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Office of the Attorney General

May 18, 2017

Governor John W. Hickenlooper
Office of the Governor
136 State Capitol Bldg.
Denver, CO 80203

RE: Your request to abandon an appeal on behalf of the Colorado Oil and Gas
Conservation Commission

Governor Hickenlooper:

Yesterday, your senior staff sent an e-mail message to Deputy Attorney General Laura Chartrand, “ask[ing] that [my] office not proceed” with the appeal in *Martinez v. Colorado Oil and Gas Conservation Commission*. Your request conflicts with an official decision of the Commission, which you do not have authority to countermand.

On May 1, 2017, the Commission convened a regular meeting to discuss various items of business. At the meeting, and I have heard at your request, the Commission called an executive session to receive legal advice regarding the *Martinez* appeal, which raises important legal questions about the meaning of the Colorado Oil and Gas Conservation Act. With the benefit of the legal advice it received, the Commission ended its executive session and, in public, deliberated the issue and unanimously voted to proceed with the *Martinez* appeal in the Colorado Supreme Court. Now your senior staff suggests that the Commission’s vote was “only advisory” and that the Commission lacks statutory authority “to challenge a court’s interpretation of its organic statute.” This quite simply is an incorrect reading of Colorado Law.

The Commission’s vote to proceed with the *Martinez* appeal was within its statutory authority. The General Assembly expressly granted the Commission power to “make and enforce rules, regulations, and orders ... and to do whatever may be reasonably necessary to carry out the provisions of [the Act].” § 34-60-105(1), C.R.S. In the *Martinez* appeal, the Commission is defending its own order disposing of a request for rulemaking. Pursuing the appeal to completion is “reasonably necessary” to “enforce” the Commission’s order. *Id.* Additionally, the Act makes clear that “[p]roceedings for appellate review ... may be taken from any judgment,

decree, or order in any action under this article.” § 34-60-109, C.R.S. The Commission’s order, and the *Martinez* appeal itself, fall within that provision. Because the Commission is a statutory client of my office, it is my office’s “duty to represent the commission in all court proceedings.” § 34-60-105(3), C.R.S. That includes court proceedings initiated by an adverse party seeking to overturn a Commission order issued under its express statutory powers.¹

The Commission is an independent agency with independent powers. § 24-1-105(1), C.R.S. (explaining that agencies like the Commission “exercise [their] prescribed statutory powers, duties, and functions, ... independently”); *see also* § 24-1-124(3)(f), C.R.S. (explaining that the Commission, when transferred to the Department of Natural Resources, retained its independent powers). The Colorado Supreme Court has explicitly rejected attempts by past Governors to “countermand[]” the actions of independent agencies. *State Highway Comm’n v. Haase*, 537 P.2d 300, 301 (Colo. 1975). Attempts to do so are “a nullity” because an agency like the Commission “exercises its prescribed statutory powers independently.” *Id.* at 302. Your staff’s assertion that a decision to proceed with the *Martinez* appeal is “more properly made by the Governor’s office” than by the Commission itself is contrary to several provisions of the Act. *E.g.*, § 34-60-105(1), C.R.S. (“Any delegation of authority to any other state officer ... to administer any other laws of this state relating to the conservation of oil or gas ... is hereby rescinded and withdrawn and such authority is unqualifiedly conferred upon the commission”); § 34-60-106(4), C.R.S. (“The grant of any specific power or authority to the commission shall not be construed in this article to be in derogation of any of the general powers and authority granted under this article.”).

The Act specifies the geographical, political, and technical qualifications that Commissioners must possess in order to make appropriate, bi-partisan policy decisions on behalf of the State. § 34-60-104(2)(a)(I), C.R.S. **While the Act gives you appointment and removal authority over the Commissioners, § 34-60-104(2)(b), C.R.S., it does not permit you to disregard the independent judgment of the Commission and direct its decision-making.**

As a separate matter, the *Martinez* appeal raises issues of great significance to the State, and I have determined independently that the Colorado Supreme Court is the proper body to resolve them. *See* § 24-31-101(1)(a), C.R.S. (stating that the Attorney General “shall prosecute and defend for the state all causes in the appellate courts

¹ In the past, parties have attempted to challenge the Commission’s independent authority to participate in court proceedings. For example, in 2012 the Commission voted to initiate litigation in *Colorado Oil and Gas Conservation Commission v. City of Longmont*, No. 12 cv 702 (D. Ct. Boulder Cnty.). The court rejected the argument that the lawsuit was beyond the Commission’s authority.

in which the state is a party or interested”). In *Martinez*, a group of litigants has called into question an interpretation of the law that has governed the Commission’s functions for nearly 25 years. Whether the Colorado Supreme Court agrees or disagrees with that interpretation, the case should be heard and decided by our highest court to ensure consistency with its own case law and to confirm that the law, as enacted and intended by the General Assembly, is given effect.

Sincerely,



CYNTHIA H. COFFMAN
Attorney General