

license may be ordered effective on the date specified in the order or on service of a certified copy of the order on the licensee, whichever is later, and effective during the proceedings. The proceedings shall be promptly commenced and determined."

A proceeding to suspend or revoke a license also constitutes a "contested case." MCLA 24.205(2); MSA 3.560(105)(2), MCLA 24.203(3); MSA 3.560(103)(3). Thus, a hearing, with reasonable notice thereof, must be held without undue delay. MCLA 24.271; MSA 3.560(171). Such notice must, at a minimum, include: a statement of the date, hour, place and nature of the hearing; a statement of the legal authority and jurisdiction for such hearing; the particular sections of the statutes and rules involved and a short and plain statement of the matters asserted.

The State Board of Education may hear the matter, or in its discretion, appoint a hearing officer to preside at the hearing. MCLA 24.279; MSA 3.560(179). The hearing must be conducted in accordance with the rules governing the procedures in "contested cases." MCLA 24.271-24.287; MSA 3.560(171)-MSA 3.560(187).

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PUBLIC SERVICE COMMISSION: Executive Organization.

EXECUTIVE ORGANIZATION: Public Service Commission.

ADMINISTRATIVE BOARDS: Role of Chairman.

The Chairman of the Public Service Commission is not vested by statute with any greater power, duties and responsibilities than any other member of the Commission.

The Director of the Department of Commerce may not delegate his duties and functions to any individual member of the Public Service Commission.

A majority of the members of the PSC can delegate to an individual member of the Commission administrative duties but may not delegate any of its substantive powers, duties and responsibilities.

Opinion No. 4840

March 18, 1975.

Mr. William R. Ralls
Commissioner
Department of Commerce
Michigan Public Service Commission
Lansing, Michigan 48913

You have asked a number of questions concerning the duties and responsibilities of the Chairman of the Michigan Public Service Commission. These questions will be taken up in the following order:

1. Are any supervisory or executive powers granted to the Chairman of the Public Service Commission by Act No. 3 of the Public Acts of 1939 or by any other act?

2. May the Director of the Department of Commerce transfer any powers granted to a principal department of government by the Executive Reorganization Act of 1965, 1965 PA 380, to the Public Service Commission, and if so, may those powers be transferred to an individual member of the Commission?

3. Has any individual member of the Commission, without action by the Commission as a whole, legal authority to enter into a contract for goods or services on behalf of the Commission?

4. What powers may the Commission, by means of bylaws or any other action, grant to an individual member of the Commission?

I.

ARE ANY SUPERVISORY OR EXECUTIVE POWERS GRANTED TO THE CHAIRMAN OF THE PUBLIC SERVICE COMMISSION BY ACT NO. 3 OF THE PUBLIC ACTS OF 1939 OR BY ANY OTHER ACT?

The single most revealing factor in an inquiry into the statutory powers of the Chairman of the Public Service Commission is the absence of any specific delegation of or reference to such powers. Indeed in the original act establishing the Public Service Commission, 1939 PA 3; MSA 22.13(1) *et seq*; MCLA 460.1, *et seq*, the Chairman is mentioned only once, and this reference appears in Section 2:

“* * * The governor shall designate one member to serve as chairman of the Commission. * * *”

Each member of this original Commission (including the Chairman) was paid the same salary. The statute has since been amended to provide, in pertinent part:

“The Chairman of the Commission and each of the other members shall be paid such annual salary as is established for such offices in the appropriation act most recently effective prior to the effective date of their confirmation by the Senate.” MCLA 460.3; MSA 22.13(3).

This being the only other reference in the entire act to the Chairman as an individual in any way distinguished from the other commissioners. All other statutory provisions refer to “the commission” as a body, and all delegations of power are so directed. According to MCLA 460.3; MSA 22.13(3), the Commission (not the Chairman) may appoint a secretary and such deputies, clerks, inspectors, heads of divisions and employees as shall be necessary. The Commission (not the Chairman) has the authority to employ engineers and experts, and to fix their compensation. The statute further provides that each such deputy, clerk, expert, etc., shall perform those duties that the Commission (not the Chairman) may require.

The intent of the legislature becomes even more clear when considering the provision that two members of the Commission (not necessarily in-

cluding the Chairman) constitute a quorum and that "(a) vacancy in the commission shall not impair the right of the two remaining members to exercise all the powers of the commission." MCLA 460.2; MSA 22.13(2). Thus were the Chairman to die, resign, or even be out-of-town, the Commission could fully function in his absence; its delegated powers lying with the body as a whole and not in the office or person of the Chairman.

