

## EXECUTIVE ORDER NO. 96-21

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**WHEREAS**, the undersigned issued Executive Order 96-12 on July 1, 1996, wherein B. Boykin Rose, Director of the Department of Public Safety, was placed on administrative leave without pay; and

**WHEREAS**, I have reviewed the pertinent documents in this matter.

**NOW, THEREFORE**, pursuant to the authority vested in me by the Constitution and Statutes of this State, I hereby find and conclude as follows:

On July 31, 1996, I served upon B. Boykin Rose notice of my intent to remove him from office as Director, South Carolina Department of Public Safety. In accordance with S.C. Code Ann. § 1-3-240(A) and (C), he was afforded an opportunity to respond to the Notice of Intent to Remove from Office. He did so by delivering seven bound volumes of documents to Henry L. Deneen, my chief legal counsel, on August 9, 1996.

I have reviewed Mr. Rose's submission and note that he has not disputed that he failed to provide me documents concerning DPS that I specifically requested of him through former U.S. Attorney Bart Daniel. Neither has he disputed that he refused to provide these documents despite repeatedly assuring Messrs. Deneen and Daniel that he would do so and despite the fact that the great majority of the requested documents are public documents under the Freedom of Information Act. Moreover, he has not disputed that he falsely stated to Messrs. Deneen and Daniel that former DPS Chief of Staff Otis Rawl continued to sign his (Mr. Rose's) name to DPS grant documents after May 1, 1996. Nor has he explained why he neglected to mention to me or my staff -- while he was accusing Mr. Rawl of improperly signing grant documents -- that he had given Mr. Rawl authority to sign documents on his behalf in a memorandum he issued on February 8, 1996.

Accordingly, upon a consideration of the entire record before me, I have determined that the above actions that he does not dispute are sufficient misconduct to remove him from office. His actions in making allegations of criminal wrongdoing by the Governor's Office staff and then obstructing my efforts to get to the bottom of it, failing to disclose to me the authority he had given Mr. Rawl to sign documents in his stead, and falsely stating that Mr. Rawl continued to sign grant documents after May 1, 1996 have caused me to lose all confidence in Mr. Rose's ability to function effectively in the office to which I appointed him.

Mr. Rose came to me on June 17, 1996, with allegations of criminal wrongdoing implicating individuals on my staff. He said he had provided this information to the U.S. Department of Justice and to Attorney General Condon. I understand law enforcement investigations have been undertaken and to my knowledge everyone on my staff has cooperated fully. At the same time as my staff was cooperating fully with those investigations, I asked former U.S. Attorney Bart Daniel to conduct an investigation for me and to advise me whether there was any misconduct by my staff which I needed to address.

My investigation revealed no wrongdoing on the part of my staff, and as a result I do not believe my staff has violated any laws as Mr. Rose has alleged. I, of course, have no knowledge what conclusions any law enforcement agencies may reach or even whether their conclusions will be made public. Let me say that if any law enforcement investigation reveals any wrongdoing on the part of any member of my staff, I will take swift action to remove the wrongdoer. The fact that no law enforcement agency has issued a report, however, does not require me to postpone holding Mr. Rose accountable for his wrongful conduct.

### I.

**Mr. Rose failed to provide me with documents that he had a constitutional and statutory duty to provide upon my request. These documents were relevant to my investigation of the allegations of wrongdoing he brought to me. Mr. Rose had orally agreed to provide these documents on at least three occasions after he had met with federal and state law enforcement officials.**

Mr. Rose was appointed by me to serve as the Director of the South Carolina Department of Public Safety, a Cabinet

agency within the Executive Branch. As such he is subject to Article IV, § 17 of the S.C. Constitution which provides:

All State officers, agencies, and institutions within the Executive Branch shall, when required by the Governor, give him information in writing upon any subject relating to the duties and functions of their respective offices, agencies and institutions, including itemized accounts of receipts and disbursements.

Similarly, as head of DPS, he is subject to S.C. Code Ann. § 1-3-10 which provides:

The departments, bureaus, divisions, officers, boards, commissions, institutions and other agencies or undertakings of the State, upon request, shall immediately furnish to the Governor, in such form as he may require, any information desired by him in relation to their respective affairs or activities.

He has indisputably violated both of these provisions by refusing to provide information and documents pertaining to DPS requested by me after (1) he came to me with concerns about alleged irregularities in the DPS grants process; (2) I told him that I would immediately investigate his concerns through former U.S. Attorney Bart Daniel; and (3) he twice agreed -- in the presence of Messrs. Daniel and Deneen, my chief legal counsel, and once again in a follow-up telephone conversation with Mr. Daniel -- to provide the requested documents and information.

