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LANEE DANFORTH
District Attorney

March 31, 2022

Lincoln County Commissioners,

There are several purposes for this letter including to inform you of the limitations of your authority as commissioners, to explain the very bad position you have placed yourselves in based on the decisions you have made that I assume have been advised by County Counsel Kristin Yuille and her office, and to notify you of my intentions moving forward.

I recognize none of you are lawyers and you rely on the legal advice given to you by County Counsel Kristin Yuille and the other two attorneys in her office. There are two options here, (1) Ms. Yuille is giving you good legal advice that you are choosing to ignore, or (2) She is giving you bad legal advice that you are choosing to follow. Either way, it has cost the county thousands of dollars, and has placed each of you in positions where you are facing potential criminal and personal liability for the decisions you have made. I don't say this lightly and I don't say it to insult you, Ms. Yuille, or the attorneys in her office. I say it because I am concerned about what has occurred over the past several months and you deserve to be accurately informed about the law.

You may be wondering what gives me the authority or makes me qualified to comment on the legal advice given by County Counsel. That's a fair question and the answer is found in ORS 8.690, which states:

Upon request of a county officer, the district attorney and deputies of the district attorney shall advise the county court and other county officers on all legal questions that may arise. When any action is instituted against any county officer or county employee for damages for an alleged wrongful act or omission in the performance of official duty, the district attorney shall defend such action. The district attorney shall also prosecute and defend all actions, suits, and proceedings to which the county may be a party. For such services the district attorney shall receive no compensation other than salary.

"County court" means the county commissioners. ORS 203.240. The legislature recognizes the District Attorney's qualifications to advise the county on legal matters, which include the limitations of your authority as commissioners. There is a separate statute that allows the commissioners to appoint county counsel, and most counties in the state do that. Counties of our size generally have one county counsel position and contract out for legal services when necessary, such as for contract negotiations. Lincoln County has three county counsel positions and still regularly contract out for legal services which ends up costing the county thousands of dollars each year.

I want to explain the limitations of your authority as commissioners and then discuss the position you have put yourselves in by exceeding your authority.

LIMITATIONS OF YOUR AUTHORITY OVER THE DA'S OFFICE

ORS 203.035 states that commissioners may "...exercise authority within the county over matters of county concern, to the fullest extent allowed by Constitutions and laws of the United States and of this state." As commissioners, you have significant power and authority. However, your power and authority are limited by the U.S. and Oregon Constitutions and Oregon law. What that means in terms of the DA's Office is that your power and authority is limited to the budget. You determine what the budget will be for the DA's Office for the next fiscal year, and I am responsible for operating within the confines of the budget. If I ask for additional funding, it's within your power and authority to approve or deny that request. If the voters do not think you are adequately funding the DA's Office, their recourse is to vote you out of office. Likewise, if the voters do not think I am spending the money given to me by the commissioners wisely or in a way that promotes public safety, their recourse is to vote me out of office.

In summary, you provide me with a budget, and I decide how to spend the budget in the DA's Office to fulfill my constitutional and statutory duties as the elected District Attorney. My job is to determine what positions to have within my office and the job duties of those positions. If I believe I need 5 detectives, and it is within my budget to fund 5 detectives and make cuts elsewhere, that is my decision to make as the elected DA. I don't need approval from the commissioners to make that decision. I recognize that HR's job is to assist my department in following employment / labor laws, and we welcome the assistance when we request it. However, I do not work for HR, I do not work for County Counsel and respectfully, I do not work for you. I work for the citizens of Lincoln County, and I answer to them, as do you.

I have several constitutional and statutory duties I am responsible for. It's not your job to know or understand what my duties are. It's also not County Counsel's job to know or understand what my duties are, nor is it their job to tell you what they believe my duties are. It is also not their job to tell you what my office does and doesn't need. That is my job. If I need additional funding to fulfill one of my duties, I will approach the commissioners and the M-Team and explain why the additional funding is needed. I, in conjunction with other public safety officials such as the Sheriff, get to make decisions about how to meet the public safety needs of Lincoln County. You get to make decisions about how much you are going to support the DA's Office and prioritize public safety and your decision is reflected in the amount of funding you allocate to public safety and my office.

