OFFICE OF THE ATTORNEY GENERAL
CONNECTICUT

WILLIAM TONG
ATTORNEY GENERAL

July 22, 2020

By Email

The Honorable Leonard A. Fasano
Senate Minority Leader
Legislative Office Building
300 Capitol Avenue, Suite 3400
Hartford, Connecticut 06106-1591

Re: *Police Accountability Bill*

Dear Leader Fasano:

You have asked for a legal opinion regarding how Section 3 of the July 15, 2020 version of the proposed Police Accountability Bill (LCO 3471) (the "Bill") would interact with collectively bargained grievance procedures. Specifically, you have asked: "will the grievance procedures in union agreements apply to decisions made by [the Police Officer Standards and Training Council], which is not a party to those union agreements, pursuant to section 3 of this proposed bill to decertify or suspend certification." As explained below, it is my opinion that grievance procedures in collective bargaining agreements between the State and state employees do not directly intersect with decisions made by the Police Officer Standards and Training Council ("POST Council"). With respect to municipal collective bargaining agreements, this Office is not authorized to issue opinions on the impact of the proposed legislation on such contracts.

By way of background, the POST Council, a state agency within the Department of Emergency Services and Public Protection (DESPP), has the power to, among other things, "issue appropriate certification to police officers who have satisfactorily completed minimum basic training programs…refuse to renew any certificate if the holder fails to meet the requirements for renewal…[and]…cancel or revoke any certificate…" for any of several reasons enumerated in the statute. See Conn. Gen. Stat. §§ 7-294d(a)(7), (c). "No person may serve as a police officer during any period when such person's certification has been cancelled or revoked pursuant to the provisions of subsection (c) of this section." Conn. Gen. Stat. §7-294d(b).

The portion of Section 3 of the Bill that is relevant to your inquiry would modify Conn. Gen. Stat. § 7-294d, by adding two new categories of grounds for which the POST Council may revoke the certification of a police officer. Under the proposed Bill, the

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POST Council would be authorized to revoke the certification of an officer who "has been found by a law enforcement unit, pursuant to procedures established by such unit, to have engaged in conduct that undermines public confidence in law enforcement...[or]...to have used physical force on another person in a manner that is excessive or used physical force in a manner found to not be justifiable after an investigation conducted pursuant to section 51-277a...." LCO no. 3471, Sec. 3, pp. 7-8 of 63, lines 181-196, modifying § 7-294d(c)(2). The statute would continue to require the POST Council to "give notice and an adequate opportunity for a hearing prior to such cancellation or revocation" of such certification. *Id.*, at p. 8 of 63, lines 201-205; Conn. Gen. Stat. §§ 7-294d(c).[1]

The Bill also would authorize the POST Council to suspend a certificate for up to 45 days and/or censure the certificate holder if the POST Council determines that the "severity of an act committed by the holder of the certificate does not warrant cancellation or revocation of such holder's certificate." LCO no. 3471, Sec. 3, p. 8 of 63, lines 210-215, modifying § 7-294d(c)(2).

As currently drafted, the proposed Bill appears to extend POST certification requirements to the Division of State Police within DESPP. See LCO no. 3471, Sec. 3, pp. 8-9 of 63, lines 223-231, 241-250, modifying Secs. 7-294d(d) and (f). Our analysis indicates that the proposed language would not change either the POST certification process or the relationship between POST certification and collective bargaining agreements. As has been true for decades, certification by the POST Council is based in an independent statutory scheme and invokes a separate and independent process that does not have a direct relationship to grievance procedures of collective bargaining agreements.

A similar analogy is to licensed occupations, such as medical professionals, attorneys or teachers employed by the State. Loss of licensure in these professions would render the employee ineligible for State employment in the specific licensed position. The licensure process is separate and distinct from the authority of arbitrators under collective bargaining agreements to rule on discipline aside from licensure. Any action by the POST Council on an officer's certification, including revocation, would not be

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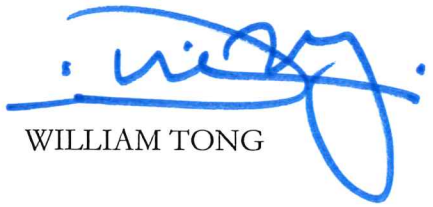
[1] The Attorney General has been asked to opine upon the scope of § 7-294d on two prior occasions. *See* Op.Atty.Gen. No. 93-028, 1993 WL 668306 (Sept. 21, 1993); Op.Atty.Gen. No. 95-013, 1995 WL 774652 (April 4, 1995). These prior opinions addressed the scope of POST's authority. Neither provide guidance on the interaction of § 7-294d and collective bargaining agreements.

subject to reversal in any subsequent grievance arbitration and would be outside the arbitrator's jurisdiction.

While the above analysis pertains to State employment, we note that the statutory requirement for POST certification applies to all municipal police departments, and thus any modification to § 7-294d(c)(2) will likely have an impact on municipal matters. However, Conn. Gen. Stat. § 3-125 does not provide the Attorney General with authority to issue opinions interpreting statutes relating to the powers and jurisdiction of municipal governments, unless the municipal action directly affects the statutory authority granted to a state agency to administer a particular state program. *See* Opinion of Attorney General No. 07-005, 2007 WL 1133270 (April 3, 2007) and opinions cited therein. Therefore, we do not opine on the impact of the proposed statutory amendments on municipal contracts.

I trust this information is responsive to your question.

Very truly yours,



WILLIAM TONG

Cc: Martin M. Looney, Senate President *pro tempore*
Joe Aresimowicz, Speaker of the House
Matthew Ritter, Majority Leader
Themis Klarides, House Minority Leader