING

JENNIFER M. GRANHOLM
GOVERNOR

JOHN D. CHERRY, JR.
LT. GOVERNOR

August 12, 2008

VIA MAIL AND FACSIMILE

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**Re: *In the Matter of the Request for the Removal of Kwame M. Kilpatrick
from the Office of Mayor of the City of Detroit, No. EO-2008-004-LO***

Dear Counsel:

The Governor has asked that I respond to a portion of Counsel McPhail's letter to me dated August 8, 2008. In that letter, Ms. McPhail requests, in part, additional information relating to immunity in this matter.

Ms. McPhail first asks, "[i]n that the Council as a body is the Petitioner, I assume that you will waive legislative immunity for the purpose of this proceeding?" Secondly, Ms. McPhail requests that she be immediately advised "as to the availability of immunity for witnesses and the Respondent, who will or may testify at the Governor's hearing."

In response, I note that the hearing in this matter is authorized by Section 327 of the Michigan Election Law, 1954 PA 116, MCL 168.327, which requires that a city officer be afforded an opportunity of being heard in his or her defense after charges of misconduct or neglect against the officer are exhibited to the governor. Nothing in MCL 168.327, or other provisions of Michigan law, authorizes the Governor to waive any claim of legislative immunity, irrespective of whether such a claim may be authorized or applicable in this matter.

Letter to Counsel McPhail
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Section 1 of 1968 PA 289, MCL 780.701, authorizes a prosecuting attorney in a criminal proceeding to apply to a magistrate or judge for an order granting immunity to a person who might give testimony concerning a criminal violation charged in a complaint or warrant before a court. This provision has no application in this matter, however. Governor Granholm is not a prosecuting attorney, magistrate, or judge. Nor is the matter before the Governor a criminal proceeding involving a criminal complaint and warrant.

Non-judicial officials have limited authority to request a court-ordered grant of immunity in an investigation or legal proceeding under Section 2a of 1968 PA 298, MCL 780.702a. Under this law, a public official or agency may apply to a court for a grant of immunity only if the official or agency:

(1) is empowered by a state statute to issue a subpoena or otherwise compel the testimony of a witness or the production of evidence in an investigation or proceeding authorized by that statute; or

(2) is authorized to seek from a court a subpoena, compelled testimony, or production of evidence from a court.

Nothing in MCL 168.327 or other applicable Michigan law authorizes the Governor to issue a subpoena, compel testimony, compel production of evidence, or to seek a subpoena, compelled testimony, or production of evidence from a court in this matter.

Accordingly, counsel is advised that Governor Granholm has no authority under MCL 168.327, or other provisions of Michigan law, to grant immunity to witnesses in this matter. Given this lack of authority, the Governor will not consider any requests for immunity or waiver of immunity in this matter unless a motion filed by counsel identifies and relies upon contrary legal authority.

Sincerely,



Kelly G. Keenan
Legal Counsel to the Governor

c: Governor Jennifer M. Granholm