

McCall's allegations 'unsubstantiated,' according to report

By MAXINE BERNSTEIN
The Oregonian

SALEM — A labor lawyer hired by the governor's office determined that former public records advocate Ginger McCall's accusations against the governor's staff of pressuring her to take their side on public records matters rather than maintaining independence were "unsubstantiated."

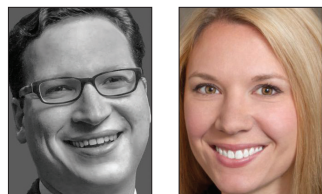
Attorney Brenda K. Baumgart wrote in a 57-page report, released last week in response to a public records request, that Gov. Kate Brown's former legal counsel, Misha Isaak, did not engage in "unprofessional or inappropriate conduct" in his dealings with McCall when she was the state's public records advocate and chaired the state's Public Records Advisory Council.

"Noticeably absent from the record is the identification of any political interest, agenda, or priority of the Governor that Mr. Isaak pressured Ms. McCall to advance with the Counsel and, secondarily, how that political interest, agenda, or priority was anti-transparency or otherwise in conflict with reform efforts desired by Ms. McCall or the Council," Baumgart wrote.

McCall said she was deeply disappointed in the report, but wasn't surprised based on the limited number of people who Baumgart questioned.

McCall resigned in September 2019, saying that Isaak pressured her to secretly work to advance the governor's policy positions, and told her that she reported to him and should vet any public records legislation, policy proposal and report with the governor's office before releasing them.

McCall explained in a letter to the governor when she resigned that she accepted the job with the understanding the public records



Isaak

McCall

advocate would have a high degree of independence to mediate records disputes, identify barriers to transparency and recommend legislative fixes.

Isaak welcomed the report's findings.

"The events surrounding these allegations were the most painful of my life," he said in an email. "After more than a year, I am relieved that my name has been cleared, and that I can put this painful episode behind me."

McCall said the report appears to "reflect an investigation which is designed to rehabilitate the images of the Governor and her former staff and to cast doubt on me."

She noted that Baumgart spoke to staff from the governor's office and three other state officials with close ties to Brown, but did not speak to McCall's former deputy Todd Albert or anyone from the Public Records Advisory Council, the Secretary of State's Office, the Oregon State Archives or the Oregon Department of Justice.

"Ms. Baumgart did not interview a single person outside of the Governor's circle," McCall said by email.

"She clearly gives great credence to Mr. Isaak and Ms. (Emily) Matasar's recollections over mine. But my meeting memos were recorded contemporaneously, in the hours and days after the meetings. I had nothing to gain by resigning my position," McCall said. Matasar had been the governor's government accountability attorney and is now in private practice.

Oregon Legislature argues Capitol staff unionization would be unconstitutional

By DIRK VANDERHART
Oregon Public Broadcasting

SALEM — Similar reasoning sunk an attempt by Delaware aides to unionize earlier this year.

Oregon Capitol staffers attempting to form a union encountered a potential roadblock on Tuesday, Dec. 29.

Their employer says they're not allowed.

In a formal document filed with the state, the Oregon Legislature raised a host of objections why the push for a first-of-its-kind union of legislative aides can not move forward as proposed.

The most sweeping argument: that such a move would be unconstitutional. Because the state's Employment Relations Board, which certifies public-employee unions, is part of the executive branch, the Legislature says the board is barred by the separation of powers clause in the Oregon Constitution to order lawmakers to recognize a union.

"These subject employees work to perform legislative related functions and duties," the objection said. "Any recognition of the bargaining unit by a branch of the government other than the Oregon Legislature would violate Article III, section 1 of the Oregon Constitution."

That argument is similar to one raised by officials in Delaware after legislative staffers there attempted to unionize earlier this year. The legal reasoning proved potent enough to sink that effort.

It's not clear what impact it will have in Oregon. The International Brotherhood of Electrical Workers Local 89, which Capitol staffers in Salem are hoping to join, told Oregon Public Broadcasting earlier this month it didn't think such an argument would fly in Oregon.

"We looked at that case when the campaign started," IBEW Local 89 organizer Tony Ruiz wrote in an email on Dec. 20. "We don't believe the same argument could be made based on Oregon rules and so far no challenges have



Kaylee Domzalski/Oregon Public Broadcasting, File

House Speaker Tina Kotek motions to someone on the House floor on April 11, 2019. Officially, Kotek has kept quiet on efforts by Oregon Legislature staff to unionize.

been made by the employer."

But the Legislature is now raising the issue as a central reason why legislative aides cannot be recognized as a union.

"Nationwide, counsel for the Employer is unaware of any administrative or judicial branch rendering a constitutionally valid recognition of a bargaining unit within the legislative branch," Oregon Department of Justice attorney Tessa Sugahara wrote in the state's objection.

Oregon has grappled with the separation of powers in a unionization push before. In 1983, the Legislature passed a bill ensuring that the chief justice of the Oregon Supreme Court would have the authority to bargain with judicial branch employees. As part of its objections, the Legislature notes that no similar action has been taken for the Legislative branch.

The Legislature raises more issues, too. It says that many — and perhaps most — employees proposed to be included in the bargaining unit might be ineligible because they either possess, or are eligible to possess, management or confidential duties within lawmakers' offices. And the Legislature argues that the constantly rotating

cast of lawmakers and staffers in the Capitol makes the number of employees eligible to join a union hard to pin down.

"By the end of December 2020, some of the employees included in the proposed unit who may have been employed at the time the petition was filed will have left employment at the Legislature due to a newly elected official replacing their member and that new member hiring personal staff of their choosing," the document said.

Legislative officials are requesting a hearing before an administrative law judge to make their case.

The state's top two lawmakers, House Speaker Tina Kotek and Senate President Peter Courtney, both limited their comments on the matter Dec. 29, saying they could not comment on a pending case.

"I am very supportive of our Legislative employees," Courtney, D-Salem, said in a statement. "They are the backbone of the Capitol."

A spokesman for Kotek, D-Portland, said she "has a strong pro-labor record and greatly appreciates the work of all legislative staff, who are essential to the Legislature's work."

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