

January 12, 2018

The Honorable Sean D. Reyes
Attorney General of Utah
350 North State Street, Suite 230
Salt Lake City, UT 84114

Dear Attorney General Reyes,

Now that John Curtis has been seated by the U.S. House of Representatives for the Third Congressional District of Utah, any differences in viewpoint regarding the process of calling the special election that resulted in his election are moot.

Accordingly, the legal opinion prepared by your office at the request of the Legislature regarding the special election process no longer poses an actual conflict of interest about a potential case or controversy between the branches.

Furthermore, the legal opinion -- which none of us have yet seen -- may be of use to the legislative process as lawmakers contemplate the process for elections to fill Congressional vacancies. Therefore, we jointly agree that this legal opinion should be released to the Legislature. In authorizing you to release the legal opinion, however, we do not intend to set any precedent about any potential conflict of legal representation that could exist when the Attorney General's office tries to represent both the executive and legislative branches of government.

Because we encourage you to release the opinion to the Legislature, we assume that the legal opinion will now be public. Consequently, we recommend that you withdraw the petition for judicial review of the State Records Committee decision on this issue.

Thank you,

Gary R. Herbert
Governor

Wayne Niederhauser
Senate President

Greg Hughes
House Speaker

STATE OF UTAH
OFFICE OF THE ATTORNEY GENERAL



SEAN D. REYES
ATTORNEY GENERAL

Spencer E. Austin
Chief Criminal Deputy

Ric Cantrell
Chief of Staff

Tyler R. Green
Solicitor General

Bridget K. Romano
Chief Civil Deputy

January 16, 2018

HAND DELIVERED

Wayne L. Niederhauser
Senate President
Utah Senate
P.O. Box 145115
Salt Lake City, Utah 84114

Gregory Hughes
Speaker of the House
Utah House of Representatives
P.O. Box 145030
Salt Lake City, Utah 84114

Dear President Niederhauser and Speaker Hughes:

Thank you for your May 2017 request for an opinion on issues related to the Third Congressional District Special Election.

Working under a very tight deadline, our team of attorneys found that Governor Herbert's actions appear to have been within his statutory and constitutional authority to call the election as he did. Please see the attached opinion letter for a more detailed analysis.

I trust you understand, after so much discussion, the reasons why we did not immediately comply with your request for an opinion. While obscure to some, those reasons are fundamental to the ethical practice of law.

At its core was our ability to effectively represent the executive branch, and not be compelled to potentially harm a client. Inappropriately providing analysis that could be used by a possible opponent, especially over the objection of our client, would damage our ability to defend them. It would also potentially violate our oath and ethical obligation to adhere to the Rules of

Professional Conduct. Those reasons and other factors that prevented disclosure are outlined in the attached copy of a letter dated June 22, 2017, that denied a similar request to Salt Lake County Mayor McAdams.

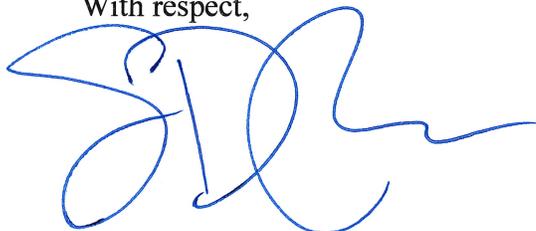
Given the likely conflicts between state law, our constitutional responsibilities, and the Rules of Professional Conduct, our office had no clear ethical path forward.

In that environment, I was not willing to ask my attorneys to step into the breach. I was also unwilling to potentially harm a client to whom I have legal, ethical, and constitutional responsibilities. Knowing both of you, I believe you would have protected your people and institutions in the same way.

Now that the threat of litigation is behind us and our client has waived the conflict of interest over a potential case or controversy between the executive and legislative branches, the barriers precluding my office's release of a legal opinion have been removed. We appreciate the letter my office just received, signed jointly by you and Governor Herbert, which indicates the resolution of such concerns to the satisfaction of all parties. I am pleased to provide the opinion you requested in May 2017.

