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February 27, 1989

The Honorable Don Aldridge
State Representative
State Capitol - House Wing
Phoenix, Arizona 85007

Re: I89-021 (R89-012)

Dear Representative Aldridge:

You have asked whether the Director of the Department of Corrections is authorized to require notice before allowing a legislator to enter any of the institutions of the Department of Corrections. You question the authority of an appointed official of the executive branch of state government to dictate this condition to a member of the Legislature.^{1/}

^{1/}We understand that the current position of the Director of the Department of Corrections regarding legislative visits is as follows:

As Director of the Department of Corrections, I have a duty to maintain a safe, orderly and secure prison system. To that end, we have requested that any legislator desiring to visit a Department facility first contact Mr. Larry Beddome, Mr. J.C. Keeney, Mrs. Carol Hurtt, Ms. Jo Stephens, or myself to advise us as to which adult prison or juvenile institution they wish to visit along with the approximate time of their arrival.

The necessity of and rationale behind the above stated procedure is three-fold. First, we are able to facilitate a legislator's expeditious entry into a prison subsequent a showing of proper identification. Second, we can ensure that appropriate staff is available to accurately answer questions legislative visitors may have regarding the operation of that particular adult prison or juvenile

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We conclude that because the Director of the Department of Corrections has been granted the exclusive statutory authority and responsibility for the administration of the state prison institutions, he may establish reasonable requirements for notice by legislators to the extent necessary to ensure safe and orderly operation of the prison.

We necessarily begin our analysis with the doctrine of separation of powers contained in article III of the Arizona Constitution:

The powers of the government of the State of Arizona shall be divided into three separate departments, the legislative, the Executive and the Judicial; and, except as provided in this Constitution, such departments shall be separate and distinct, and no one of such departments shall exercise the powers properly belonging to either of the others.

We have previously discussed the doctrine of separation of powers as it applies to the executive and legislative branches.

It is when the exercise of the same type of powers by more than one department significantly interferes with the operations of the department to which the power properly belongs that the doctrine is implicated. See J.W. Hancock Enterprises, Inc. v. Arizona State Registrar of Contractors, 142 Ariz. 40, 690 P.2d 119 (App. 1984).

Ariz. Att'y Gen. Op. I87-107 (emphasis added.) See also In re

institution. Lastly, prior notice will assist the Department in ensuring a sufficient number of security staff is available to protect the personal safety of legislators during their visit to any one of our twelve adult prisons or six juvenile institutions. I wish to stress that the prior notice to which we refer need only be a few hours.

Letters dated January 27, 1989 to the President of the Senate and Speaker of the House from the Director of the Department of Corrections.

Walker, 153 Ariz. 307, 310, 736 P.2d 790, 793 (1987) ("[T]hose who make the law [must] be different from those who execute and apply it.")

In order to answer your question, we must examine the separate authority of individual legislators as members of the legislative branch of Arizona government and those of the Director of the Department of Corrections, an executive branch officer.

The legislature as a body is vested with all power not expressly denied it or given to another branch of government. Turner v. Superior Court, 3 Ariz. App. 414, 417, 415 P.2d 129, 132 (1966). Included within this power is the authority to conduct investigations. Buell v. Superior Court, 96 Ariz. 62, 66, 391 P.2d 919, 922 (1964). Investigation of the management of state institutions and departments is a legitimate legislative function. Dickinson v. Johnson, 117 Ark. 582, 176 S.W. 116 (1915).

We recently examined the authority of the legislature to appoint committees pursuant to A.R.S. § 41-1131^{2/} and the scope of the investigative authority of legislative committees. In Ariz. Att'y Gen. Op. I88-089 we stated:

Legislative committees are permitted to investigate into any subject that is legitimately within the scope of the legislature's authority to secure information necessary for the proper enactment of laws or discharge of legislative duties.

. . . .

^{2/}A.R.S. § 41-1131 provides:

Standing committees of the legislature shall be appointed by the presiding officer of the respective houses, but each house may, by resolution or rule, direct otherwise.

See also Ariz. Const. art. IV, pt. 2, § 8.