He has attempted to justify his refusal to comply with his constitutional and statutory obligations by professing uncertainty about Mr. Daniel's role and by insinuating that he was under orders from the Federal Bureau of Investigation not to disclose the requested documents. He has also insinuated that I had no right to request this information and that even if I did, his refusal to provide them to me was inconsequential because the documents were available to me through my statutory membership on the Public Safety Coordinating Council. The first two excuses are belied by his own words and actions. The last two excuses are without merit, irrelevant, and insulting to the taxpayers of South Carolina.

As to former U.S. Attorney Daniel's role, Mr. Rose acknowledges, at page 18 of the affidavit that he has filed with the Supreme Court and has included in his response to me, that on June 17, 1996, in a meeting with me at which Messrs. Daniel and Deneen were also present: "Governor Beasley informed me that he had hired Bart Daniel to investigate possible wrongdoing on the Governor's personal staff concerning the grants program and that he (the Governor) fully supported the actions I had taken in bringing these problems to light." Mr. Rose's own sworn words, therefore, betray his assertion that he was uncertain as to Mr. Daniel's role. Mr. Rose knew Mr. Daniel was working for me to investigate Mr. Rose's allegations of impropriety by members of my staff relative to the grants process.

Thus, he knew that when Mr. Daniel requested documents and information from him relative to the DPS grants process, Mr. Daniel was acting on my behalf and at my direction. Indeed, Mr. Rose acknowledged his clear understanding of these facts by orally agreeing to provide Mr. Daniel with documents he had requested on three separate occasions, a fact Mr. Rose does not dispute. Mr. Deneen, my chief legal counsel, was present on two occasions when Mr. Rose agreed to provide documents to Mr. Daniel, and Mr. Rose has never indicated that he had any uncertainty about Mr. Deneen's role or authority.

In light of Mr. Rose's orally agreeing to provide Mr. Daniel documents Mr. Daniel had requested on three separate occasions after Mr. Rose had already gone to the FBI and Attorney General Condon, Mr. Rose's attempt to explain his insubordinate refusal to turn over these documents to me based on his professed uncertainty as to Mr. Daniel's role and his professed concern that doing so might interfere with the FBI or Attorney General's investigations rings hollow. Significantly, Mr. Rose has not disputed the fact that on three separate occasions after he met with me on June 17th, he orally agreed to provide to Mr. Daniel the documents and information that he requested of Mr. Rose. Since Mr. Rose's affidavit reflects that he had already met with federal and state law enforcement authorities when he met with me, Mr. Daniel and Mr. Deneen on June 17th, Mr. Rose's assertion that he was reluctant to give Mr. Daniel the documents and information he requested because doing so might interfere with the federal and/or state investigation is unconvincing. Mr. Rose evidently had no such concerns when he told Mr. Daniel on three different occasions that he would give him the documents and information I needed to investigate his allegations.

In sum, Mr. Rose's attempt to justify his flagrant insubordination by suggesting that he was driven by some moral imperative or contrary instructions from the FBI simply does not square with his own words and actions. His position

on these issues defies common sense.

Moreover, his assertion that many of the documents that Mr. Daniel was requesting on my behalf "were already in [my] possession as Chairman of the Public Safety Coordinating Council[.]" [Rose Narrative Response, ¶12] is as impertinent as it is irrelevant and further confirms my conclusion that he cannot serve effectively in my Cabinet. Neither Article IV § 17 nor § 1-3-10 provides that an Executive Branch officer can refuse to provide documents or information requested by the Governor even if the Governor may acquire the same documents or information by alternative means. Far from satisfactorily explaining Mr. Rose's insubordinate failure to fulfill his constitutional and statutory obligations, his argument simply confirms the gravity of his insubordination and confirms his inability to function as an effective member of my Cabinet. His refusal to provide the requested documents and information, along with the impertinence of his response, reflects a serious lack of judgment and discretion which is unacceptable in a Cabinet officer.

Finally, his suggestion that the General Assembly intended to vest DPS with full responsibility for determining grant funding priorities, to the exclusion of the Governor's Office, though not relevant to his insubordinate refusal to provide documents and information to me, bears comment. It would be nothing short of extraordinary for the General Assembly to vest the power to decide federal block grant funding priorities -- involving huge sums of public money passing from the federal government to the states -- in an appointed bureaucrat accountable to no one, as he fancies himself to be. Under his view, he would not answer to the Governor (or to the General Assembly for that matter) for the way these huge federal block grants were spent by the State of South Carolina -- a view wildly out of step with the goals of restructuring. Other cabinet officers with similar responsibility under state law for grant programs recognize the Governor's authority and seek to promote appropriate public policy objectives in an accountable fashion.