We, like you, are interested in resolving the conflicts inherent in a situation like this. Let's find a path forward that respects the independence of our office, the separation of powers, and the ethical obligations by which all Utah attorneys are bound.

With respect,

A handwritten signature in blue ink, appearing to read 'S. Reyes', with a long horizontal flourish extending to the right.

Sean D. Reyes
Utah Attorney General

cc: Governor Gary Herbert

Encl. (3)

STATE OF UTAH
OFFICE OF THE ATTORNEY GENERAL



SEAN D. REYES
ATTORNEY GENERAL

Spencer E. Austin
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Parker Douglas
Chief Federal Deputy
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Tyler R. Green
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Missy W. Larsen
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May 26, 2017

VIA E-MAIL AND U.S. MAIL

Wayne L. Niederhauser
Senate President
Utah Senate
P.O. Box 145115
Salt Lake City, Utah 84114

Gregory Hughes
Speaker of the House
Utah House of Representatives
P.O. Box 145030
Salt Lake City, Utah 84114

Subject: Processes related to the mid-term vacancy of a member of the United States House of Representatives

Dear President Niederhauser and Speaker Hughes:

The Office of the Attorney General¹ provides this letter, pursuant to Utah Code section 67-5-1(7), in response to your May 23, 2017 correspondence, addressed to Attorney General Reyes. Your letter asks the Attorney General's opinion relating to the "process to fill the vacancy that could occur if Representative Chaffetz's resignation becomes effective." You have asked four principal questions, with sub-parts, regarding this process, and the source of authority for establishing such a process.

Executive Summary

Your four groups of questions focus on three main issues: First, when does a "vacancy" in the office of a member of the United States House of Representatives "occur"? Second, what are the federal constitutional and statutory limitations on the respective powers and obligations of the Legislature and the Governor (or Lieutenant Governor) in the process to fill a mid-term vacancy in such an office?

¹As part of the Office's responsibility to act as "the legal adviser of the State officers," Utah Const. art. VII, § 16, a number of attorneys within the Office previously provided, or reviewed, advice to the Governor regarding the procedures for a special election to replace Representative Chaffetz. All of those attorneys were screened off from your request and this response.

Third, how does Utah law affect each branch's power and obligations? The following is an executive summary of our answers, followed by a more in-depth analysis of the issues.

- A Congressional “vacancy” “occurs” when the office is no longer occupied by the incumbent. However, no precedent we examined prohibits a state from engaging in election processes before the vacancy occurs. Utah law, interpreted with the aid of the Rules of Construction from the Utah Code, would empower the Governor to issue a proclamation calling for a special election “when a vacancy will occur” in the office of United States Representative. Further, other states, and the U.S. House itself, all recognize the validity of various pre-vacancy election procedures.
- The United States Constitution places a duty on the state legislatures to prescribe the “Times, Places and Manner of Holding Elections ... for Representatives ...” This includes mid-term special elections. However, the Constitution also places a duty on the executive of each state, when there is a mid-term congressional vacancy, to “issue Writs of Election to fill such Vacancies.” Case law recognizes that, in requiring the executive to issue a writ of election, the Framers intended a state executive to have discretion to set the parameters of the election, subject to the parameters existing in state law.
- Regarding special elections for United States House of Representatives, Utah law requires that the Governor “issue a proclamation calling an election to fill the vacancy.” The Governor (or his designee in this case, the Lieutenant Governor, who has general supervisory authority over elections) therefore has discretion to set the time, place, or manner of the election through the proclamation, so long as the terms are not contrary to state law or any individual's constitutional rights.