We conclude that a legislative committee may conduct investigations that are reasonably related to its purpose, as limited by the rules of the legislature establishing the committee, so long as it does not violate provisions of the Arizona and United States Constitutions.

(Citations omitted.) Legislative committees may also appoint subcommittees if permitted by the rules of the legislature. Johnson v. McDonald, 269 So. 2d 682, 683 (Fla. 1972). Any committee or subcommittee of the legislature must be authorized to conduct an investigation.

The theory of a committee inquiry is that the committee members are serving as the representative of the parent assembly in collecting information for a legislative purpose. But when only one or two men purport to act on behalf of the entire legislative body, it must be made plain that the power of the legislature has been clearly delegated to them, and that they have been instructed as to how to exercise that power.

Costiglio v. Strelzin, 98 Misc. 2d 548, 551, 414 N.Y.S.2d 430, 433 (1978) (Assembly Speaker's authorization of committee chairman to conduct investigation was insufficient to grant jurisdiction to investigate because authorization by the entire Assembly was necessary.).

Therefore, a duly-appointed committee of the legislature may be directed to investigate the management and administration of the Department of Corrections so long as the committee does not violate article III of the Arizona Constitution by exercising the powers granted to an executive branch officer or significantly interfering with the operations of his department. See Hancock Enterprises, 142 Ariz. at 405, 690 P.2d at 124. However, absent express authorization from the Speaker of the House or President of the Senate pursuant to A.R.S. § 41-1131 to conduct an investigation, an individual legislator has no authority to investigate.

We now turn to the statutory authority granted to the Director of the Department of Corrections.^{3/} We have also recently issued an opinion on this subject. In Ariz. Att'y Gen. Op. I88-113 we concluded that pursuant to the Director's statutory authority to administer the prison facility, A.R.S. § 41-1604,^{4/} the Director has authority to designate the location of meetings of the Board of Pardons and Paroles at the state prison.

Likewise, because the Legislature has delegated exclusive authority and responsibility for safe operation of the prison institutions to the director, he may set reasonable conditions on admission to the prison facilities in order to ensure the public safety and orderly operation of the facility. This power cannot be simultaneously exercised or usurped by the legislative branch of government without offending article III of the Arizona Constitution. Therefore, even a duly-authorized investigative committee of the legislature may be required to comply with reasonable requests for notice before entering a

^{3/}The Director of the Department of Corrections is an executive branch officer who is appointed by the Governor pursuant to A.R.S. § 38-211 and serves at the pleasure of the Governor. A.R.S. § 41-1603(A).

^{4/}A.R.S. § 41-1604 provides, in part:

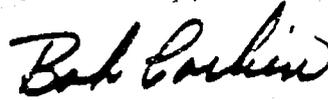
A. The director shall:

1. Be responsible for the overall operations and policies of the department.
2. Maintain and administer all institutions and programs within the department, including prisons

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prison facility.^{5/}

Sincerely,



BOB CORBIN
Attorney General

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^{5/}The Director may not set unreasonable conditions upon entry into the prison institution that would thwart the legislature's authority to investigate. In a specially concurring opinion, a Justice of the Florida Supreme Court pointed out the practical realities of the balance of powers in government:

The latent constitutional power of either branch of the Legislature to investigate subjects of legislative concern is so great it is hardly ever challenged by an administrative officer of state government, even when the power has not been fully and technically implemented. Even though a legislative investigation or creation of a committee for the purpose has not been provided, most governmental officials respond fully and voluntarily to questioning by any member or members of the legislature concerning any phase of state business. They respond voluntarily and promptly because of the long followed tradition the public's representatives have the right to be fully informed of all phases of state business with few and rare exceptions, and be armed with the necessary data for more knowledgeable discharge of legislative duties. Furthermore, public servants know that denial of information is usually a losing proposition because within reasonable limits any holdover legislator as a rule can subsequently secure the cooperation of his branch of the legislature to compel the reluctant official to furnish the information desired.

Johnston v. Gallen, 217 So. 2d 319, 323 (Fla. 1969).