



STATE OF NEW YORK  
OFFICE OF THE ATTORNEY GENERAL  
120 BROADWAY  
NEW YORK, NY 10271

ERIC T. SCHNEIDERMAN  
ATTORNEY GENERAL

(212) 416-8050

July 15, 2015

Gerald F. Mollen  
District Attorney, Broome County  
George Harvey Justice Building  
4th Floor  
45 Hawley Street  
P.O. Box 1766  
Binghamton, NY 13902

Dear Jerry:

I received your e-mail indicating that some District Attorneys “are not certain” that my designation letter dated July 13, 2015 is lawful. The apparent objection is that a District Attorney is not permitted to take any action, even if designated by my Office, in a case that falls within the scope of the Governor’s Executive Order. That objection is entirely without merit.

Executive Law § 63(2) provides that a superseded District Attorney “shall only exercise such powers and perform such duties as are required of him by the attorney-general or the deputy attorney-general.” Likewise, Executive Order 147 provides that each superseded District Attorney “shall have only the powers and duties designated to him or her by the special prosecutor as specified in subdivision 2 of section 63 of the Executive Law.” My designation letter dated July 13, 2015, exercises this authority and ensures that District Attorneys are not disabled from taking appropriate actions in the hours immediately following an incident described by the Executive Order.

In 1972, Governor Rockefeller superseded the five New York City District Attorneys for certain crimes relating to corruption in the criminal justice system, on the recommendation of the Knapp Commission, which was based on an observation that District Attorneys “work so closely with policemen that the public tends to look upon them—and indeed they seem to look upon themselves—as allies of the [Police] Department.” Knapp Commission Report at 14-15. Despite this justification for superseding the five New York City District Attorneys, the Special Prosecutor routinely called upon those District Attorneys to prosecute crimes within his jurisdiction. This division of labor was upheld by the Court of Appeals.

Gerald F. Mollen  
July 15, 2015  
Page 2

Given my designation letter, if a District Attorney fails to take appropriate actions in the hours following an incident, it will not be because of any legal prohibition but because of a choice by the District Attorney not to take appropriate actions.

I understand from Executive Deputy Attorney General Alvin Bragg that the District Attorneys Association of the State of New York declined his request for a meeting or conference call to discuss any legal issues of concern, and that the Association has chosen instead to formally present its objections in writing. This seems to indicate that some members of the Association do not, in fact, seek to obtain clarity on legal issues, but rather to create uncertainty where none is warranted.

I once again request that we meet to chart a course forward to implement the Governor's Executive Order and collaborate as fellow public servants to address any operational or legal questions.

Sincerely,

A handwritten signature in cursive script, appearing to read "Eric".

Eric T. Schneiderman