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November 2, 2007

By facsimile and certified, first-class mail # 7007 0710 0002 5666 2160

Richard Blumenthal, Attorney General
State of Connecticut
55 Elm St
Hartford CT 06106-1746
Fax: (860) 808-5387

Re: Board of Firearms Permit Examiners, October 12, 2007, Request for Opinion; Attorney General's Representation of the Connecticut State Defendants in Kuck v. Danaher, et al., Docket No. 3:07-1390(VLB) (D. Conn.)

Dear Mr. Blumenthal:

I represent M. Peter Kuck ("Mr. Kuck"). This letter regards an October 12, 2007, request by Christopher R. Adams ("Chairman Adams") and Joseph T. Corradino ("Attorney Corradino") for an opinion from your office. The request is referenced in a Joint Statement by Chairman Adams and Attorney Corradino issued in writing and read orally by Chairman Adams at the meeting of the Board of Firearms Permit Examiners ("Board") on October 11, 2007 ("Meeting"). The opinion asks whether, under the stated circumstances, a conflict of interest exists by Mr. Kuck's continued participation in hearings held before the Board. In consideration of a recent Notice of Appearance filed by your office as legal counsel to the defendants in a federal lawsuit filed by Mr. Kuck against the Connecticut State Department of Public Safety (DPS), its Commissioner, and a DPS Commanding Officer, Mr. Kuck, by this letter, requests a determination or opinion from your office addressing whether a conflict of interest exists on the part of your office in responding to the October 12, 2007, request for an opinion by Chairman Adams.

Mr. Kuck is a member of the Board appointed pursuant to Connecticut General Statutes ("General Statutes"), § 29-32b, by the Governor upon nomination of Ye Connecticut Gun Guild, Inc ("YCGG").¹ Mr. Kuck served as Secretary of the Board until October 11, 2007. Attorney

¹ Section 29-32b(a) provides: "There shall be established a Board of Firearms Permit Examiners, within the Department of Public Safety for administrative purposes only, hereinafter referred to as the board, to be comprised of seven members appointed by the governor to serve during his term and until their successors are appointed and qualify. With the exception of public members, the members shall be appointed from nominees of the Commissioner of Public Safety, the Connecticut State Association of Chiefs of Police, the Commissioner of Environmental Protection, The Connecticut State Rifle and Revolver Association, Inc., and Ye Connecticut Gun Guild, Inc., and each of said organizations shall be entitled to representation on the board. At least one member of the board shall be

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Corradino is a member of the Board appointed pursuant to General Statutes § 29-32b by the Governor upon the nomination of the DPS Commissioner. Chairman Adams is a member of the Board and its Chairman. According to General Statutes § 29-32b, YCGG is entitled to representation on the Board and the DPS Commissioner is entitled to representation on the Board. By nominating Mr. Kuck, YCGG designated Mr. Kuck as its representative on the Board. By nominating Attorney Corradino, the DPS Commissioner designated Attorney Corradino as its representative on the Board. At the Board Meeting held on October 11, 2007, following the filing of the federal lawsuit, Attorney Corradino, the DPS Commissioner's representative on the Board, replaced Mr. Kuck as the Board's Secretary.² Mr. Kuck was willing, able, and prepared to continue serving as the Board's Secretary.

Mr. Kuck (and others) were not aware that Chairman Adams and Attorney Corradino intended to render a Joint Statement on October 11, 2007.³ The Agenda for the October 11, 2007, Board Meeting omitted reference to the issuance of the Joint Statement. Mr. Kuck was not aware that Chairman Adams and Attorney Corradino intended to request an opinion from your office. By letter dated September 18, 2007, to Chairman Adams, Mr. Kuck specifically requested that he be kept apprised of the Board's intentions:

I will assume that, unless I am notified, the Board will not provide any further consideration to the statements by individual Board members at the September 13, 2007, Board meeting that Mr. Kuck has any cause to recuse himself or resign from the Board. If either of these actions is further considered, or any other change in the terms and conditions of Mr. Kuck's service is considered, then I will assume that Mr. Kuck and his undersigned attorney will receive proper notice and a full opportunity to be heard.

Chairman Adams did not respond to Mr. Kuck's September 18, 2007, letter and purposefully failed to provide notice to Mr. Kuck (and others) that the same issue clarified in Mr. Kuck's September 18, 2007, letter to Chairman Adams would be the subject matter of a Joint Statement issued by Chairman Adams and Attorney Corradino at the October 11, 2007, Board Meeting. The Meeting Agenda provided notice that the Board would address the (A) Approval of Minutes; (B) Resignation of a Board Member; (C) Election of Officers; (D) Hearings; (E) Cases Originally Scheduled But Delayed by Appellants; and (F) Any other Matters to Come Before the

a lawyer licensed to practice in this state, who shall act as chairman of the board during the hearing of appeals brought under this section."

