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July 10, 1979

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ARIZONA ATTORNEY GENERAL

Honorable Pete Corpstein
House of Representatives
State Capitol
1700 West Washington
Phoenix, Arizona 85007

Re: I79-190 (R79-164)

Dear Representative Corpstein:

You have requested an opinion from this Office on the following three questions:

1. May the presiding officer of either house of the Legislature or the Chairman of the Motor Vehicle Inspection Committee issue subpoenas pursuant to A.R.S. § 41-1151 to require a person to appear before that Committee?
2. If the answer to Question One is in the affirmative, are subpoenaed witnesses subject to the provisions of A.R.S. §§ 41-1152, 41-1153, and 41-1154?
3. Is a witness who testifies before the Motor Vehicle Inspection Committee subject to the provisions of A.R.S. § 13-2704(A)(2)?

I. A.R.S. § 41-1141 provides as follows:

A subpoena may be issued by the presiding officer of either house or the chairman of any committee before whom the attendance of a witness is desired. The subpoena is sufficient if it states whether the proceeding is before the Senate, house of representatives or a committee, is addressed to the witness, requires the attendance of the witness at a certain time and place and is signed by either presiding officer or a committee chairman. The subpoena may be served and returned in like manner as civil process.

This statute does not explicitly state the kinds of committees before which a person can be subpoenaed by a legislative subpoena. Nonetheless, the clear implication from the title and language of the statute and its placement within the "Legislature" Chapter is that the only committees before which a person can be subpoenaed pursuant to A.R.S. § 41-1151 are committees of the Legislature. Committees of the Legislature, by definition, must be composed exclusively of members of the legislature. One of the definitions of "committee" in Black's Law Dictionary reads as follows:

In parliamentary law. A portion of a legislative body, comprising one or more members, who are charged with the duty of examining some matters specially referred to them by the house, or of deliberating upon it, and reporting to the house the result of their investigation or recommending a course of action. Rev. 4th ed., page 342 (emphasis added).

Further, when the California statutes from which A.R.S. § 41-1151 was derived¹ are examined, the term "committee" for legislative subpoena purposes is defined as follows:

As used in this chapter, "committee" means a committee of either the Senate or Assembly, a joint committee of both houses, or, when any of the foregoing committees is authorized to create subcommittees, a subcommittee. West's Ann. Gov. Code § 9400.

Therefore, in order to have the subpoena power provided in A.R.S. § 41-1151, the Motor Vehicle Inspection Committee must be a committee of the Legislature.

The Motor Vehicle Inspection committee was created by laws of 1978, Chapter 205, Sections 14(A), which reads as follows:

There is established a motor vehicle inspection committee. The committee shall be composed of five members, one appointed by the governor, two appointed by the president of the senate and two appointed by the speaker of the house of representatives. Legislators may be appointed to serve on such committee.

1. See the Historical Note following A.R.S. § 41-1151.

The last sentence of the above-quoted section makes it clear that the Motor Vehicle Inspection Committee need not be composed exclusively of legislators. Therefore, it is not a committee of the Legislature, but rather merely a committee created by the legislature, and as such, a person cannot be subpoenaed to testify before it pursuant to A.R.S. § 41-1151, either by the Chairman of the Committee, or by the presiding officer of either house, whose subpoena powers under the statute are limited to subpoenaing a person to appear before a house as a whole or to appear before a committee of the Legislature.

II. Since the answer to Question One is in the negative, this Question is inapplicable.

III. Arizona Revised Statutes § 13-2704(A)(2) reads as follows:

A person commits unsworn falsification by knowingly:

* * *

2. Making any statement which he believes to be false in regard to a material issue to a public servant in connection with any official proceeding as defined in § 13-2801.

Arizona Revised Statutes § 13-2801(2) reads as follows:

"Official proceeding" means a proceeding heard before any legislative, judicial, administrative or other governmental agency or official authorized to hear evidence under oath.

Therefore, in order for a witness appearing before the Motor Vehicle Inspection Committee to be subject to the provisions of A.R.S. § 13-2704(A)(2), the Committee must be authorized to hear evidence under oath.

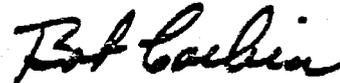
Nothing in the legislation establishing the Committee authorizes it to hear evidence under oath. Nor does any other legislation confer that authority on the Committee.

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Given the above, persons appearing as witnesses before the Motor Inspection Committee are not subject to the provisions of § 13-2704(A)(2).²

We would suggest that in the future when creating a special committee like the Motor Vehicle Inspection Committee, which by the terms of the statute creating the committee is not necessarily composed entirely of members of the Legislature, the Legislature should state that the committee has the powers conferred by A.R.S. §§ 41-1151 through 1154 if the Legislature desires to confer subpoena authority on the special committee.

Sincerely,



BOB CORBIN
Attorney General

BC/mm

2. Nonetheless, A.R.S. § 13-2702 (perjury) would apply to any testimony received by the Committee if a witness consented to appear, and to testify under oath, and A.R.S. §§ 13-2311, 13-2407(A)(3) and 39-161 would apply in certain circumstances to a person who voluntarily supplied false documents to the committee.