



# State of Connecticut

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July 24, 2020

Attorney General William Tong  
55 Elm Street  
Hartford, CT 06106

Attorney General Tong:

I write pursuant to section 3-125 of the general statutes to seek your legal opinion on the constitutionality of House Bill 6004, An Act Concerning Police Accountability. My request pertains to the creation of the Office of the Inspector General ("OIG") and sections 33, 34, 35 and 46 of the bill. As you are aware, this bill passed the House of Representatives this morning and is expected to be taken up by the Senate on Tuesday of next week. Thus, your prompt attention is appreciated.

In particular, I would like your opinion on whether or not the OIG as contemplated in HB 6004 runs afoul Article XXIII of the Amendments to the Constitution. That article states:

*Article XXIII amends Article fourth of the Constitution to add a new section that provides: There shall be established within the executive department a division of criminal justice which shall be in charge of the investigation and prosecution of all criminal matters. Said division shall include the chief state's attorney, who shall be its administrative head, and the state's attorneys for each judicial district, which districts shall be established by law. The prosecutorial power of the state shall be vested in a chief state's attorney and the state's attorney for each judicial district. The chief state's attorney shall be appointed as prescribed by law. There shall be a commission composed of the chief state's attorney and six members appointed by the governor and confirmed by the general assembly, two of whom shall be judges of the superior court. Said commission shall appoint a state's attorney for each judicial district and such other attorneys as prescribed by law.*

First, I am concerned that the office may be considered independent of the division of criminal justice contrary to the constitutional mandate. Section 33 (a) of the bill makes the OIG "an independent office within the DCJ". In addition, section 34 (c) authorizes the Inspector General ("IG") to independently "prosecute any case" in which he or she determines that a peace officer unjustifiably used force. I ask your legal opinion as to whether these or any other provisions related to independence run afoul of our constitution.

Second, I am concerned that the newly created position is appointed by the legislature rather than the Criminal Justice Commission as the state constitution may require.

Article XXIII of the Amendments to the Constitution requires that the Criminal Justice Commission, composed of the chief state's attorney and six members appointed by the governor and confirmed by the general assembly, appoint a state's attorney for each judicial district *and such other attorneys as prescribed by law*. I am concerned that section 46 of the bill authorizes the Criminal Justice Commission to "appoint" a Deputy Chief State's Attorney to serve as the IG, but only for the purpose of *nominating* that person to the legislature for the legislature to truly appoint as the IG.

Third, what impact is there, if any, if the legislature appoints someone who is not currently a state's attorney employed by the Department of Criminal Justice?

I ask that you please review and provide your opinion as soon as possible. The bill in question is currently in the process of being readied for a vote to take place during a special session of the Senate on Tuesday. Thank you for your attention to this matter.

Sincerely,

A handwritten signature in blue ink, appearing to be 'Len Fasano', with a stylized, cursive script.

Len Fasano  
Senate Republican Leader