



STATE OF OREGON  
LEGISLATIVE COUNSEL COMMITTEE

September 11, 2018

Senator Jackie Winters  
Senate Republican Leader  
900 Court Street NE S323  
Salem OR 97301

Re: Appointment of Steve Novick as Special Assistant Attorney General

Dear Senator Winters:

You asked about the Attorney General's authority to appoint Steve Novick as a Special Assistant Attorney General through a fellowship with the State Energy & Environmental Impact Center at New York University School of Law (Center). With your permission, we asked the Department of Justice (DOJ) for more details about Mr. Novick's appointment, and we received two documents: an *Employee Secondment Agreement between the Oregon Department of Justice and the State Energy & Environmental Impact Center at NYU School of Law* (Secondment Agreement) and an employment offer letter from the Center to Mr. Novick, both of which are attached. Based on these documents, we conclude that some aspects of Mr. Novick's appointment conflict with the Attorney General's authority to appoint assistants under ORS 180.140.

ORS 180.140 (1) provides:

The Attorney General shall appoint the other assistants the Attorney General deems necessary to transact the business of the office, each to serve at the pleasure of the Attorney General and perform such duties as the Attorney General may designate and for whose acts the Attorney General shall be responsible. Each assistant shall have full authority under the direction of the Attorney General to perform any duty required by law to be performed by the Attorney General.

Thus, the Attorney General has broad authority to appoint assistant attorneys. ORS 180.140 (4) provides some limitations on that authority:

Each assistant shall receive the salary fixed by the Attorney General, payable as other state salaries are paid. Each assistant so appointed shall devote the full time of the assistant to the business of the state, unless employment on a part-time basis is otherwise fixed by the Attorney General.

The documents provided by the DOJ provide for Mr. Novick to receive his salary from the Center.<sup>1</sup> Thus, Mr. Novick is not receiving a salary fixed by the Attorney General, and his salary is not paid as other state salaries are paid. This arrangement does not comply with ORS 180.140 (4).

In addition, while the documents provided by the DOJ state that during Mr. Novick's employment he will be "under the direction and control of, and owe a duty of loyalty to, the DOJ,"<sup>2</sup> the documents also require the DOJ and Mr. Novick to report to and collaborate with the Center.<sup>3</sup> Although these duties may be minimal, they arguably prevent Mr. Novick from "devot[ing] the full time of the assistant to the business of the state" as required by ORS 180.140 (4).

We hope this is helpful.

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Very truly yours,

DEXTER A. JOHNSON  
Legislative Counsel



By  
Marisa N. James  
Senior Deputy Legislative Counsel

Encls.

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<sup>1</sup> Employment offer letter, page 1; Secondment Agreement, section C.3.

<sup>2</sup> Employment offer letter, page 1; Secondment Agreement, section A.3.

<sup>3</sup> Secondment Agreement, section D.