



DEPARTMENT OF JUSTICE

Justice Building
1162 Court Street NE
Salem, Oregon 97301-4096
Telephone: (503) 378-4400

September 24, 2018

Dexter Johnson
Legislative Counsel
Office of the Legislative Counsel
900 Court St. NE, S-101
Salem OR 97301

Re: DOJ/NYU Special Assistant Attorney General Agreement

Dear Mr. Johnson,

I am writing you after reviewing the letter from Senior Deputy Legislative Counsel Marisa James to Senator Jackie Winters dated September 11, 2018. As you know, that letter calls into question DOJ's authority to engage the services of NYU Law School Fellow Steve Novick. Mr. Novick is employed as a Special Assistant Attorney General (SAAG) through a secondment agreement with his employer, New York University School of Law (NYU Law).

While we very much appreciate the role of your office, we must respectfully disagree with the conclusion expressed in the September 11 letter. We believe that ORS 180.140(5) fully authorizes this SAAG arrangement. That subsection authorizes the Attorney General to employ "[s]pecial legal assistants or private counsel * * * under the direction and control of the Attorney General, in particular cases or proceedings, whenever the Attorney General deems it appropriate to protect the interests of the state." DOJ routinely uses this authority to contract with outside SAAGs for representation in individual cases, or to provide legal services in particularized subject areas.

Unfortunately, Ms. James's letter overlooks DOJ's authority to hire engage SAAGs under ORS 180.140(5), and treats Mr. Novick as though he were an Assistant Attorney General (AAG) employed by DOJ directly under ORS 180.140(4). As a result, Ms. James's letter mistakenly concludes that "some aspects" of the arrangement regarding Mr. Novick "conflict with the Attorney General's authority to appoint assistants under ORS 180.140." Specifically, her concerns are based on two requirements that apply to AAGs but not to SAAGs. First, she notes that "Mr. Novick is not receiving a salary fixed by the Attorney General, and his salary is not

paid as other state salaries are paid.” And second, she expresses concern that Mr. Novick's obligations to NYU Law “arguably prevent Mr. Novick from ‘devot[ing] [his] full time ...to the business of the state.” For those reasons, she opines that the arrangement with Mr. Novick “does not comply with ORS 180.140 (4).”

But it is clear that ORS 180.140(4) does not apply to SAAGs. If it did, every SAAG would, upon appointment, be required to (1) cease receiving private compensation and be paid as other Assistant Attorneys General employed by DOJ; and (2) devote his or her full time to the legal work of the state. In other words, every SAAG would need to become an AAG, and the Attorney General’s express authority to employ “[s]pecial legal assistants or private counsel” would be effectively eliminated.

If the arrangements regarding Mr. Novick are correctly assessed under ORS 180.140(5), they are clearly lawful. Under Paragraph A.3 of the secondment agreement, Mr. Novick’s work is expressly under DOJ’s direction and control, as required by ORS 180.140(5). The agreement also limits Mr. Novick’s service to particular matters – specifically, those “relating to clean energy, climate change, and environmental matters of regional and national importance,” including “strategy discussions and court appearances.” Secondment Agreement, paragraphs B.2. and B.3. This is consistent with many longstanding SAAG appointments in areas like tobacco enforcement, bond issuance, and complex health care transactions.

ORS 180.140(5) also requires that “[t]he cost of such special assistants or counsel shall be charged to the appropriate officer or agency pursuant to ORS 180.160.” Given that Mr. Novick is being paid by the NYU School of Law, his appointment should entail relatively few costs. But to the extent we need to do so, the secondment agreement permits DOJ to bill Mr. Novick’s time to agency clients as appropriate. Paragraph A.3.

We respectfully submit that ORS 180.140(5) provides ample authority for this SAAG arrangement.

Sincerely,



FREDERICK M. BOSS
Deputy Attorney General