Caveats

The purpose of this letter is to provide legal analysis of the questions posed. However, the opinions are provided with important caveats: Because the Office of the Attorney General does not have the constitutional or statutory authority to be the “legal adviser” to the Legislature, *Hansen v. Utah State Retirement Bd.*, 652 P.2d 1332, 1336 (Utah 1982), this letter is not “legal advice” to you or the Legislature, is not an attorney-client privileged communication, and does not take into account any preferred policy considerations. Because you requested a response to your letter within three days, we were unable to ensure a complete review of all relevant authority, a deep analysis of the pertinent statutory provisions’ legislative history, an extensive examination of other states’ laws on the issues, or a significant historical analysis of the Framers’ intent of the constitutional provisions at issue. Thus, this opinion cannot be said to be comprehensive. Because Utah has not held a special election for United States Congress in 86 years,² there is no controlling legal authority interpreting Utah law, or even authority about similar issues in our jurisdiction. Thus, this opinion cannot provide citation to controlling law on the salient questions. Because the questions you have posed include abstract issues and seek information beyond “question[s] of law relating ... to your ... office ...,” Utah Code Ann. § 67-5-1(7), the opinion may not be complete or may include analysis or opinion beyond the limited confines of your questions. Accordingly, the opinions in this letter are not intended to reach definitive legal conclusions to any of the questions you pose, and are not intended to constitute a final opinion of the Attorney General.

² Brian Schott, *Utah Has Not Held a Special Election for U.S. Congress in 86 Years*, utahpolicy.com (Jan. 16, 2017), available at <http://utahpolicy.com/index.php/features/today-at-utah-policy/12030-utah-has-not-held-a-special-election-for-u-s-congress-in-86-years> (last visited May 25, 2017).

Legal Analysis

When a congressional “vacancy” “occurs” (or “happens”)

Your first question asks an opinion of the date on which a congressional “vacancy” “occurs.” “Vacancy” is a defined term in Utah’s Election Code and means “the absence of a person to serve in any position created by statute, whether that absence occurs because of death, disability, disqualification, resignation, or other cause.” Utah Code Ann. § 20A-1-102(82). Long ago, and in a case involving the appointment of a city counselor to a seat vacated by the death of the incumbent, the Utah Supreme Court noted that “[t]here can be no actual vacancy [of an office] as long as the rightful occupant continues to hold office; that is, until death, resignation, removal, or some legal disability occurs.” *State v. Elliott*, 13 Utah 471, 45 P.3d 346, 358 (Utah 1896) (citation omitted).

This view comports with the plain meaning of the word “vacancy.” For example, the leading legal dictionary states that the word “vacancy,” when applied to official positions, means “[t]he quality, state, or condition of being unoccupied,” and “[t]he time during which an office ... is not occupied.” VACANCY, Black’s Law Dictionary (10th ed. 2014). Accordingly, a vacancy in office occurs when the position is unoccupied, rather than at the announcement of an intent to resign.

This letter does not provide an opinion on the propriety of the timing of any particular proclamation calling an election to fill a vacancy. However, because you ask whether a process could require candidates to “declare candidacy before the Governor issues a writ of election,” we provide a short analysis of whether precedent supports implementing a pre-vacancy procedure to begin a special election to fill the vacancy.

In our brief examination of the issue, we have found no precedent concluding that the commencement of an election process prior to the effective date of an announced congressional vacancy violates the United States Constitution or Utah law. We have found some precedent supporting such a procedure. Article I, Section 2, Clause 4 of the United States Constitution requires that “[w]hen vacancies happen in the Representation from any State, the Executive Authority thereof shall issue Writs of Election to fill such Vacancies.” Utah law, in conformance with that federal constitutional command, requires the Governor to issue a proclamation calling an election to fill the vacant office of a representative in Congress “[w]hen a vacancy occurs[.]” Utah Code Ann. § 20A-1-502(1). Utah Code’s Rules of Construction provide that certain “general rules ... shall be observed ...” when constructing statutes, unless doing so “would be repugnant to the context of the statute.” Utah Code Ann. § 68-3-12(1)(a)(ii). One such general rule is that “[a] word used in the present tense includes the future tense.” *Id.* § 68-3-12(1)(d). Applying this general rule of construction to § 20A-1-502(1), the word “occur” would be read to include its future tense—*i.e.*, “will occur.” Under such circumstances, section 502(1) would read that the Governor shall issue a proclamation calling an election to fill the vacant office of a representative in Congress “when a vacancy will occur.”

