

**TO:** Sharon Segner  
LS Power Transmission

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**DATE:** March 27, 2012

**RE:** **Can State Attorney Generals Issue Legal Opinions to Private Parties**

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On behalf of LS Power Transmission you asked that Dickstein Shapiro prepare a survey of the scope of authority for Attorneys General in the jurisdictions in which PJM Interconnection operates for submission to PJM Interconnection on a non-confidential basis.

**I. QUESTION PRESENTED**

Under what circumstances can a State Attorney General issue a legal opinion regarding state law?

**II. SHORT ANSWER**

Generally, State Attorneys General may only issue legal opinions at the request of government agencies or State legislatures. The specific agencies and officials vary by state, but among the PJM jurisdictions, the Attorneys General are not permitted to issue legal opinions at the request of private companies or citizens. Because a prospective PJM transmission developer is a private entity, the Attorneys General from Delaware, District of Columbia, Illinois, Indiana, Kentucky, Maryland, Michigan, New Jersey, North Carolina, Ohio, Pennsylvania, Tennessee Virginia, and West Virginia are prohibited from issuing a legal opinion to the developer or PJM

Interconnection that such entity is eligible to build electric transmission in the respective state or to obtain eminent domain authority.

### III. DISCUSSION

Each of the jurisdictions examined in this memo prohibit the State Attorney General from issuing legal opinions for any party other than specified government officials and agencies.

Attorneys General are charged with representing the legal interests of their respective states and the interests of the citizens of those states as they pertain to statewide issues. Attorneys General in all of the PJM Interconnection jurisdictions are directed by law to issue written legal Opinions as part of their duties. However, the same statutes limit the officials and agencies that can request official opinions to selected, enumerated government officials. PJM Interconnection, while federally regulated, is a private company not part of any state government, thus any request made by PJM Interconnection for a State Attorney General to issue a legal opinion is prohibited by statute. Likewise, Attorneys General in the PJM Interconnection jurisdictions would be prohibited from acting on a request by a private developer of electric transmission, even the obligation to make that request with part of a federally approved transmission tariff.

Listed below are the statutes in each PJM Interconnection jurisdiction that prohibit the Attorney Generals from issuing opinions to private entities:

#### Delaware

The Delaware Attorney General is limited by statute to issuing legal advice, counsel, and services for “administrative offices, agencies, departments, boards, commissions, and officers of the state government concerning any matter arising in connection with the exercising of their official powers or duties.” 29 Del. Code Ann. §2504(2) (2011). Further, Delaware courts have

held that opinions of the Attorney General are advisory and not binding “on those to whom it is given” and the opinions are regarded by the courts as “simply legal opinions which the courts read as they read other authorities.” *Sullivan v. Local Union 1726 of AFSCME*, 464 A.2d 899 (Del. 1983); *State ex rel. Davis v. Woolley*, 48 Del. 34, 97 A.2d 239 (1953).

#### District of Columbia

The Attorney General of the District of Columbia “shall furnish opinions in writing to the Mayor and the Council whenever requested to do so. All requests for opinions from agencies subordinate to the Mayor shall be transmitted through the Mayor.” D.C. Code § 1-301.81 (2012). Generally, the Attorney General and staff cannot provide legal assistance to private citizens and the Office of the Attorney General does not become involved with private disputes.

District of Columbia Attorney General Website, Who We Are,

<http://oag.dc.gov/DC/OAG/About+OAG/Who+We+Are> (last visited Mar. 21, 2012).

#### Illinois

The Illinois Attorney General’s office and position were created by the Attorney General Act. 15 Ill. Comp. Stat. Ann. 205/0.01 (2012). Under the Act, one of the Attorney General’s duties is “to give written opinions, when requested by either branch of the general assembly, or any committee thereof, upon constitutional or legal questions.” 15 Ill. Comp. Stat. Ann. 205/4 (2012).

#### Indiana

The Indiana Attorney General is prohibited by law from practicing private law, thus he/she cannot provide legal advice or opinions to non-government officials or agencies. *See*

Indiana Attorney General Website, Frequently Asked Questions,

[http://www.iot.custhelp.com/app/answers/detail/a\\_id/1386/related/1](http://www.iot.custhelp.com/app/answers/detail/a_id/1386/related/1), (last updated Dec. 21, 2009). Further, the Indiana Code states that the Attorney General “shall give his legal opinion to the governor upon request, touching upon any question or point of law in which the interests of the state may be involved...[and] to any other state officer touching upon any question or point of law concerning the duties of the officer; and also, to either house of the general assembly...*and he shall not be required to advise any other officer or person.* Ind. Code §4-6-2 (2012) (emphasis added).

#### Kentucky

The Attorney General provides legal opinions to public officials to assist them in the performance of their duties. When special circumstances exist, the Attorney General may provide opinions to members of the general public on issues of significant public interest. Opinions of the Attorney General (OAGs) do not have the force of law, but they are persuasive and public officials are expected to follow them. The Attorney General is authorized by law to “when requested in writing, ... furnish such opinions subject to the following conditions: (1) When questions of law of interest to the Commonwealth are submitted by a state department, agency, board or commission; (2) When public questions of law are submitted by either house of the Legislature or by any member of the Legislature; (3) When public questions of law pertaining to local government are submitted in writing by the proper public official of the county or other political subdivision of the Commonwealth; (4) When, in the discretion of the Attorney General, the question presented is of such public interest that an Attorney General's opinion on the subject is deemed desirable and when provided for by regulation pursuant to the provisions of this section.” Ky. Rev. Stat. Ann. § 15.025 (2012).

