

**IN THE CIRCUIT COURT OF COLE COUNTY
NINETEENTH JUDICIAL CIRCUIT
STATE OF MISSOURI**

RON CALZONE,)	
Relator,)	
vs.)	Case No. _____
)	
ADMINISTRATIVE HEARING COMMISSION)	Division _____
and COMMISSIONER SREENIVASA)	
DANDAMUDI,)	
_____ Respondents.)	

PETITION FOR WRIT OF PROHIBITION

Pursuant to Rule 97.03, Relator Ron Calzone, as and for his Petition for a Writ of Prohibition, states as follows:

I. Statement of Facts

A. The Parties

1. Relator Ron Calzone is a Missouri citizen, a resident of Pulaski County, and has filed a Petition for Administrative Review with the Administrative Hearing Commission seeking reversal of a finding of probable cause entered against him by the Missouri Ethics Commission (“MEC” or “Ethics Commission”).

2. Respondent Administrative Hearing Commission (“AHC” or “Hearing Commission”) is required by statute to, *inter alia*, review findings of probable cause made by the MEC.

3. Respondent Sreenivasa Dandamudi (“Dandamudi” or “the AHC Commissioner”) is a Commissioner for Respondent Administrative Hearing Commission, who has been

assigned to Case. No. 15-1450 EC, Mr. Calzone's challenge to a finding of probable cause made by the MEC.

B. Procedural History

4. On November 4, 2014, the Missouri Society of Governmental Consultants ("the Society"), acting through counsel, filed a complaint against Relator, alleging that he was operating as a legislative lobbyist pursuant to § 105.470(5)(c), RSMo., without first registering with the government. Ex. A and B.

5. On September 11, 2015, the MEC issued an Order finding probable cause that Respondent violated § 105.470(5)(c), RSMo.

6. On September 25, 2015, Mr. Calzone filed a Petition for Review with the AHC; this action was assigned to Respondent Dandamudi and was given Case No. 15-1450 EC.

7. Mr. Calzone has consistently argued that the complaint the Society filed against him did not vest the MEC, and by extension, the AHC, with subject-matter jurisdiction because the complaint was filed by a corporation and not a natural person. § 105.957(2), RSMo. ("Complaints filed with the commission shall be in writing and filed only by a natural person").

8. The AHC's jurisdiction is coterminous with the MEC's, and clear statutory language limits the AHC's jurisdiction to cases based upon a proper complaint. *Bauer v. Missouri Ethics Comm'n*, 2008 Mo. Admin. Hearings LEXIS 287 (Mo. Admin. Hearings 2008); *J.C. Nichols Co. v. Director of Revenue*, 796 S.W.2d 16, 20 (Mo. 1990).

9. Mr. Calzone filed for Judgment on the Pleadings before the AHC. At oral argument for that Motion, the AHC Commissioner noted that he would rule for Mr. Calzone on

jurisdictional grounds. Nevertheless, the AHC Commissioner permitted the MEC to supplement the record with a copy of the Society's complaint against Mr. Calzone to ensure that the record would be complete in the event of an appeal.

10. That evening, the MEC filed a sur-reply and an amended answer, attaching a number of documents beyond those requested by the AHC Commissioner. Consequently, the Commissioner denied the Motion for Judgment on the Pleadings and instead ordered the parties to brief a Motion for Summary Decision. Ex. D.

11. The MEC sought no discovery in advance of its finding of probable cause. Before the Administrative Hearings Commission, however, the MEC sought far-reaching, burdensome, and invasive discovery against both Relator and a non-party, Missouri First, Inc. Ex. F.

12. On March 1, 2016, Relator filed a motion for a protective order barring the MEC's requested discovery. Ex. G. Relator argued, *inter alia*, that discovery should be held in abeyance until the AHC had determined whether it was vested with jurisdiction to hear the case. Ex. G at 48-51.

13. On April 8, 2016, the Hearing Commission denied Relator's motion and granted the MEC's motion to compel discovery against Relator. Ex. E (AHC Order of Apr. 8, 2016). Its decision does not discuss, let alone rule upon, the jurisdictional argument raised by Relator.

14. Because the Administrative Hearing Commission lacks subject-matter jurisdiction, subpoenas issued against Mr. Calzone or any non-party are void and this Court should order the Respondents immediately to enter decision in favor of Mr. Calzone because

neither the MEC nor the AHC properly have jurisdiction in regard to the complaint filed by the Society.

15. In the alternative, until such time as the Administrative Hearing Commission rules on the validity of the underlying Complaint in this matter, and consequently on its own jurisdiction, this Court should only allow the Respondents to authorize discovery going directly to the question of the Respondents' jurisdiction.

II. Relief Sought

For reasons fully explained in Relator's Suggestions in Support of this Motion, Relator asks this Court to issue a permanent writ of prohibition instructing the Respondents to enter an order ruling that both the MEC and the AHC lack jurisdiction to consider a complaint filed by the Society, a non-natural person. In the alternative, Relator asks the Court to issue a writ of prohibition that will, until further order of this Court, (1) stay the effect of any Orders the Respondent has issued in the underlying matter, Case No. 15-1450 EC, (2) bar the Respondents from taking any action in relation to the underlying matter other than to issue a ruling on the question of the MEC's and/or AHC's jurisdiction over the complaint filed by the Society, (3) bar the Respondents from attempting to exercise authority of any sort over any entity not a party to the underlying matter, and/or (4) limit the Respondents to authorizing discovery that directly addresses the question of the MECs and/or AHC's jurisdiction over the complaint filed by the Society.