Other governmental entities have interpreted Article I, Section 2, Clause 4 of the United States Constitution to offer flexibility to initiate special election proceedings in anticipation of vacancies.³ For example, based on our preliminary research, it appears that of the forty-seven state legislatures which have adopted special election procedures to fill a vacancy within the House of Representatives, twenty-seven have codified a time constraint with only an upper limit (requiring the governor to initiate special election proceedings within a certain period after the vacancy) and with no apparent lower limit. *See e.g.*, Kan. Stat. Ann. § 25-3501 (providing that the governor must declare a special election “not later than five days” after a vacancy); Wyo. Stat. Ann. § 22-18-105 (providing the governor must declare a special election “within five days” after a vacancy).

Further, the Rules of the House of Representatives recognize the ability of a member to select a future date for resignation, so long as the state concerned is “willing to treat the prospective resignation as a constitutional predicate for the issuance of a writ of election.” Rules of the House of Representatives of the United States One Hundred Twelfth Congress, § 19, House Doc. No. 111-157 (2011).

In short, a “vacancy” “occurs” (under state law) or “happens” (under federal law) at the time the congressperson no longer holds the office, but nothing in Utah law prohibits—and national practice supports—the potential for a pre-vacancy procedure to fill a soon-to-be-vacant congressional seat.

Federal constitutional, statutory, and common-law prescriptions on the timing and processes for a congressional special election

Your next questions inquire about the authority, obligations, and responsibilities of the executive and the legislative branches of government as they relate to the process to fill a mid-term vacancy in the United States House of Representatives. We first analyze federal law defining that balance of power, followed by any specific prescriptions created by Utah statutes.

The Framers recognized a delicate balance of power in the regulation of elections for federal legislative office. *Federalist No. 59* (Hamilton). The Framers

submitted the regulation of elections for the general government, in the first instance, to the local administrations; which, in ordinary cases, and when no improper views prevail, may be both more convenient and more satisfactory; but they have reserved to the national authority a right to

³ There is also support for a broad interpretation of the word “happen” in Article I, Section 2, Clause 4 of the United States Constitution, which requires the Executive Authority of the State to issue a Writ of Election “[w]hen vacancies happen.” U.S. Const. art. I, § 2, cl. 4. For example, in an opinion regarding the President of the United States’s authority to make recess appointments and fill vacancies that “may happen during the recess of the Senate,” the United States Attorney General noted that, in its “most natural sense,” the term “happen” could be interpreted to mean “happen to occur” or “happen to take place”—which reading would seemingly limit the President’s authority to fill vacancies that originate or first occur during the Senate recess. *Exec. Auth. to Fill Vacancies*, 1 U.S. Op. Atty. Gen. 631, 632-23, 1823 WL 539 (1823). However, the Attorney General concluded that the term should be interpreted as meaning “happen to exist”—which reading would permit the President to fill vacancies that arose during the Senate session and continued to exist during the Senate recess. *Id.* at 631, 632. The Attorney General opined that the latter sense was “most accordant with . . . the reason and spirit” of the constitution, and that “[t]he substantial purpose of the constitution was to keep these offices filled” and that “powers adequate to this purpose were intended to be conveyed.” *Id.* at 632. Here, a broader interpretation of the term “happen” would likewise serve the substantial purpose of Article I, Section 2, Clause 4—*i.e.*, keeping those offices filled.

interpose, whenever extraordinary circumstances might render that interposition necessary to its safety.

Id.

As a result, the United States Constitution demands that “[t]he Times, Places and Manner of holding Elections ... for Representatives, shall be prescribed by each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations” U.S. Const. art. I, § 4, cl. 1. Discretionary power rests “primarily” in the state legislatures, and “ultimately” with Congress. *Federalist No. 59*.