I can tell you neither I nor the Deputy District Attorneys in my office feel supported or valued by the three of you. You have been working in direct opposition to the DA's Office since the moment I took office on January 4, 2021. I have spent more time trying to get the basic operational needs of my office met and fighting against my own county commissioners than I have spent prosecuting crime and supporting the DDAs and staff in my office. Your interference with the DA's Office and my ability to run the office has significantly harmed our community. I intend to send you a letter outlining each of those decisions and the negative impact those decisions have had.

CURRENT POSITION YOU ARE IN

Public officials are held to a high standard, as they should be. There are potential penalties for exceeding your authority. One example of that is the penalty that can be imposed for willfully violating public meeting laws. If you make decisions, such as the decision (it was a decision) you made to effectively rescind your employment offer to Detective Dorsey and place the DA's Office Detective position "on hold", without a public meeting or executive session, and you did so willfully, you can be *personally* liable. That means you must pay out of your own pocket if a lawsuit is filed, and a judge makes the required findings.

There are potential criminal penalties for exceeding your authority. I am not going to review all the criminal statutes that could apply but I will explain what Official Misconduct in the First Degree is.

Official Misconduct in the First Degree (ORS 162.415)

A public servant commits the crime of official misconduct in the first degree if:

(a) With intent to obtain a benefit or to harm another:

(A) The public servant knowingly fails to perform a duty imposed upon the public servant by law or one clearly inherent in the nature of the office; or

(B) The public servant knowingly performs an act constituting an unauthorized exercise in official duties

The harm can be anything, including retaliation for whistleblowing. I would like to assume the commissioners have acted with good intent and that your decisions are the result of flawed legal advice from County Counsel. Perhaps you didn't know that the decisions you were making constitute an unauthorized exercise in your official duties. I am advising you that the decisions you have made and your interference with the DA's Office *do* constitute an unauthorized exercise in your official duties. I have clearly articulated the limitations of your positions as commissioners and should you continue to exceed your authority and continue to interfere with my ability to carry out the duties of my elected office, you will be doing so with the knowledge it is unauthorized.

I want to be very clear that this is not a threat to prosecute you for Official Misconduct in the First Degree or any other crimes. This is designed to accurately inform you of the limitations of your statutory authority so that you stop interfering with my ability to do the job I was elected to do, swore an oath to do, and am legally obligated to do. That said, my job is to prosecute crime and protect our community. The law applies equally to everyone, including you and including your appointed employees. I will not hesitate to prosecute *anyone* who violates the law.

IN CONCLUSION

Now that you clearly understand your role and limitations as it relates to the DA's Office, I am informing you (not asking for approval) that I am going to do the following:

1. Detective Abby Dorsey was hired by the county and has a legally binding employment contract. She is starting in the DA's Office on April 1, 2022. It's not fair to Detective Dorsey

nor is it fair to Sheriff Landers to have Detective Dorsey suddenly abandon that office and I know Detective Dorsey has no intention of doing so. We both care deeply about the Sheriff's Office and work collaboratively. I will work with the Sheriff regarding her duties and assistance to his office. Please advise Anna Semple of what paperwork needs to be completed this afternoon so Detective Dorsey can be on the DA's Office payroll starting tomorrow.

2. Chief Deputy DA Lynn Howard is going to perform her supervisory duties, effective immediately. You demoted her without the authority to do so and without due process, and without reinstating her in the union. I will not explain the legal implications of doing so, I am aware you received Ms. Howard's tort claim notice. The DDA's in the office have been without an attorney supervisor for 8 weeks and it is creating a hardship for my office. and it's been 8 weeks that she has been unable to perform her job duties. The DDAs in the office, crime victims, and our community have been harmed because of your decision with respect to my appointed Chief Deputy.
3. I was instructed to promote a DDA only because I promoted a younger DDA with less years on the job. I will not do so. Promotion decisions are mine to make and I will not promote someone based on their age, that is illegal.

Sincerely,



Lanee Danforth
Lincoln County District Attorney