The act establishing the Liquor Control Commission is similar to that which created the Public Service Commission. A 1943 opinion of the Attorney General held:

"* * * Article XVI, § 11 of the Constitution of the state of Michigan and the Liquor Control Act, cited above, confer on the Liquor Control Commission complete control of the alcoholic beverage traffic in this state subject only to statutory limitations. Broad powers are thus conferred on the Liquor Control Commission, but only on the Commission as a whole and not on the individual members thereof.

"* * *

"From the foregoing, it is clear that no individual member of the Commission may exercise any of the powers conferred on the Commission."

OAG, 1943-1944, No 0-1630, p 609, 610 (December 20, 1943).

In marked contrast to the absence of any specific delegations of power to the Chairman of the Public Service Commission and the Liquor Control Commission, or of any distinctions drawn at all in the statutes between the Chairman and the other commissioners, is the 1947 Act which set up the Workmen's Compensation Commission, 1947 PA 357. This statute was repealed by 1969 PA 317. It contained the same phrase, "The governor shall designate the chairman of said commission," but the legislature went on, being very specific in forging its intended power structure for the Commission:

"The Chairman of said commission shall have general supervisory control of the work of said commission and all officers and employees thereunder. He shall have charge of the assignment of the work of said commission to the members thereof, their deputies and employees.

"He shall also have general charge of all administrative functions of said commission and shall have authority to delegate such duties, the performance of such administrative functions and the authority incident thereto, to the secretary or any other assistants or employees.

"The chairman shall, from time to time, designate 1 commissioner who shall be in personal charge of the Detroit office of said commission."

Thus, the legislature clearly knew the means by which it could grant broad powers to a single officer of a commission as opposed to vesting all of its powers within the body as a whole. That the legislature chose not to do so in the case of the Public Service Commission was, as noted by Cushman in 1941, the usual pattern followed in establishing such govern-

mental agencies in the U.S. at that time.¹ This trend was criticized by the Hoover Commission in 1949 which strongly favored a powerful administrative chairman for organizations such as the Interstate Commerce Commission, but no such change was implemented by the Michigan legislature for the Public Service Commission.

In the absence of any specific legislative grants of power to the Chairman of the Public Service Commission, what powers and duties, other than acting as one of the three members of the Commission, does this official have?

These would appear to be such powers as are inherent in the term "chairman" which is "a name given to the presiding officer of an assembly, public meeting, convention, deliberative or legislative body, board of directors [or] committee, etc." Black's Law Dictionary (3rd ed), *chairman*.

II.

MAY THE DIRECTOR OF THE DEPARTMENT OF COMMERCE TRANSFER ANY POWERS GRANTED TO A PRINCIPAL DEPARTMENT OF GOVERNMENT TO THE PUBLIC SERVICE COMMISSION AND IF SO, MAY THOSE POWERS BE TRANSFERRED TO AN INDIVIDUAL MEMBER OF THE COMMISSION?

In relation to this question, I note that by a letter to Mr. William Rosenberg, Chairman of the Public Service Commission, dated January 29, 1973, Mr. Richard K. Helmbrecht, Director of the Department of Commerce, has stated:

"I am designating you (Mr. Rosenberg) as Chairman of the Public Service Commission, as that individual who has the authority to exercise the full responsibilities of administering all staff activities and expenditures of the Public Service Commission. You will exercise these responsibilities in addition to your independent duties and functions as a member of the commission."

The Public Service Commission is a Type I agency within the Department of Commerce, having been transferred pursuant to 1965 PA 380, § 231; MCLA 16.331; MSA 3.29(231). The Department of Commerce is one of the 19 principal departments of state government. Its head is the director of commerce, MCLA 16.326; MSA 3.29(226). The Executive Organization Act provides that:

"Under this act, a type I transfer means the transferring intact of an existing department, board, commission or agency to a principal department established by this act. When any board, commission, or other agency is transferred to a principal department under a type I transfer, that board, commission or agency shall be administered under the supervision of that principal department. Any board, commission or other agency granted a type I transfer shall exercise its prescribed

¹ Cushman, *The Independent Regulatory Commissions*, Oxford Univ. Press (1941) p 749.

statutory powers, duties and functions of rule-making, licensing and registration including the prescription of rules, rates, regulations and standards, and adjudication independently of the head of the department. Under a type I transfer all budgeting, procurement and related management functions of any transferred board, agency or commission shall be performed under the direction and supervision of the head of the principal department." 1965 PA 380, § 3(a); MCLA 16.103; MSA 3.29(3).

It is further provided by Section 7(a) of the Act that:

"Except as provided by law or within this act, the head of each principal department with the approval of the governor is authorized to establish the internal organization of his department and allocate and reallocate duties and functions to promote economic and efficient administration and operation of the department. No substantive function vested by law in any officer or agency within the principal department shall be removed from the jurisdiction of such officer or agency under the provisions of this section." 1965 PA 380, § 7(a); MCLA 16.107; MSA 3.29(7).