One year ago, under different circumstances, Mr. Rose correctly stated the role of DPS regarding federal block grant spending programs when he wrote: "The Department of Public Safety, Office of Safety and Grants, is charged with the administration of highway safety programs throughout the state on behalf of the Office of the Governor." (emphasis added) Department of Public Safety, 1996 Highway Safety Funding Guidelines, p. 2. The views he stated a year ago parallel my view today of the role of a cabinet agency administering block grant funds and are, I believe, consistent with what the General Assembly intended and the people of this State rightfully expect.

## II.

### **Mr. Rose falsely stated that his former Chief of Staff had signed Mr. Rose's name to grant documents after May 1, 1996.**

Mr. Otis Rawl joined DPS as Chief of Staff in January of 1996 with my encouragement and Mr. Rose's consent. Mr. Rawl was expected to provide day-to-day leadership in the agency. He was also expected to help facilitate the integration into DPS of the Division of Motor Vehicles, which had been transferred from the Department of Revenue where Mr. Rawl had served capably.

Mr. Rose came to my Chief of Staff in May of 1996, complaining that Mr. Rawl was engaging in improper conduct relative to the grants process and accusing him of forging Mr. Rose's name to grant documents. Mr. Rose repeated these accusations in mid-June 1996 when he met with Messrs. Deneen and Daniel. Mr. Rose never disclosed to my Chief of Staff or to Messrs. Deneen and Daniel that he had issued a memorandum dated February 8, 1996, authorizing Mr. Rawl "to authenticate and sign documents which require the signature of the Director." More significantly, he told Messrs. Deneen and Daniel that Mr. Rawl had signed his name to grant documents after May 1, 1996, when, according to Mr. Rose, he had explicitly told Mr. Rawl that he was not to do so under any circumstances. This is simply not true. Mr. Rose has produced no document substantiating this accusation nor has my investigation disclosed any such document.

While I encourage and support the reporting of improper and unlawful conduct by other public servants, no public servant has a right to make knowingly false accusations against another public servant. Contrary to Mr. Rose's assertions in this matter, disciplining persons who make knowingly false accusations against others is indeed the right thing to do. In fact, the law recognizes that a public servant's deliberately false accusations of wrongdoing by another public servant is not protected.

In sum, Mr. Rose has not disputed that he falsely accused his former Chief of Staff of forging his signature on grant documents after May 1, 1996. This fact, coupled with his failure to disclose to me or my staff the written authority that he had given Mr. Rawl to sign his name to DPS documents in February of 1996, reflects duplicitous misconduct that I will not tolerate from a member of my Cabinet who is sworn to enforce the law impartially.

Mr. Rose argues that he is entitled to a hearing under the Administrative Procedures Act before a hearing officer where witnesses testify under oath and are subject to cross-examination. I have concluded that the Administrative Procedures Act does not apply for the reason, among others, that when removing an official for cause under S.C. Code Ann. § 1-3-240, the cause must appear "to the satisfaction of the Governor." This statutory language excludes anyone other than the Governor from making that decision in the first instance. Furthermore, this statute was enacted as part of the Restructuring Act of 1993. If the Governor is to be accountable to the people for the operation of the Executive Branch of State Government -- as he is under restructuring -- the judgment must be made by the Governor whether or not there is incompetence, misconduct, or misfeasance by cabinet officers.

### **CONCLUSION**

Mr. Rose has had an opportunity to be heard. I have reviewed the documents and arguments he has submitted in response to my Notice of Intent to Remove from Office. While other matters described in the Notice are disturbing and, in my opinion, constitute cause for his removal notwithstanding his response, I am making my decision independent of those facts and circumstances and have focused on the facts set out in the Notice that he has not disputed in his response. These facts alone, as set out hereinabove, are sufficient to warrant his removal for incompetence, misconduct, or misfeasance under S.C. Code Ann. § 1-3-240. Accordingly, he is hereby removed from office as Director of the South Carolina Department of Public Safety effective immediately.

**GIVEN UNDER MY HAND AND THE GREAT SEAL OF THE STATE OF SOUTH CAROLINA, THIS 3RD DAY OF SEPTEMBER, 1996**

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**DAVID M. BEASLEY**  
**GOVERNOR**

ATTEST:

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JAMES M. MILES  
Secretary of State

Last Updated: Tuesday, July 7, 2009 at 11:18 A.M.