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February 16, 2016

By First Class Mail and Electronic Mail

Mary Connaughton
John Sivolella
Pioneer Institute
185 Devonshire Street, Suite 1101
Boston, MA 02110

Dear Mary and John:

Thank you for your letters of February 1 and 3 by which the Pioneer Institute asked the Attorney General's Office to issue an advisory opinion "regarding the constitutionality of the Massachusetts legislature's exemption from G.L. c. 30A, §§18-25," the Open Meeting Law.

While we encourage all such inquiries, we cannot provide the advisory opinion you have requested concerning whether the legislature's exemption from the Open Meeting Law is constitutional. Although the OML and the regulations promulgated thereunder do allow the AG, through the Division of Open Government, to issue advisory opinions, this power is limited to opinions regarding the operation and implementation of the OML itself. *See* G.L. c. 30A, § 25 ("The attorney general shall have the authority to interpret the open meeting law and to issue written letter rulings or advisory opinions according to rules established under this section."); 940 C.M.R. 29.08 ("The attorney general may issue advisory opinions on request or on his or her own initiative to provide guidance to public bodies and the public on changes to [the OML], court decisions interpreting [the OML] or other developments concerning [the OML].") This authority under the OML does not extend to the constitutional analysis that Pioneer requests.

More fundamentally, even if my office were to interpret the OML to allow for advisory opinions on constitutional questions, precedent from the Supreme Judicial Court would forbid it. As the enforcement agent under the OML, the Attorney General is, in effect, an administrative agency created by the OML. *See* G.L. c. 30A, § 19(a) ("There shall be in the department of the attorney general a division of open government under the direction of a director of open government."). The SJC (and the United States Supreme Court) has held that administrative agencies do not have the power to declare unconstitutional the statutes that created them. *See Doe No. 10800 v. Sex Offender Registry Board*, 459 Mass. 603, 628-629 (2011) (citing state and federal cases for this proposition back to 1972).



Mary Connaughton & John Sivoella
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Should you wish to discuss these issues further, please contact me.

Sincerely,

A handwritten signature in blue ink, appearing to read "Chris Barry-Smith", with a long horizontal flourish extending to the right.

Chris Barry-Smith
First Assistant Attorney General