With regard to a Type I agency, a "substantive function vested by law" is synonymous with the phrase "prescribed statutory powers, duties and functions of rulemaking, licensing and registration including the prescription of rules, rates, regulations and standards, and adjudication * * *." 1965 PA 380, § 3(a); MCLA 16.103; MSA 3.29(3). In other words, the functions which the head of a principal department may not remove from an agency by allocation and reallocation are the same functions which are not among those transferred to the principal department under a Type I transfer. As I read Section 7a, all of those functions which are transferred to the principal department by a Type I transfer are subject to allocation and reallocation by the head of the principal department with the approval of the governor. The Executive Organization Act itself specifies what these functions are in the last sentence of Section 3a quoted above, namely, "budgeting, procurement and related management functions."

The letter from Mr. Helmbrecht to Mr. Rosenberg accomplishes just such a reallocation as is contemplated by the provision of this Section 7a. However, Mr. Helmbrecht has chosen to express this reallocation in terms of an individual member of the Public Service Commission, the Chairman, rather than in terms of the Commission itself. Can such a reallocation be sustained in view of the discussion in response to Question 1 above? In other words, can a single member of the Commission "exercise these responsibilities in addition to (his) independent duties and functions as a member of the commission"?

The hiring of employees, engineers and experts, under the provisions of MCLA 460.3; MSA 22.13(3), is a prescribed statutory power of the Public Service Commission. This is a type of authority which, in my view, is the type of "housekeeping" function which this office has consistently held is transferred to the principal department pursuant to a Type I transfer. The question of the transfer of employment powers by a Type I transfer was considered in OAG, 1965, 1966, No 4468, p 291, 294 (May

24, 1966). In that opinion, the attorney general held that where housekeeping functions were conferred upon an agency by statute and where that agency was later subject to a Type I transfer, the grant of statutory authority to engage in housekeeping functions must be considered to have been repealed by implication by the provisions of 1965 PA 380. A discussion of this issue taken from that opinion follows:

"These functions were designated collectively, in my Opinion No. 4479, *supra*, as 'housekeeping functions' which are to be administered by the principal department, the power to direct and the power to administer having been held by the courts to be synonymous terms.

"Accordingly, it is my opinion that under the type I transfer of the bridge authorities to the Michigan Department of State Highways, said authorities lost their plenary status.

"The housekeeping functions of the bridge authorities having been placed under the direction and supervision of the head of the principal department, the Michigan Department of State Highways, it is clear that the legislature has, by implication, repealed that part of the act having to do with Mackinac and International Bridge Authorities which provide that said bridge authorities may hire employees and fix their compensation.

"Although repeal of statutory provisions by implication is not favored in law, legislative intention must be given force and effect. Repeal of statute by implication is discussed in *Jackson v Michigan Corrections Commission*, 313 Mich 352."

For the purposes of this opinion, it is important to note the intent of the Legislature in enacting 1939 PA 3 and 1965 PA 380. It was the intention of the Legislature, not since modified in subsequent amendments, to create a Public Service Commission exercising its functions in a collegial manner, with all members participating equally in decisionmaking. Other alternatives were known and available, and the Legislature has in fact amended the statute since its initial enactment. The purpose of 1965 PA 380 was not to modify, by implication or otherwise, the several administrative forms chosen by the Legislature as most appropriate for adjudication and rulemaking in different areas of government, but rather to provide for implementation of the Constitution of 1963 in terms of "housekeeping" functions.

A statute should be construed to give effect to its purpose and the objectives sought to be accomplished by it. *Lakehead Pipeline Co v Dehn*, 340 Mich 25, 64 NW2d 903 (1954); *Zawacki v Detroit Harvester Co*, 310 Mich 415; 17 NW2d 234 (1945). Repeal by implication must be strictly construed, and in this case the effect of 1965 PA 380 must be construed in the light of 1939 PA 3 taken as a whole. No member of the Public Service Commission was granted any powers or duties in excess of any other member by that act, and therefore it is improper to arrogate by implication to any one member additional powers flowing from collateral legislation. In order to properly effectuate 1965 PA 380 in harmony with the clear intention of the Legislature in 1939 PA 3, any allocation or reallocation by the director of the Department of Commerce must

necessarily be to the entire commission, acting as a body, rather than to any individual member of it.

Where a board is established by law, its authority must be exercised jointly. The members of a public board cannot act separately as individuals. *New England Box Co v C&R Construction Co*, 313 Mass 696; 49 NE2d 121; 150 ALR 152 (1943). See also *Carbone v Kelley*, 289 Mass 602; 194 NE 701 (1935). If a board is composed of three or more persons, its authority may be exercised by a majority of the board; such authority, however, may not be exercised by a single member of the body. CJS, Officers, § 109.

