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Office of The Attorney General
State of Connecticut

October 30, 2013

The Honorable Dannel P. Malloy, Governor
State of Connecticut
State Capitol
Hartford, CT 06106

Dear Governor Malloy:

This letter responds to your request for a formal legal opinion concerning the authority to appoint a new chairperson for the Board of Firearms Permit Examiners (the "Board"). We understand that the existing chairperson of the Board is resigning effective November 1, 2013, and that the Board has elected a new chairperson pursuant to section 29-32b-4a of its regulations. You have asked whether the Board has the authority to make that appointment, or whether the Governor possesses that power pursuant to Conn. Gen. Stat. § 4-9a. We conclude that because the statutory provisions of Conn. Gen. Stat. § 4-9a prevail over the Board's regulations, the Governor, not the Board, has the authority to appoint the Board's chairperson.

Pursuant to Conn. Gen. Stat. § 29-32b, the Board consists of nine members, eight of whom are appointed by the Governor and one of whom is a retired Superior Court judge appointed by the Chief Court Administrator. Conn. Gen. Stat. § 29-32b(a), as amended by 2013 Conn. Pub. Acts No. 13-3, § 60. Although § 29-32b(a) provides that "[a]t least one member of the board appointed by the Governor shall be a lawyer licensed to practice in this state who shall act a chairman of the board during the hearing of appeals," the statute does not specify how the chairperson shall be selected.

The Board, however, has adopted regulations that purport to provide for the election of officers, one of which is presumably, although not explicitly, the chairperson. Specifically, the Board relies on § 29-32b-4a of its regulations, entitled "Election of officers," which provides in pertinent part that "[t]he Board shall elect its officers biennially." Regs., Conn. State Agencies, § 29-32b-4a. The Board relied on this regulation in electing a new chairperson.

The Board's reliance on § 29-32b-4a to permit it to elect its chairperson, however, conflicts with the provisions of Conn. Gen. Stat. § 4-9a. Section 4-9a

applies generally to all boards and commissions in the Executive Department, with limited exceptions not relevant here, and provides, in pertinent part, that:

The Governor shall appoint the chairperson and executive director, if any, of all boards and commissions within the Executive Department, except the State Properties Review Board, the State Elections Enforcement Commission, the Commission on Human Rights and Opportunities, the Commission on Fire Prevention and Control and the Citizens Ethics Advisory Board.

Conn. Gen. Stat. § 4-9a(a). Because the Board is within the Executive Department and is not one of the entities specifically excepted from the statute, § 4-9 grants the Governor the authority to appoint the Board's chairperson.

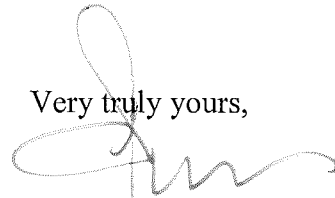
It is a well settled principle that “[w]hen a statute and a regulation conflict, the statute must prevail.” Med-Trans of Connecticut, Inc. v. Department of Public Health and Addiction Services, 242 Conn. 152, 168 (1997); see also Rose v. Freedom of Information Commission, 221 Conn. 217, 229 (1992); Austin v. Housing Authority of City of Hartford, 143 Conn. 338, 348-349 (1956). Accordingly, given the clear conflict between the Board's reliance on § 26-32b-4a of its regulations and Conn. Gen. Stat. § 4-9a, the latter statutory provision must prevail.¹ We therefore conclude that pursuant to Conn. Gen. Stat. § 4-9a, the Governor has the authority to appoint the Board's chairperson.²

¹ We note that this conflict with § 4-9a does not necessarily render the Board's regulation a nullity. Our conclusion is only that the regulation must yield to the statutory process for appointing the Board's chairperson. This does not mean necessarily that the regulation prevents the Board from electing other “officers” if it otherwise has authority to do so.

² We similarly opined in a 2011 opinion that the Governor has the authority pursuant to Conn. Gen. Stat. § 4-9a to appoint the chairperson of the State Teachers' Retirement Board, notwithstanding a regulation permitting the Board to make the appointment, which the Board had relied upon for decades to elect its own chairperson. 2011 Conn. Op. Atty. Gen. 2011-006, 2011 WL 5617500 (July 29, 2011). Although we concluded in that opinion that § 4-9a trumped the conflicting regulation because it was adopted later, and “a later statute . . . repeals a prior irreconcilable administrative regulation,” *id.*, quoting Harper v. Tax Commissioner, 199 Conn. 133, 142 (1986), we could equally well have applied the principle that we apply in the present opinion. Thus, our reliance on a different analysis in our 2011 opinion in no way alters our conclusion here.

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Very truly yours,

A handwritten signature in black ink, appearing to read "G. Jepsen", written over the closing "yours,".

GEORGE JEPSEN
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