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July 31, 1992

George Leckie  
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Re: I92-007 (R92-008)

Dear Mr. Leckie:

You have requested an Attorney General's Opinion as to whether advisory committees are subject to the Open Meeting Law. Although you did not raise the question, we presume that you are concerned specifically with whether advisory committees appointed by the Governor are subject to that law.

An advisory committee is subject to the Open Meeting Law if the committee is created by a multi-member governing body. In that case, the advisory committee is itself a public body, and therefore is subject to the Open Meeting Law. Ariz. Rev. Stat. Ann. § 38-431(1), (5).

We have previously opined that an advisory committee appointed by the Governor is subject to the Open Meeting Law. Ariz. Att'y Gen. Op. I90-013. That opinion, however, related to an "advisory committee" that served as the predecessor, and carried out the functions, of the Occupational Therapy Examiners Board. In contrast, the advisory committee here at issue is not one created by statute, but rather is appointed by the Governor solely to render advice and counsel to him. Based on this distinction, we conclude that advisory committees appointed by the Governor, for the purpose of advising the Governor, are not subject to the Open Meeting Law.

We stated in Ariz. Att'y Gen. Op. I90-013 that:

(a)lthough the Governor's authority to appoint advisory boards and committees is not expressly enumerated in Ariz. Rev. Stat. Ann. § 41-101 (powers and duties of the Governor), the power to appoint advisory committees has been provided by

George Leckie  
July 31, 1992  
Page 2  
192-007

the Legislature in A.R.S. § 41-106 . . . . The Governor's Office has in the past established such committees by executive order. (Citations omitted.) Therefore, we conclude that the Governor has authority to issue an executive order to establish an advisory board or committee.

We reaffirm that statement today. However, one may not infer from the mere fact that the Governor has the authority to create and appoint an advisory committee by executive order that such a committee is always subject to the Open Meeting Law. In fact, advisory committees established by Executive Order and whose members are appointed by the Governor are not public bodies at all since they are not created by a public body. Ariz. Rev. Stat. Ann. § 38-431(5) defines a public body as:

the legislature, all boards and commissions of the state or political subdivisions, all multi-member governing bodies of departments, agencies, institutions and instrumentalities of the state or political subdivisions, including without limitation all corporations and other instrumentalities whose boards of directors are appointed or elected by the state or political subdivision. Public body includes all quasi-judicial bodies and all standing, special or advisory committees or subcommittees of, or appointed by, such public body.

Because the office of governor is held by a single individual, not a multi-member body, the Governor is clearly not a "public body" or a "governing body" under this definition. Since the committees under discussion are not appointed by a multi-member governing body, they are not subject to the Open Meeting Law. Ariz. Rev. Stat. Ann. § 38-431(1), (5). The office of Governor is held by a single individual, not a multi-member body, and, therefore, is essentially no different from state agencies headed by a single individual.

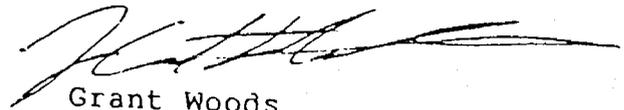
In Ariz. Att'y Gen. Op. No. 75-7, we opined that single heads of agencies are not governing bodies capable of taking legal action because that term means a "collective decision, commitment or promise made by a majority of the members" of a "governing body." Ariz. Rev. Stat. Ann. § 38-431.2. That statute, which has since been amended, now uses the term "public body." We do not think the change significant and therefore reaffirm the language of that opinion at 1975-76 Op. Atty. Gen. 48:

George Leckie  
July 31, 1992  
Page 3  
192-007

Obviously, there can be no "collective decision, commitment or promise" made by a single individual. Likewise since the deliberations of a single individual are essentially mental processes, the public cannot "listen" to such deliberations as required under A.R.S. § 38-431.01A, as amended. Moreover, the Legislature, in describing "legal action" as the act of a "majority of the members" of a governing body, clearly contemplated multi-member bodies.

Therefore, advisory committees created by the Governor pursuant to executive order are not public bodies and, hence, are not subject to the Open Meeting Law.

Sincerely,



Grant Woods  
Attorney General

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