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62706

March 6, 1975

FILE NO. 8-875

**STATE MATTERS:**

Whether the Illinois Energy  
Resources Commission is Subject  
to the Open Meetings Act

Honorable Adeline J. Geo-Karis  
State Representative  
Chairman  
Illinois Energy Resources Commission  
State Capitol  
Springfield, Illinois 62706

Dear Representative Geo-Karis:

This responds to your request for an opinion as to whether the Illinois Energy Resources Commission is a commission excepted from the requirements of "AN ACT in relation to meetings" (Ill. Rev. Stat. 1973, ch. 102, par. 41 et seq.) Section 2 of that Act (Ill. Rev. Stat. 1973, ch. 102, par. 42) specifically provides that: "This Act does not apply to the General Assembly or to the committees or commissions thereof". The Act does not define "commissions". If the

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Commission is not a commission of the General Assembly, you also request my opinion as to whether it is permissible for the Commission to go into executive session to receive material which is either of a proprietary or secret nature when no final action will be taken by the Commission.

The Illinois Energy Resources Commission was created by Public Act 78-1125. That Act provides that the Commission shall consist of 10 members of the General Assembly and 8 members from the general public, all of which are appointed by the leadership of the General Assembly. One of the duties of the Commission is to study, review and make recommendations concerning energy related problems in the State of Illinois. The Commission is to submit its findings and recommendations to the General Assembly.

The Commission is similar in its membership and duties to other commissions such as the Commission on the Status of Women (Ill. Rev. Stat. 1973, ch. 23, par. 5201); the Spanish Speaking Peoples Study Commission (Ill. Rev. Stat. 1973, ch. 23, pars. 5211 et seq.) and the County Problems Commission (Ill. Rev. Stat. 1973, ch. 34, pars. 1201 et seq.) These are all commonly considered legislative commissions.

While "AN ACT in relation to meetings", supra, does not define "commissions", "commission" is defined in section 1

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of "AN ACT in relation to hearings before commissions" (Ill. Rev. Stat. 1973, ch. 63, par. 13.1) as follows:

\* \* \* 'Commission' means a special or interim committee or commission of the House of Representatives or the Senate, a joint committee or commission of the House of Representatives and the Senate, any committee or commission consisting of members of the General Assembly and of the public, or a duly authorized subcommittee of any of the foregoing, but shall not be construed to include any standing committee of either the House of Representatives or the Senate.

\* \* \*

The Energy Resources Commission falls within the definition of "commission" as so defined.

It is thus the obvious legislative intent that the Illinois Energy Resources Commission be considered a commission of the General Assembly.

Furthermore, if the Commission is not considered a commission of the General Assembly, the question would arise as to whether it is a commission of the executive or judicial branch. It is obvious from the duties of the Commission that it is not a judicial commission. While the Commission does have the duty to review and approve or reject all proposed projects under the program of capital development of coal resources funded through the sale of general obligation bonds,

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even after such funds have been appropriated to the Department of Business and Economic Development, this does not detract from the legislative intent that the Commission be a commission of the General Assembly. If the Commission were considered an executive commission, it would be unconstitutional since section 9(a) of article V of the Illinois Constitution of 1970 prohibits the General Assembly from appointing officers of the executive branch. Statutes should be interpreted so as to avoid rendering them unconstitutional.

I, therefore, am of the opinion that the Illinois Energy Resources Commission is a commission of the General Assembly and is not subject to the requirements of "AN ACT in relation to meetings", supra.

Since the Commission is not subject to the Act, I need not consider your second question. The exception is an absolute exception to all meetings of the Commission and an application of such exception does not depend on the subject matter discussed at the meetings.

This opinion is not to be construed as a holding on the validity or propriety of possibly executive activities being assigned to or exercised by this legislative commission.

Very truly yours,

A T T O R N E Y   G E N E R A L