



STATE OF OREGON  
LEGISLATIVE COUNSEL COMMITTEE

May 30, 2013

Representative Jeff Barker, Chair  
House Committee on Judiciary  
900 Court Street NE H480  
Salem OR 97301

Re: A-engrossed Senate Bill 463

Dear Representative Barker:

You asked whether sections 1 and 3 of A-engrossed Senate Bill 463, which state that, “[a]t the request of a member of the Legislative Assembly, the Oregon Criminal Justice Commission shall prepare a racial and ethnic impact statement,” are constitutional. Although our answer is not free from all doubt, we conclude that they are.

The provisions in question allow a single member of the Legislative Assembly—or, in the case of the -5 and -6 amendments, two members of the Legislative Assembly—to request a commission in the executive branch to perform a specific act, and require the commission to fulfill that request. We do not think this presents a separation of powers issue under Article III, section 1, of the Oregon Constitution, since the legislative branch is not actually exercising the functions of the executive branch.

At first glance, the provisions of A-engrossed Senate Bill 463 do seem to implicate Article IV, section 25, of the Oregon Constitution, which requires the Legislative Assembly to pass all legislation by a majority of the members of each house. Therefore, the Legislative Assembly may delegate legislative functions to individual members, committees, or any subset less than the full Assembly only in very specific circumstances.<sup>1</sup> However, a request for the preparation of a report or statement is more an investigative or information-gathering function than a legislative function.

It is unusual to allow specific members of the Legislative Assembly to request information from another branch, and then require the other branch to furnish the information, but a similar situation already exists in current law. The Legislative Assembly possesses the power to conduct legislative investigations by compelling the attendance of witnesses and the production of documents and other evidence.<sup>2</sup> This power is held by specific individual members and by the chairperson or vice chairperson of any legislative committee.<sup>3</sup> We think this function of the Legislative Assembly is analogous to what A-engrossed Senate Bill 463 allows. In effect,

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<sup>1</sup> Article III, section 4, authorizes the Legislative Assembly to allow the Senate to confirm or reject appointments to state offices. Article III, sections 2 and 3, authorize the Legislative Assembly to create a joint committee to address budgetary issues between sessions of the Legislative Assembly.

<sup>2</sup> ORS 171.510 (1).

<sup>3</sup> *Id.*

the members requesting the racial and ethnic impact statement are asking for information regarding proposed legislation or state measures. The Oregon Criminal Justice Commission is required to provide such information, and we do not think this creates a constitutional problem.

The opinions written by the Legislative Counsel and the staff of the Legislative Counsel's office are prepared solely for the purpose of assisting members of the Legislative Assembly in the development and consideration of legislative matters. In performing their duties, the Legislative Counsel and the members of the staff of the Legislative Counsel's office have no authority to provide legal advice to any other person, group or entity. For this reason, this opinion should not be considered or used as legal advice by any person other than legislators in the conduct of legislative business. Public bodies and their officers and employees should seek and rely upon the advice and opinion of the Attorney General, district attorney, county counsel, city attorney or other retained counsel. Constituents and other private persons and entities should seek and rely upon the advice and opinion of private counsel.

Very truly yours,

DEXTER A. JOHNSON  
Legislative Counsel

A handwritten signature in dark ink, appearing to read "D. Johnson", written over a light gray circular stamp.

By  
Jessica L. Minifie  
Deputy Legislative Counsel