This general deference extends to the specific context of the procedure to fill a mid-term vacancy of a member of the House as well. Federal law provides:

[T]he time for holding elections in any State, District, or Territory for a Representative or Delegate to fill a vacancy, whether such vacancy is caused by a failure to elect at the time prescribed by law, or by the death, resignation, or incapacity of a person elected, may be prescribed by the laws of the several States and Territories respectively.

2 U.S.C. § 8(a).

The United States Constitution also recognizes the traditional role of the executive of the state to initiate the process of an election when a mid-term vacancy exists. Article I, Section 2, Clause 4 commands that “[w]hen vacancies happen in the Representation from any State, the Executive Authority thereof shall issue Writs of Election to fill such Vacancies.” U.S. Const. art. I, § 2, cl. 4. The Constitution, itself, gives no further direction as to the scope of the Governor’s authority in this regard. Case law, however, establishes that Article I, Section 2, Clause 4 is not merely an authorization to call an election, it creates in the executive of a state a *mandatory obligation* to call one. *Am. Civil Liberties Union v. Taft*, 385 F.3d 641, 648 (6th Cir. 2004); *Jackson v. Ogilvie*, 462 F.2d 1333, 1337 (7th Cir. 1970).

The relationship between a state executive’s obligation to call an election, and the state legislature’s authority—and duty—to set the parameters of mid-term elections is also not defined in the U.S. Constitution or federal statute. Case law, however, also provides guidance on this issue.

In general, the executive authority of a state must follow the parameters set in state law when performing the obligation to execute the writ of election. See *Judge v. Quinn*, 612 F.3d 537, 554 (7th Cir. 2010) (addressing similar issues with special elections for senators). However, the executive may not refuse to perform the duty if the refusal violates federal law or individual federal constitutional rights. *Jackson*, 462 F.2d at 1336; cf. *Fox v. Paterson*, 715 F. Supp. 2d 431, 442 (W.D.N.Y. 2010) (recognizing the executive’s duty, but finding no constitutional violation on the facts of the case). And, when state law provides the governor with discretion in performing the obligation, the governor may exercise it. See *Judge*, 612 F.3d at 555.

The executive’s discretionary authority arises from two sources. First, it arises from the general “executive power” of the Governor to “see that the laws are faithfully executed.” Utah Const. art. VII, § 5, including the “[g]eneral powers and duties” of the Governor requiring that he “must issue and transmit election proclamations as prescribed by law.” Utah Code Ann. § 67-1-1(10); see also *Jackson*, 462 F.2d at 1338 (describing the “limited” discretion a governor has in “prefer[ring] one day of the week over another, or caus[ing] the special election to coincide with or to avoid being held on the same day as another election”).

But more specifically, the inclusion in the Constitution that the executive must execute a “writ of election” includes an implicit recognition of executive discretion in setting elections. At the time of the framing, the executive’s “power to issue a writ of election carried with it the power to establish the time for holding an election, but only if the time had not already been fixed by law.” *Judge*, 612 F. 3d at 552 (citations omitted). Even if a statute controls the timing of an election, the writ “plays the important administrative role of authorizing state officials to provide for the myriad details necessary for holding an election (printing ballots, locating voting places, securing election personnel, and so on).” *Id.* Accordingly, “[w]here state law leaves room for executive discretion ... the executive may [act] within the authorized range.” *Id.* at 555.

Though *Judge* is a case about a senatorial special election, and focuses on the authority of the executive to set the *date* of an election, its logical foundations and reasoning should apply equally to the ability of a state legislature to set other parameters regarding mid-term elections and to the discretion of a state executive to act within those parameters.

In sum, “[t]he Elections Clause ... obliges state legislatures to promulgate regulations for congressional elections, including elections to fill vacancies Through the writ of election, the state executive calls the election to fill the vacancy and sets its time, place, and manner, subject to procedural parameters set by state law.” *Rossito-Canty v. Cuomo*, 86 F. Supp. 2d 175, 185 (E.D.N.Y. 2015) (citing *Federals No. 59*) (further citations and quotations omitted).

