



Michael E. Christensen
Director

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General Counsel

May 27, 2017

Attn: Billy Walker
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Utah State Bar
645 South 200 East
Salt Lake City, Utah 84111

Dear Mr. Billy Walker:

On behalf of both houses of the Utah State Legislature, Speaker of the House Gregory Hughes and Senate President Wayne Niederhauser recently requested an opinion from Attorney General Reyes on questions of law relating to the legislature. The request was made pursuant to Utah Code Subsection 67-5-1(7).

Upon information and belief, ethical questions have arisen as to whether the request creates a conflict of interest related to the attorney general's representation of clients. We believe the request does not create a conflict of interest. First, the opinion is authorized by statute. Second, the Utah Rules of Professional Conduct permit such a relationship between the legislature and the attorney general.

The legislature has enacted Utah Code Section 67-5-1(7), which requires the attorney general to "give the attorney general's opinion in writing and without fee to the Legislature or either house ... upon any question of law relating to their respective offices." The legislature's authority to enact this statute is specifically granted under the Utah Constitution, Article VII, §16. (see also Art. VII, §1, *Hansen v. Utah State Retirement Bd.* (652 P.2d 1332 (1982))). The attorney general's responsibility to provide his opinion to the legislature under the statute is established procedure. See *University of Utah v. Shurtleff*, 252 F. Supp. 2d 1264, 1271 (D. Utah 2003). A "formal opinion of the Attorney General, given pursuant to this statute, constitutes the Attorney General's carefully considered judgment as to what the law requires in the circumstances presented." *Id.* (internal quotations omitted). The questions presented are a generally applicable determination of requirements of the law and do not create a conflict of interest based on the identity of the requester.

Even if, for argument, a requested attorney general opinion did give rise to conflicting interests between the legislature and another client of the attorney general, the Utah Rules of Professional Conduct permit the attorney general to provide the legislature with an opinion without violating conflict-of-interest rules: "The government lawyer's client is the governmental entity except as the representation or duties are otherwise required by law." Utah Rules of Professional Conduct R.

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1.13(h) (2017). This rule permits the legislature through statute to create duties with respect to the attorney general's obligations.

Under the Utah Rules of Professional Conduct, the attorney general may have obligations to keep legal inquiries and responses confidential to different persons who have made separate legal inquiries. We expect and agree that the attorney general's office should continue to take all appropriate internal actions, including the creation of confidentiality fire walls, to protect the interests of those different persons and to act in good faith in this matter. The attorney general's office has represented to us that it is indeed taking all necessary precautions to ensure confidentiality and adherence to ethical standards. Comments to Rule 1.13 of the Utah Rules of Professional Conduct underscore the complicated relationships that arise in government and state that "[a] government lawyer following these legal duties in good faith will not be considered in violation of the ethical standards of this Rule." R. 1.13 cmt. 13(a) (2017).

Utah Code Subsection 67-5-1(7) requires the attorney general to provide a legal opinion at the request of the Legislature and there is an established history of the attorney general issuing such opinions. Time is of the essence in this matter. To the extent that your office is involved in the issue at hand, we ask that you expeditiously give assurances that state statutes and the Utah Rules of Professional Conduct permit the attorney general to move forward with the issuance of the requested opinion.

Respectfully,



John Fellows
General Counsel
Utah State Legislature



Eric Weeks
Deputy General Counsel
Utah State Legislature