² Mr. Kuck does not concede that the election of officers at the October 11, 2007, was conducted in accordance with lawful practice and procedures. Various emails between Chairman Adams and Susan Mazzoccoli ("Ms. Mazzoccoli") discuss their reluctance to comply with requests made by Mr. Kuck in accordance with his role as Board Secretary. It is Mr. Kuck's position that these outstanding requests cannot be ignored simply because Attorney Corradino, the DPS Commissioner's Board representative, was elected Board Secretary on October 11, 2007.

³ Of course, if a quorum of the Board was aware of the Joint Statement prior to the Meeting and failed to inform Mr. Kuck then this would constitute an unlawful meeting of the Board.

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Board, specifically, (i) a request for reconsideration by Attorney Sherman for Craig Perry; (ii) a request for Declaratory Ruling (#2) by Mr. Edward Peruta; (iii) and discussion regarding response from DPS to Boards [sic] letter sent May 14, 2007. The record reflects that the only matters on the Agenda and considered by the Board at the October 11, 2007, Meeting were those designated under sections (B) and (C), above. In the Joint Statement, Chairman Adams and Attorney Corradino justified delaying the eight hearings scheduled under section (D) of the Agenda pending the issuance of the opinion requested in the October 12, 2007, letter to your office. No reason was offered for adjourning the Meeting without approval of the September 13, 2007, Board meeting minutes⁴ and consideration of sections (E) and (F) of the Agenda.

Despite Chairman Adams' receipt of the September 18, 2007, letter from Mr. Kuck, and although Chairman Adams and Attorney Corradino were aware, since at least September 18, 2007, that Mr. Kuck had filed a federal complaint naming the DPS Commissioner and a DPS Commanding Officer, in their official and individual capacities as defendants, neither Chairman Adams nor Attorney Corradino took steps to convene a special meeting of the Board for the purpose of requesting and possibly receiving an opinion from your office prior to the October 11, 2007, Board Meeting.⁵ Despite Chairman Adams' receipt of the September 18, 2007, letter from Mr. Kuck, and although Chairman Adams and Attorney Corradino were aware, since at least September 10, 2007, that Mr. Kuck had filed a citizen's complaint on August 17, 2007, with the DPS Professional Standards Section against a member of the Special License and Firearms Unit, neither Chairman Adams nor Attorney Corradino took steps to convene a special meeting of the Board for the purpose of requesting and possibly receiving an opinion from your office prior to the October 11, 2007, Board Meeting. Instead both waited until the eight citizens appeared for their scheduled hearings on October 11, 2007, some with attorneys, and the media were assembled, to issue the Joint Statement.⁶

The Joint Statement opines that Mr. Kuck's initiation of a lawsuit against DPS "presents a sufficient question of bias or conflict of interest in each case adjudicated by Mr. Kuck so as to expose every successful appellant to potential additional litigation should the Commissioner choose to appeal from our decision." (Joint Statement at 2-3.) Chairman Adams and Attorney Corradino conclude that "[w]e in good conscience cannot permit this to happen to persons who have patiently waited to have their cases determined by the Board." (Joint Statement at 3.) Although Chairman Adams and Attorney Corradino expressed, apparently on behalf of the DPS, their concerns that the circumstances presented a sufficient question of bias or conflict of interest harmful to the DPS, the legal representatives of the DPS present at the Meeting were not asked and did not ask to be heard on this issue. Instead, Chairman Adams and Attorney Corradino assumed the role of advocate for DPS and spoke on its behalf. This is because, at least from the perspective of Chairman Adams, he knew through *ex parte* email communications, that the DPS

⁴ At the commencement of the October 11, 2007, Board meeting, approval of the minutes was tabled for further discussion when Mr. Kuck moved that discussion at the September 13, 2007, Board meeting be included in the minutes. The October 11, 2007, Board Meeting was adjourned without ever returning to the approval of the minutes.

⁵ Chairman Adams stated at the Meeting that the Attorney General is able to prepare some opinions in twenty-four (24) hours.

⁶ Just prior to reading the Joint Statement, Chairman Adams mentioned the presence of the media.

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had advocated for Mr. Kuck's removal from the Board before Mr. Kuck filed a citizen's complaint with DPS Internal Affairs against Detective Thomas Karanda and before Mr. Kuck filed a federal lawsuit against the DPS, its Commissioner, and a DPS Commanding Officer.⁷

Mr. Kuck anticipated that your office would contact him to discuss the accuracy and completeness of the issues set forth by Chairman Adams in his October 12, 2007, request for an opinion from your office. Presently, Mr. Kuck has received notice that the November 8, 2007, Board meeting is confirmed. It now appears that your office may not intend to contact Mr. Kuck prior to the November 8, 2007, Board meeting and that, once again, Mr. Kuck (and others) will be denied a meaningful opportunity to respond to events of which they had no notice.