Statutory prescriptions on the timing and processes for a congressional special election in Utah law.

Finally, you ask about the interplay of various portions of Utah law in determining the timing or other processes of congressional special elections.

Utah has a comprehensive scheme for operating general (as opposed to special) elections for the election of a member of the House of Representatives. Utah Code Ann. tit. 20A, ch. 13, pt. 1; *see also* Utah Code Ann. tit. 20A, ch. 9 (requirements for candidate qualifications and nominating procedures for general elections). In accord with the authority above, the Utah Legislature has the authority to establish a comprehensive scheme, not inconsistent with federal law or an individual’s constitutional rights, to govern a mid-term congressional election. U.S. Const. art. I, § 4, cl. 1; *see also Taft*, 385 F.3d at 650 (recognizing that a legislature’s choice in the manner of election is “entitled to considerable deference”).

And although there is a “common pattern” in other states of the state legislature passing statutes providing a range of dates and other requirements for a vacancy election, *Judge*, 612 F.3d at 554, Utah’s statutory law on this issue is not specific.

The Utah Legislature has passed a statute providing that “[w]hen a vacancy occurs for any reason in the office of a representative in Congress, the governor shall issue a proclamation calling an election to fill the vacancy.” Utah Code Ann. § 20A-1-502(1). Because the Legislature has not prescribed the time for or manner of holding the election, it “leaves room for executive discretion” *Judge*, 612 F.3d at 555, to “set [the election’s] time, place, and manner” via the writ of election (or similar proclamation), *Rossito-Canty*, 86 F. Supp. 3d at 185, and therefore “the executive may [act] within the authorized range.” *Judge*, 612 F.3d at 555.

Utah’s statutes further describe the Governor and Lieutenant Governor’s “authorized range.” The Lieutenant Governor’s enumerated duties include serving as the chief election officer of the state. Utah Code Ann. § 67-1a-2. In that capacity, the Lieutenant Governor has authority to “exercise general supervisory authority over all elections,” and to “exercise direct authority over the conduct of elections for federal, state, and multicounty officers and statewide or multicounty ballot propositions and any recounts involving those races.” *Id.* The Lieutenant Governor also possesses the authority to “render all

interpretations and make all initial decisions about controversies or other matters” arising out of election disputes. *Id.* § 20A-1-402.

The Lieutenant Governor’s general supervisory authority under Utah statutory law authorizes him to prescribe the time for holding a special election. *Id.*; *Judge*, 612 F.3d at 555; *Sloan v. Donoghue*, 127 P.2d 922, 923 (Cal. 1942) (noting that 2 U.S.C.A. § 8 provides that the time for holding elections to fill a vacancy *may* be prescribed by state law, but that “[t]he Legislature of this state has adopted no statute relating to the filling of such vacancies,” and ruling that “the proclamation of the governor properly called for the [special] election to be held in the old district” as it existed when the representative (now deceased) was elected (as opposed to in the enlarged district as it existed at the time of the governor’s proclamation)). This supervisory authority would also likely authorize him to prescribe the “manner” of such a special election under current Utah law.⁴

* * *

In conclusion, the United States Constitution defines the responsibilities of state legislatures and state executives in providing for elections of their state’s representatives, in the first instance, and in assuring election of a replacement “[w]hen vacancies happen.” The Governor and Lieutenant Governor have a mandatory obligation to order an election should a vacancy occur and are granted some discretion in exercising that obligation in this instance.

Sincerely,



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



Joni Jones, Assistant Utah Attorney General
Litigation Division, Division Director



Kyle Kaiser, Assistant Utah Attorney General
Section Director, Civil Rights Section,
Litigation Division

⁴ See also Rules of the House of Representatives of the United States One Hundred Twelfth Congress, *supra* § 24, (accepting the credentials of a Member elected in a special election called by a governor “in pursuance of constitutional authority,” even though “no State law prescribed the time, place, or manner of such election”).

