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ARIZONA ATTORNEY GENERAL

July 13, 1972

DEPARTMENT OF LAW LETTER OPINION NO. 72-21-L (R-53)

REQUESTED BY: JOHN O. GRAHAM
Commissioner
Arizona State Department of Public Welfare

QUESTION: Does the enactment of Chapter 142 (Senate Bill 1068, Thirtieth Legislature, Second Regular Session) extinguish the membership of the present Advisory Committee for the Blind as of August 13, 1972?

ANSWER: No. The members will continue to serve until the expiration of their normal terms.

Chapter 142, Laws of 1972 (Senate Bill 1068), enacts A.R.S. § 46-285 and repeals A.R.S. § 46-281. Sec. 96 of the Act is a retention provision. These pertinent statutes and section are as follows:

§ 46-281. Advisory committee

A. The state department shall appoint an advisory committee of which the superintendent of the state school for the deaf and blind and the superintendent of public health shall be ex officio members.

B. The committee shall make a study of conditions affecting the blind and recommend to the state department a program of constructive service for such persons, with special emphasis upon prevention, cure, and rehabilitation. Funds appropriated for the enforcement of this article may be utilized for the purpose of providing such constructive service.

§ 46-285. Advisory committee

A. The director shall appoint an advisory committee of which the superintendent of the state school for the deaf and blind and the commissioner of public health shall be ex officio members.

B. The committee shall study conditions affecting the blind and visually impaired and recommend to the state department programs of constructive service for such persons, with special emphasis upon prevention, cure and rehabilitation. (Emphasis added.)

Sec. 96. Retention of members

All persons serving as members of a board, council or commission on the effective date of this act whose board, council or commission is retained as a part of the department of economic security shall continue to serve until expiration of their normal term.

You requested our office to determine if the Legislature's action would truncate the terms of the present Advisory Committee for the Blind by virtue of the inclusion of responsibility for the "visually impaired" and the exclusion of the word "committee" from the retention clause.

The concept of separation of powers is paramount to our constitutional form of government and, as set forth in Article 3 of the Constitution of Arizona, no branch of the government can exercise any power which tends to limit the constitutional powers of any other branch. Through Article 5, Section 4 of the Constitution of Arizona the Governor is mandated to transact all executive business, and "He shall take care that the laws be faithfully executed."

Accordingly, in Ahearn v. Bailey, 104 Ariz. 250, 451 P.2d 30 (1969), the Arizona Supreme Court held that removal of public officers is an executive function which cannot be directly or indirectly undertaken by the Legislature. In that case the Legislature had expanded the membership of the Industrial Commission from three to five members and had attempted to truncate the terms of the three existing members. The Court in reprimanding the action recognized that, while the right to abolish an office lies in the power that created it, the right to remove an officer is the prerogative of the power who appointed the officer.

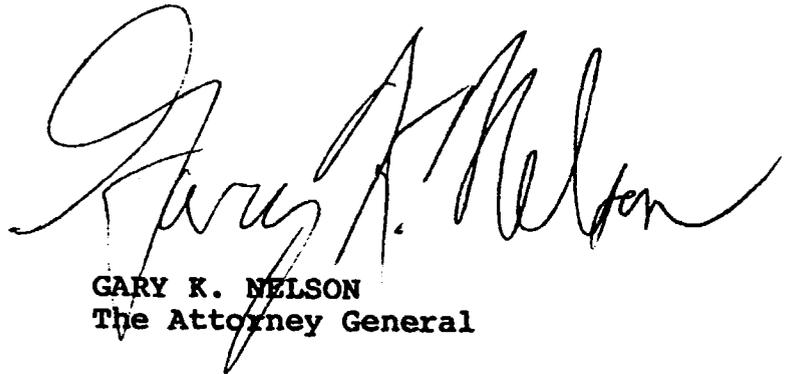
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In the present case, there being no abolishment of the committee or substantial realignment of the duties thereof, the Legislature cannot undertake to dismiss the appointed members, as this is the duty of the Director, an executive function. The inclusion of responsibility for the "visually impaired" is so analogous and contingent to the duties of the present committeemen there is no good reason for denying retention through enactment of the new law.

Furthermore, the broad scope of the language used in the retention clause (Sec. 96 of Chapter 142) which includes all members of "boards, councils or commissions" cannot reasonably be held to exclude members of committees required by the statute. To do so would invoke an inconsistency in total disaccord with the spirit and purpose of the legislation when read in its entirety. Greyhound Parks of Arizona v. Waitman, 105 Ariz. 374, 464 P.2d 966 (1970); State v. Stockton, 85 Ariz. 153, 333 P.2d 735 (1958).

For the reasons herein stated, it is our opinion that the members of the Advisory Committee for the Blind will continue to serve until the expiration of their normal tenure.

Respectfully submitted



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The Attorney General

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