



## State of Connecticut

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August 16, 2016

The Honorable George C. Jepsen  
Attorney General State of Connecticut  
55 Elm Street  
Hartford, CT 06106

Dear Attorney General Jepsen:

Pursuant to Connecticut General Statute Section 3-125, I am writing to request your opinion on the following question:

1. Does Governor Malloy have the legal authority to unilaterally reduce the legislatively authorized budgets of our state's three preeminent government "watchdog agencies", the State Elections Enforcement Commission, the Office of State Ethics, and the Freedom of Information Commission?

### **Background:**

In 2004, while facing state and federal corruption investigations, the Rowland administration attempted to disempower our critical good government watchdog agencies by drastically reducing their funding and threatening their independence. These efforts were viewed by many as a form of political retribution and a crude attempt to silence his critics.

In response, the legislature amended state law to protect these agencies from such unilateral executive action. Since 2004, state statutes have clearly, specifically and broadly prohibited the Governor from reducing the legislatively authorized allotments for these agencies. For example, Section 9-7c of the general statutes provides that "(b) *Notwithstanding any provision of the general statutes*, the Governor *shall not* reduce allotment requisitions or allotments in force concerning the State Elections Enforcement Commission." (emphasis added) Sections 1-205a(b) and 1-81a(b) of the general statutes provide the same protection for the Freedom of Information Commission and Office of State Ethics.

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The purpose of these unique statutory protections is to insulate these agencies from the political vagaries of the executive branch and ensure that they have both the funding and political autonomy necessary to perform their oversight functions.

Despite this history, and the clear statutory limits on his authority, Governor Malloy's administration recently announced that it was withholding almost \$200,000 in legislatively authorized allotments from the three watchdog agencies. Ironically, this announcement came following an Elections Enforcement Commission investigation into the illegal funneling of state contractor contributions to the Malloy campaign through the State Democratic Party's federal account and the revelation that federal prosecutors have launched a criminal grand jury investigation.

The Malloy administration claims to have the authority to implement these budget cuts pursuant to a provision of the recently enacted state budget. Section 34 of Public Act 16-2 allows, *but does not require*, the administration to "make reductions in allotments for the executive branch for fiscal year ending June 30, 2017" in order to achieve certain targeted savings. The language goes on to prohibit or limit the Governor's authority to reduce allotments pursuant to this section for certain agencies and programs that, *unlike the watchdog agencies, are not otherwise specifically protected under existing state law.*

Following the announcement of the Governor's budget cuts, the leaders of the watchdog agencies, good government organizations such as Common Cause, and even the Chair of the legislature's Appropriations Committee, Rep. Toni Walker, who co-authored the budget bill upon which he relies, objected to the Governor's actions.

### **Discussion**

The plain language of Sections 9-7c(b), 1-205a(b) and 1-81a(b) of the general statutes clearly and specifically prohibits the Governor from reducing the legislatively authorized allotments for the three watchdog agencies, "**[n]otwithstanding any provision of the general statutes ....**" The general enabling language of Section 34 of P.A. 16-2 must be read in conjunction with and consistent with these existing specific prohibitions. These statutes do not conflict. It is possible for the Governor to comply with all provisions of the law by not cutting the watchdog agencies and spreading the reductions he ordered to their budgets across all other executive branch agencies that are not specifically protected by either existing law or Section 34.

If the legislature, which is presumed to be aware of existing statutes, had intended to repeal, supersede or "notwithstanding" the absolute protections granted in Sections 9-7c(b), 1-205a(b) and 1-81a(b), it would and could have done so plainly and unambiguously. For example, Section 34 could have read "*Notwithstanding Sections 9-7c(b), 1-205a(b) and 1-81a(b) of the general statutes*, the Secretary of the Office of Policy and Management may make reductions in

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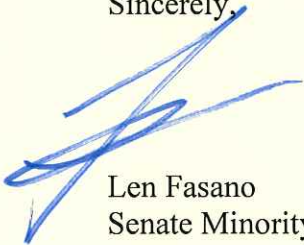
allotments for the executive branch ...” or “The Secretary of the Office of Policy and Management may make reductions in allotments for the executive branch, ***including reductions in allotments for the State Elections Enforcement Commission, Office of State Ethics and Freedom of Information Commission ...*** “

However, the legislature did not do so. Instead, it left the existing law, which specifically and plainly protects these agencies from unilateral budget reductions by the Governor, intact. It then further identified and protected other agencies and programs that are not otherwise protected by existing state law. Read together with existing law, Section 34 of P.A.16-2 allows the Governor to reduce allotments for executive branch agencies other than (1) those specifically protected under existing state law, such as the watchdogs, and (2) those additional agencies specifically protected in Section 34 itself. This is the only interpretation that is consistent with the plain language of both existing state statutes and Section 34. This is also the only interpretation that upholds the intent of the legislature to protect our watchdog agencies from being weakened by the unilateral actions of the executive branch.

In light of the above, I would appreciate your opinion on the question presented.

Thank you for your time and attention.

Sincerely,



Len Fasano  
Senate Minority Leader