

GEORGE JEPSEN
ATTORNEY GENERAL



55 Elm Street
P.O. Box 120
Hartford, CT 06141-0120

Office of the Attorney General
State of Connecticut

November 18, 2015

Honorable Claudia Baio
Chairperson
Governmental Accountability Commission
c/o State Contracting Standards Board
999 Asylum Avenue
Hartford, CT 06105

Dear Chairperson Baio:

You have asked for an opinion about the responsibilities of the Executive Administrator of the Office of Governmental Accountability (OGA) with regard to labor relations. In particular, you ask who – the Executive Administrator or the head of the individual agencies – has authority to respond to labor grievances. We conclude that, under the statute governing the OGA, responsibility with regard to labor grievances is shared, such that OGA and its Executive Administrator serve in a support role, modeled after the Small Agency Response Team program of the Department of Administrative Services, with final decision-making authority remaining with the heads of the individual agencies.¹

Public Act No. 11-48 (Act) established the OGA, with the Executive Administrator as its administrative head. Conn. Gen. Stat. § 1-300(a). The OGA "shall provide personnel, payroll, affirmative action and administrative and business office functions and information technology associated with such functions" for the Office of State Ethics, State Elections Enforcement Commission, Freedom of Information Commission, Judicial Review Council, Judicial Selection Commission, Board of Firearms Permit Examiners, Office of the Child Advocate, Office of the Victim Advocate and State Contracting Standards Board (collectively, Agencies). *Id.*, § 1-300(b). However, the Act also provides that "[n]othing in this section shall be construed to affect or limit the independent decision-making authority" of the Agencies, and "[s]uch decision-making authority includes, but is not limited to, decisions concerning budgetary issues and *concerning the employment of necessary staff to carry out the statutory duties*" of the Agencies. *Id.*, § 1-300(c) (emphasis added).

¹ The opinion request was originally made on behalf of the Governmental Accountability Commission (GAC) by Chairperson Charles F. Chiusano. We understand that, in the meantime, Claudia Baio was elected Chairperson of the GAC.

In construing a statute, the objective is to give effect to the apparent intent of the legislature. *Chairperson, Conn. Med. Examining Bd. v. FOIC*, 310 Conn. 276, 283 (2013). To ascertain a statute's meaning, Conn. Gen. Stat. § 1-2z directs that the text first be considered along with its relationship with other statutes. If after such examination the meaning of the text is not plain and unambiguous or it produces absurd or unworkable results, extratextual evidence of the statute's meaning may be consulted. *Id.* A statute is ambiguous when, read in context, it is susceptible to more than one reasonable interpretation. *Financial Consulting, LLC v. Comm'r of Insurance*, 315 Conn. 196, 210 (2014).

The relevant statutory language here is ambiguous. On the one hand, the OGA is to provide "personnel, payroll, affirmative action and administrative and business office functions" for the Agencies. On the other, the Act expressly states that the Agencies retain independent decision-making authority over employment of necessary staff. The OGA Executive Administrator does have a role in providing "personnel" functions, but the Agencies have employment decision-making authority. How precisely the two roles are intended to play out in the context of union grievances is unclear.

The legislative history of the Act provides some guidance. First, in response to questions about the authority of the OGA relative to the existing Agency heads, Senator Harp, the principal proponent in the Senate floor debates, emphasized that the Executive Administrator's role was to support the Agencies in personnel matters. The Agencies, she indicated, "will continue to have the power of policy and hiring for the business of the [Agencies]." 54 Sen. Proc. at 4345 (June 1, 2011). *See Pereira v. State Bd. of Educ.*, 304 Conn. 1, 26 n.18 (2012) (statements in floor debate are significant evidence of legislative intent).

Second, Senator Harp remarked that the OGA was modeled after the Small Agency Resource Team (SMART), which is part of the Department of Administrative Services (DAS) and provides personnel, affirmative action and other business office functions for small agencies. 54 Sen. Proc. at 4229. SMART was established pursuant to Public Act 05-251, § 60(c), which provides:

The Commissioner of Administrative Services, in consultation with the Secretary of the Office of Policy and Management, shall develop a plan for the Department of Administrative Services to provide personnel, payroll, affirmative action and business office functions of state agencies. All executive branch state agencies may be considered in the development of this plan, but the specific agencies to be included shall be determined by the Commissioner of Administrative Services in consultation with the Secretary of the Office of Policy and Management. The *personnel, payroll, affirmative action and business office functions* shall be merged

and consolidated within the Department of Administrative Services.

P.A. 05-251, § 60(c) (emphasis added). The nearly identical language used in the Act and in Public Act 05-251 reflects that the legislature intended for the OGA to have a similar role as DAS through the SMART program. *See Brennan v. Brennan Assocs.*, 293 Conn. 60, 83-84 (2009) (same words in related statutes should ordinarily be given same meaning).

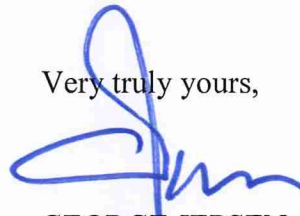
Our understanding, from consultation with DAS staff, is that under the SMART program DAS staff in effect serves the same role in employee or labor matters that an agency's staff otherwise would. Thus, for example DAS staff is responsible for implementing disciplinary decisions made by agency heads. And DAS staff would typically represent the agency in a labor grievance before the Office of Labor Relations. However, final decision-making authority remains with the agency head.

This description of DAS's role in the SMART program is consistent with the Act. Both the statutory language and the legislative history make clear that the heads of the Agencies retain final decision-making authority in employment matters. The Agencies, not the OGA Executive Administrator, are the employers of the Agencies' employees. OGA and the Executive Administrator are to play a supportive role in a manner similar to the way DAS staff provides administrative and office support for small agencies in the SMART program.

In this regard, it may be beneficial for the Executive Administrator and the Agencies to consult further with DAS staff involved in the SMART program for guidance on the details of its role in that program and to consider entering into memoranda of understanding between the OGA and the Agencies to clarify their respective roles based, as appropriate, on the SMART program model.

We trust this is responsive to your questions.

Very truly yours,



GEORGE JEPSEN
ATTORNEY GENERAL