

STATE OF UTAH
OFFICE OF THE ATTORNEY GENERAL



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Chief Civil Deputy

May 30, 2017

Utah State Legislature
C/O Senate President & Speaker of the House
Utah State Capitol Complex
Salt Lake City, UT 84114

VIA EMAIL AND HAND-DELIVERY

Re: Request for Attorney General Opinion

Dear President Niederhauser and Speaker Hughes:

This letter acknowledges receipt of your letter dated May 27, 2017, which was hand delivered to the Attorney General's Office at the Utah State Capitol on the afternoon of May 30, 2017.

Your May 27 letter re-states your May 23, 2017, request for the Attorney General's opinion on legal questions about the authority of the Governor, the Lieutenant Governor, and the Legislature following Representative Jason Chaffetz's announcement that he intends to resign as a member of the U.S. House of Representatives effective June 30, 2017. You made both requests in accordance with Utah Code § 67-5-1(7). And you requested an opinion no later than May 30, 2017.

As we have discussed, questions arose last week about whether the Attorney General's Office could respond to your request and still comply with its ethical duties under the Utah Rules of Professional Conduct. Among others, **those questions implicate the Attorney General's Office's duties under Rules 1.7 and 1.10 to avoid conflicts of interest**—here with the Governor and Lieutenant Governor, who are our clients by virtue of the Utah Constitution and the Utah Code.

To avoid even the suggestion that we did not take seriously the obligations those rules impose, we have sought advice from the Bar's Office of Professional Conduct. OPC's initial, informal feedback suggests that this Office's providing an opinion to the Legislature could bring the Office uncomfortably close to an ethical line—even as close as a "50/50 chance" that our providing an opinion would constitute an ethical violation.

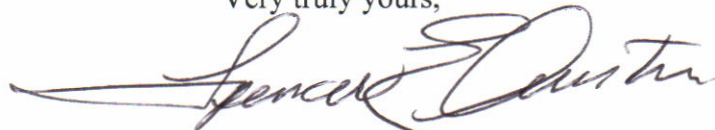
As I'm sure you appreciate, the Office cannot tolerate those odds. The citizens of Utah—and you as their representatives—deserve better than an Attorney General's Office willing to commit an ethical violation on a coin flip's chance.

I acknowledge the statement in your May 27 letter that your legal counsel have sent a letter to the Utah State Bar about these ethical questions. Although your letter to us said you attached a copy of your letter to the Bar, no such copy was in fact attached. I would appreciate it if you would send me a copy of your letter to the Bar at your earliest convenience.

To be sure, we respect the need for a timely response to your request on these important questions. But it's precisely because the stakes are so high for so many Utahns that we must continue to analyze these important ethical questions, and to seek further guidance from the Bar, before we are able to respond to your request. We thus will not be able to provide your requested opinion before May 30.

We do anticipate being able to reach a decision on these ethical questions by the end of this week. I will keep you apprised of our progress and decision as that date approaches.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Spencer E. Austin". The signature is fluid and cursive, with a long horizontal flourish extending to the left.

Spencer E. Austin
Chief Criminal Deputy
Office of the Utah Attorney General

Cc:

John Fellows, General Counsel, Office of Legislative Research and General Counsel

Ric Cantrell, Chief of Staff, Utah State Senate

Greg Hartley, Chief of State, Utah House of Representatives