STATE OF UTAH
OFFICE OF THE ATTORNEY GENERAL



SEAN D. REYES
ATTORNEY GENERAL

Spencer E. Austin
Chief Criminal Deputy

Parker Douglas
Chief Federal Deputy
& General Counsel

Tyler R. Green
Solicitor General

Missy W. Larsen
Chief of Staff

Bridget K. Romano
Chief Civil Deputy

June 22, 2017

Sent by Electronic and U.S. Mail

Ben McAdams
Salt Lake County Mayor
Salt Lake County Government Center
2001 South State Street, Suite N2-100
Salt Lake City, Utah 84114-4575

Re: Legal Opinion Request

Dear Mayor McAdams,

This letter acknowledges your letter of June 20, seeking advice or a legal opinion from the Office of the Utah Attorney General "regarding the legality of candidate selection processes and deadlines" selected by the Governor and Lieutenant Governor for the special election to replace Third Congressional District Representative Jason Chaffetz. The Office sincerely appreciates your requests, but must respectfully decline.

First, to the extent you seek directly (as page 2 of your letter suggests) "the legal advice provided to, or relied on by, the Governor and Lieutenant Governor," such information is protected by the attorney-client privilege. Its release to you, and even more broadly to the Utah Association of Counties, would constitute a clear violation of the Rules of Professional Conduct. For this Office to release such information, the Governor and Lieutenant Governor would have to waive their attorney-client privilege, which they have specifically declined to do. Further, the information is not, as your letter suggests, available under the Utah Government Records Access and Management Act. Records that

are subject to the attorney-client privilege, Utah Code § 63G-2-305(17), and records that constitute attorney work product, *id.* § 63G-2-305(18), are protected records under Utah law.

Additionally, only a narrowly defined group of offices and officeholders may ask this Office to answer a “question of law relating to their respective offices”. Utah Code § 67-5-1(7). In Utah, those persons or entities consist of “the Legislature or either house and [] any state officer, board or commission, and [] any county or district attorney.” *Id.* Neither a county mayor nor a professional association falls within the statute’s reach. Thus, because your request is not statutorily permitted, the Office has no authority to answer it.

As you note, the Utah Legislature has requested a similar opinion from our Office, which has been withheld. It would make little sense to release an opinion to you or to UAC – a person or association from whom an AG Opinion request is not statutorily permitted or contemplated – but to refrain from releasing the same analysis to the Legislature, which unquestionably falls within Section 67-5-1(7).

Other reasons militate against granting your request. Almost universally, AG Offices deem it improper to issue an AG Opinion that answers questions that, like yours:

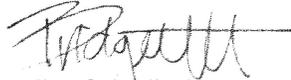
1. Relate to issues of current or reasonably imminent litigation;
2. Involve the exercise of legislative or executive judgment, or the exercise of discretion by public officers; or
3. Do not pertain to the duties or responsibilities of the person making the request, or that are made on behalf of a person or entity not entitled to request an AG Opinion.

Still, other states decline to entertain AG Opinion requests to answer questions that:

1. Seek the interpretation of federal law;
2. Involve the constitutionality of a law, act or regulation, the sole determination of which is reserved to the courts;
3. Involve intergovernmental disputes unless each governmental entity has joined in the request; and pertinent here,
4. May present a conflict of interest with respect to other legal matters in which the AG Office may be involved.

The Office of the Attorney General acknowledges the potential costs of this special election to the counties, including Salt Lake County. That said, we are simply not able to grant your request for either the release of attorney-client privileged advice or for a formal AG Opinion.

Best Regards,

A handwritten signature in black ink, appearing to read "Bridget K. Romano", with a horizontal line extending to the right.

Bridget K. Romano
Chief Civil Deputy
Utah Attorney General

BKR/pc