III. Statement of Reasons Why the Writ Should Issue

As set forth below, and in the Suggestions filed herewith, the writ of prohibition should issue because:

A. It is well established that “a circuit court has jurisdiction to issue a writ of prohibition directed to an administrative agency.” *State ex rel. Carter v. City of Independence*, 272 S.W.3d 371, 374 (Mo. App. W.D. 2008). This Court is specifically empowered to “to issue a writ of prohibition to the AHC.” *State ex rel. Mo. State Bd. of Pharm. v. Admin. Hearing Comm’n*, 220 S.W.3d 822, 825 (Mo. App. W.D. 2007); *see also State ex rel. Pulliam v. Reine*, 108 S.W.3d 148 (Mo. App. W.D.2003)

B. “[P]rohibition lies where a judicial or quasi-judicial body... lacks jurisdiction over the subject matter the body is asked to adjudicated.” *State ex rel. Riverside Joint Venture v. Mo. Gaming Comm’n*, 969 S.W.2d 218, 221 (Mo. banc 1998). In particular, “[p]rohibition is a proper remedy for an abuse of discretion or act in excess of jurisdiction in...denying...a protective order...” *State ex. rel Ford Motor Co. v. Manners*, 239 S.W.3d 583, 586 (Mo. banc 2007).

C. Because this case was initiated by means of a complaint filed by a corporation and not a natural person, both the MEC and the Hearing Commission lack subject-matter jurisdiction in this case. Consequently, neither may issue nor enforce subpoenas directed against any party.

D. Even if the AHC’s lack of jurisdiction were unclear, it is the subject of significant doubt and the AHC has failed to rule on the validity of the Society’s underlying complaint and, thus, of its own jurisdiction. Consequently, long-standing, black-letter law holds that no discovery may be permitted until the AHC makes that determination. *U.S. Catholic Conf. v. Abortion Rights Mobilization*, 487 U.S. 72 (1988); *Mo. Comm’n on Human Rights v. Cooper*, 639 S.W.2d 902 (Mo. App. W.D. 1982). In the meantime, only

discovery specifically addressing jurisdiction may be permitted. None of the discovery requests made by the MEC are relevant to the AHC's jurisdiction.

E. Administrative agency jurisdiction is a creature of statute, and the MEC has been granted jurisdiction only in cases brought pursuant to complaints filed in accordance with § 105.957(2), RSMo. That provision states that “[c]omplaints filed with the commission shall be in writing and filed only by a natural person.”

F. The complaint filed against Mr. Calzone was filed by a corporation, the Missouri Society of Governmental Consultants, which is not a natural person. The Society's Board voted to authorize the Complaint, determined its timing, and hired an attorney to do the necessary paperwork. Ex. A at 2 (cover letter from Society attorney noting that he was filing on behalf of his client), Ex. B (complaint form), Ex. C (selected hearing transcript pages).

G. The Administrative Hearing Commission has ordered a briefing schedule concerning, *inter alia*, the question of whether or not the complaint vested the MEC with jurisdiction. Ex. D (AHC Order of Feb. 5, 2016). This briefing schedule has been delayed, at the MEC's request, so that it may conduct the unrelated discovery attached to this filing as Exhibit F.

H. Mr. Calzone moved for a protective order, on a number of grounds, against this discovery and additional non-party discovery sought by the MEC. Ex. G. The AHC denied this motion and granted the MEC's motion to compel discovery against Mr. Calzone on April 8, 2016. Ex. E (AHC Order of Apr. 8, 2016). However, the Hearing Commission's order fails to rule upon, or even discuss, the jurisdictional arguments raised by Relator.

I. The ordering of discovery is contingent upon the existence of jurisdiction. Where there is none, discovery may not be had, and process in pursuit of discovery is “void.” *U.S. Catholic Conf.*, 487 U.S. at 80.

WHEREFORE, Relator Calzone asks this Court immediately to issue a Preliminary Order in Prohibition staying the effect of any Orders the Respondent has issued in the underlying matter, Case No. 15-1450 EC, and commanding Respondent Administrative Hearing Commission to file an answer directed to this petition and meanwhile, until further order from this Court, to refrain from: (1) proceeding in any way with consideration of the underlying matter due to the Respondent’s lack of jurisdiction, (2) taking any action in relation to the underlying matter other than to issue a ruling on the question of the MEC’s and/or the AHC’s jurisdiction, (3) attempting to exercise authority of any sort over any entity not a party to the underlying matter, including but not limited to enforcing any order to comply with discovery requests, and/or (4) permitting or requiring discovery of any sort related to the underlying matter unless that discovery is directly related to the question of the MEC’s and/or the AHC’s jurisdiction. Relator also asks this Court to make its Preliminary Writ permanent, thereby prohibiting the Respondent from continuing to consider the underlying action, over which it plainly lacks jurisdiction.

Dated: April 14, 2016

Respectfully submitted,



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**pro hac vice admission pending*