



THE COMMONWEALTH OF MASSACHUSETTS OFFICE OF THE ATTORNEY GENERAL

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August 4, 2025

VIA E-MAIL

Michael Leung-Tat
General Counsel and Deputy Auditor
Office of the State Auditor (OSA)
Michael.Leung-Tat@massauditor.gov

Dear Michael:

I write to follow-up on our previous communications regarding the Office of the State Auditor's (OSA) request to initiate litigation against the House, the Senate, elected or appointed officials within each chamber, and, possibly, the Secretary of the Commonwealth.

Since our last written communication, OSA publicly released correspondence between our respective offices related to that request. As a result of that disclosure, subsequent correspondence, including this letter, may not be protected by attorney-client privilege. So as not to prejudice the OSA's legal position moving forward, we set forth the following issues only in broad strokes.

It will not surprise you that the Attorney General's Office (AGO) has concerns with representing OSA in the proposed litigation, including that any such representation has been unduly complicated because of OSA's inconsistent positions on the prospective litigation and the associated issues. At times, we have been told one thing in a meeting, only to read quite another in a public statement. For instance, the Massachusetts Constitution recognizes legislative privilege, which affects the scope of the OSA's authority with respect to the House and Senate. At times, the OSA has conceded that point only to later and publicly claim otherwise. We cannot initiate litigation or undertake representation of the OSA when the OSA's position on this central issue is in flux. In addition, we have noted on numerous occasions that, to our knowledge, no Massachusetts court has ever ordered mandamus or entered an affirmative injunction against the Legislature; but that nonetheless appears to be what the OSA would be seeking in its proposed litigation. We still do not have any information regarding how the OSA intends to navigate that threshold issue.

These concerns do not necessarily preclude the appointment of a Special Assistant Attorney General (SAAG) to pursue your proposed litigation. But as we have emphasized, part of the role of the AGO is to limit intergovernmental disputes presented to the courts for resolution; and, particularly, to avoid the use of litigation as a political tool by one part of state government against another. Given our experience with the OSA on this issue, we believe the OSA may prefer to publicly claim the right to an all-encompassing legislative audit despite the serious legal complications attendant to such an audit, rather than commit itself in court to a legal position that may allow non-legislative functions to be audited but would preclude an audit of the lawmaking process, committee assignments, or other legislative actions. If that is so, litigation is neither necessary nor appropriate. Similarly stated, where parts of state government are at odds, litigation must be the last option and not the first; and the legal issue must be one that actually warrants judicial attention. By way of example, the accommodations process—through which, at the federal level, the legislature and the executive address committee requests for information and assertions of executive privilege—requires extensive engagement between the elected branches before courts are willing to intercede. Minimal such engagement has occurred here.

Moreover, were a SAAG to be appointed to pursue litigation on your behalf, any such appointment would be expressly limited to a particular cause of action against specifically identified defendants.

To assist our evaluation of whether a SAAG appointment is appropriate—and the scope of any such authorized representation—please provide us with:

- A precise description of the full scope of the proposed audit of the Legislature;
- The documents sought as part of that audit, including an explanation of why those documents are necessary to complete the audit and whether the documents are available from any other source;
- The OSA's position on whether core legislative functions (including lawmaking, the evaluation of potential legislation, and committee assignments) are subject to audit or, instead, are the exclusive province of the Legislature under the state Constitution;
- The cause of action(s) the OSA desires to bring against specifically named defendants; and
- A commitment that the OSA and its counsel will abide by the scope of SAAG authority authorized by the AGO (including assent to the AGO's intervention in any such action to enforce the scope of that authority).

Should it be useful to do so, we are glad to discuss these issues with you.

Very truly yours,

A handwritten signature in blue ink, appearing to read "M. Patrick Moore Jr.", written in a cursive style.

M. Patrick Moore Jr.

First Assistant Attorney General