As referenced previously in this letter and in the October 12, 2007, request for an opinion to your office by Chairman Adams, Mr. Kuck has named the DPS, its Commissioner, and a DPS Commanding Officer as defendants in a lawsuit filed on September 17, 2007, by Mr. Kuck. Your office filed a Notice of Appearance on October 31, 2007, as legal representative for the defendants DPS, DPS Commissioner John A. Danaher, III, and DPS Commanding Officer Albert J. Masek, Jr. ("DPS defendants").

In consideration of the fact that your office has not contacted Mr. Kuck and now represents the DPS defendants in the federal lawsuit brought by Mr. Kuck, prior to rendering an opinion responsive to the October 12, 2007, request by Chairman Adams, Mr. Kuck requests an determination or opinion from your office regarding the following:

- I. Whether the Office of the Attorney General has a conflict of interest in rendering an opinion regarding whether Mr. Kuck, as a plaintiff in a federal lawsuit, has a conflict in continuing to serve on the Board when a client of the Office of the

⁷ In an email from Ms. Mazzoccoli to Chairman Adams dated July 6, 2007, Ms. Mazzoccoli writes: "By the way, now that Peter [Mr. Kuck] hired an attorney to investigate DPS (the FOI complaint) DPS is going to object to Peter serving on the Board due to conflict of interest. Should I let Maryann Boord know about the latest development?" In a July 9, 2007, email from Chairman Adams responding to Ms. Mazzoccoli's July 9, 2007, email with the subject heading "Good News" indicating that Attorney Corradino was available for a July 12, 2007, Board meeting, Chairman Adams writes: "Cool! Thanks for the followup. Though, with a subject line like "Good news" I was hoping for some other type of good news, if you know what I mean and I think you do. ;^) Speaking of which, were you able to talk to MaryAnne Boord re the appointments?" Ms. Mazzoccoli then responded on July 9, 2007, in the following email to Chairman Adams: "I received an email from her confirming the member's addresses. Nelson, Kuck and Hahn hadn't received their forms. She is resending the forms. She is also just now sending the letter to the Ye CT Gun Guild to get three names for nomination. I am calling her today to follow up. Do you want me to mention anything?" In a July 17, 2007, email Ms. Mazzoccoli informs Chairman Adams that two detectives from the DPS Special License and Firearms Unit (SLFU) attempted to meet with Maryann P. Boord, the Director of the Boards and Commissions in the Governor's office to discuss Mr. Kuck: "Maryann is leaving the Board & Commissions office to work at a new office that handles property rights (eminent [sic] domain etc.) Det. Mattson and Karanda tried to make an appointment with Maryann but she convinced them they didn't need an appointment. She told them she had enough information and was sending a letter to Ye CT Gun Guild asking for 3 names to appoint to the Board. I wish Maryann wasn't leaving. Barb doesn't think anything will be done about Peter now that Maryann is leaving. I don't either."

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Attorney General, who is a defendant in the federal lawsuit brought by Mr. Kuck, is the party, purportedly, raising the conflict of interest issue?

- II. Whether the Office of the Attorney General has a conflict of interest in rendering an opinion regarding whether Mr. Kuck, a Plaintiff in a federal lawsuit, has a conflict in continuing to serve on the Board when the Office of the Attorney General represents the DPS Commissioner as a Defendant in the federal lawsuit brought by the Plaintiff and it is the DPS Commissioner's representative on the Board who has signed a Joint Statement raising the conflict of interest issue?

In closing, Mr. Kuck fervently hopes that any forthcoming action by the Office of the Attorney General is not presented in the same manner as the Joint Statement by Chairman Adams and Attorney Corradino at the Meeting on October 11, 2007. The lack of notice and the chaos which followed, culminating in an adjournment before Board business unrelated to the hearings was completed, while dramatic, was blatantly designed for the benefit of the media to the detriment of the citizens seeking redress for the denial, non-renewal, or revocation of their pistol permits.

I look forward to working with your office toward a constructive resolution of these issues. My understanding is that your client, the DPS, possesses the documents referenced in this letter. However, if you require a copy of any document referenced do not hesitate to contact my office.

Sincerely,

Rachel M. Baird, Attorney

c: Christopher R. Adams, Chairman
(by facsimile and certified, first-class mail # 7007 0710 0002 5666 2153)
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