Maryland

The Maryland Constitution directs the Maryland Attorney General to issue a written opinion when requested by the General Assembly, the Governor, the Comptroller, the Treasurer, or “any State’s Attorney on any legal matter or subject.” Md. Const. art. V, § 3. The Attorney General is charged with supervising and representing the “legal business of the State.” Md. Code Ann. §6-106 (2012). The Office of the Attorney General will also write letters and memoranda to State officials analyzing legal issues, but these letters are not considered an Opinion of the Attorney General. The Maryland Attorney General is not permitted to respond to requests for Opinions from private citizens or lawyers. See Maryland Attorney General, Opinions Frequently Asked Questions, at <http://www.oag.state.md.us/Opinions/faq.htm> (last visited Mar. 16, 2012).

Michigan

Michigan law requires that the Attorney General only provide counsel to the State, the Governor, and the Legislature. It is the Attorney General's duty “to give his opinion upon all questions of law submitted to him by the legislature or either branch thereof, or by the governor . . . or any other state officer.” Therefore, private citizens do not have standing to seek an Attorney General Opinion. Michigan Attorney General Website, Frequently Asked Questions, <http://www.michigan.gov/ag/0,1607,7-164-48126-181949--F,00.html> (last visited Mar. 21, 2012) (citing Michigan Code, Mich. Comp. Laws § 14.32 (2012)).

New Jersey

The New Jersey Attorney General is authorized to provide legal advice only to departments, agencies, and instrumentalities of State government. State law restricts the Attorney

General from providing legal advice to private citizens or organizations. This is reflected in the state law indicating that the Division of Law in the Attorney General's Office is authorized only to counsel agencies of state government. N.J. Stat. Ann. 52:17A-4(e), 52:17A-11 (2012). *See* State of New Jersey, Office of the Attorney General, Frequently Asked Questions, <https://www.nj.gov/oag/faq.htm> (last visited Mar. 16, 2012).

#### North Carolina

The North Carolina Attorney General has the duty “[t]o give, when required, his opinion upon all questions of law submitted to him by the General Assembly, or by either branch thereof, or by the Governor, Auditor, Treasurer, or any other State officer.” N.C. Gen. Stat. § 114-2 (2012). In most instances the Attorney General, “cannot provide legal advice to individuals or private organizations.” North Carolina Attorney General Website, Duties and Responsibilities, <http://www.ncdoj.gov/About-DOJ/The-Attorney-General/Duties-and-Responsibilities.aspx> (last visited Mar. 21, 2012). Courts in North Carolina have held that opinions of the Attorney General are advisory only. *Lawrence v. Shaw*, 210 N.C. 352, (1936), rev’d on other grounds, 300 U.S. 245, 57 S. Ct. 443 (1937).

#### Ohio

By Statute, the Ohio Attorney General, “when so requested, shall give legal advice to a state officer, board, commission, the warden of a state correctional institution, the superintendent, trustees, or directors of a benevolent institution of the state, and the trustees of the Ohio state university, in all matters relating to their official duties.” Ohio Rev. Code Ann. § 109.12 (2012).

Pennsylvania

The Pennsylvania Attorney General is governed by the Commonwealth Attorneys Act. The statute limits the Attorney General's authority to issue legal advice to only "[u]pon the request of the Governor or the head of any Commonwealth agency ... concerning any matter or issue arising in connection with the exercise of the official powers or the performance of the office." 71 P.S. §732-204 (2012). The advice of the Attorney General is not binding upon the Governor, but "in all other cases the advice when received shall be followed and, when followed, the recipient shall not in any way be liable for doing so." *Id.*

Tennessee

The Tennessee Attorney General is required to provide written legal opinions to "the governor, secretary of state, state treasurer, comptroller of the treasury, members of the general assembly and other state officials...in the discharge of their official duties." Tenn. Code Ann. § 8-6-109 (b)(6). By law, the Attorney General cannot issue opinions to county or local government officials or to private citizens. Tennessee Attorney General Website, <http://www.tn.gov/attorneygeneral/op/opinions.html> (last visited Mar. 21, 2012).

Virginia

Section 2.2-505 of the Virginia Code authorizes the Attorney General of Virginia to "give his advice and render official advisory opinions in writing only when requested in writing so to do by one of the following: the Governor; a member of the General Assembly; a judge of a court of record or a judge of a court not of record; the State Corporation Commission; an attorney for the Commonwealth; a county, city or town attorney in those localities in which such office has been created; a clerk of a court of record; a city or county sheriff; a city or county treasurer or

similar officer; a commissioner of the revenue or similar officer; a chairman or secretary of an electoral board; or the head of a state department, division, bureau, institution or board....The Attorney General shall have no authority to render an official opinion unless the question dealt with is directly related to the discharge of the duties of the official requesting the opinion.” Va. Code. Ann. §2.2-505 (2012).

#### West Virginia

The West Virginia Attorney General’s office provides formal written opinions about constitutional or legal questions when requested by statewide elected officials, members of the Legislature, appointed heads of state agencies, and county prosecuting attorneys. The Attorney General is “not authorized to provide legal advice or opinions for private citizens or businesses,” and “does not prepare opinions for private citizens, state agency employees, or employees of local agencies.” West Virginia Attorney General Website, Duties & Responsibilities, <http://www.wvago.gov/attorneygeneral.cfm?fx=duties>; Frequently Asked Questions, <http://www.wvago.gov/faqs.cfm?fx=view&id=162> (last visited Mar. 16, 2012). Further, West Virginia courts have held that opinions of the Attorney General are “not considered as precedent to be followed by the supreme court.” *State v. Wassick*, 156 W. Va. 128 (1972); *see also Walter v. Ritchie*, 156 W. Va. 98 (1972) (stating “although an opinion of the Attorney General is not binding upon the Supreme Court of Appeals, it is persuasive when it is issued rather contemporaneous with the adoption of a statute in question.”).