In summary, the director of the Department of Commerce pursuant to Section 7(a) of 1965 PA 380, *supra*, is authorized "with the approval of the governor, * * * to establish the internal organization of his department and allocate and reallocate duties and functions to promote economic and efficient administration and operation of the department." This section authorizes the allocation of the duties described in the letter, to the extent that they are possessed by the Department of Commerce, to the Commission, but they may not be delegated to an individual member of the Public Service Commission, regardless of his status.

III.

HAS ANY INDIVIDUAL MEMBER OF THE COMMISSION, WITHOUT ACTION BY THE COMMISSION AS A WHOLE, LEGAL AUTHORITY TO ENTER INTO A CONTRACT FOR GOODS OR SERVICES ON BEHALF OF THE COMMISSION?

It is, of course, apparent that to the extent that the Public Service Commission has authority to enter into contracts for goods and services, any such action must be approved by the commission as a whole. For the most part, however, any contract for goods and services will be in the nature of a housekeeping responsibility which is a responsibility of the Department of Commerce, subject to allocation as described in our answer to question II, above.

It cannot be said, however, that all contracts for goods and services may properly be described as falling within the general category of housekeeping. Certain contracts are of such magnitude and in their execution may have such a potent effect on the "exercise (of the commission's) prescribed statutory powers, duties and functions of rulemaking, licensing and registration including the prescription of rules, rates, regulations and standards, and adjudication" that the letting of such contracts must be controlled by the commission "independently of the head of the department." 1965 PA 380, § 3(a). In its function as economic regulator in the field of public utilities, such contracts could well include the employment of expert witnesses and consultants, the commissioning of special studies, and the like. Any contract falling into this category clearly must be negotiated for and acted upon by the commission as a whole.

IV.

WHAT POWERS MAY THE COMMISSION, BY MEANS OF BYLAWS OR ANY OTHER ACTION, GRANT TO AN INDIVIDUAL MEMBER OF THE COMMISSION?

This question will be considered in relation to Article II of the Bylaws of the Michigan Public Service Commission which were adopted at a meeting of the Commission on July 27, 1973, and applicable general principles of Article II provides as follows:

"*Section 1. Officers.* The officers of the Commission shall be a Chairman and a Vice Chairman.

"*Section 2. Chairman.* The Chairman of the Commission shall be the member of the Commission designated by the Governor pursuant to Act No 3, Public Acts of 1939, as amended, being Section 460.2 Compiled Laws of 1948. The Chairman shall preside at all meetings of the Commission, and shall be the chief administrative officer of the Commission, having general supervision over the business and affairs of the Commission, provided that policy of the Commission shall be set by the Commission.

"*Section 3. Vice-Chairman.* The Vice-Chairman shall be elected by the Commission and shall serve until replaced. The Vice-Chairman shall perform the duties of the Chairman when the Chairman is out of the state, is absent from any meeting or when the Chairman advises the Vice-Chairman of his incapacity, except as otherwise provided by law. The Chairman shall resume his duties upon notification to the Vice-Chairman."

These bylaws constitute an " * * * intra-agency memorandum, directive or communication which does not affect the rights of, or procedures and practices available to, the public. As such its adoption is authorized without the promulgation of a rule." See Administrative Procedures Act, 1969 PA 306, § 7; MCLA 24.207; MSA 3.560(107).

The specific grant of powers to the Chairman, if there is any such grant to be found in the bylaws, arises from the appellation "chief administrative officer," defined as "having general supervision over the business and affairs of the Commission." The Michigan Supreme Court has characterized the word "administrative" as synonymous with the word "ministerial." *People v Salsbury*, 134 Mich 537, 96 NW 936 (1903). It is generally accepted that ministerial duties are those to be performed on a given state of facts in a prescribed manner, without exercise of individual judgment.

Official action is "ministerial" when it is absolute, certain and imperative, involving merely execution of a set task, and when law which imposes it prescribes and defines time, mode and occasion for its performance with such certainty that nothing remains for judgment or discretion. *Meyer v Carman*, 271 Wis 329, 73 NW2d 514 (1955).

Such a grant of ministerial powers to the Chairman may, in the judgment of the Public Service Commission, facilitate the day to day activities of the commission. A grant of merely ministerial functions does not con-

flict with the broad basic responsibilities to be discharged by individual members of the commission in their individual capacities, and for that reason should be permitted.

As a declaration of administrative policies, these bylaws can remain in effect in their present form only as long as they are agreed to by a majority of the commission. If it is and remains the commission's will that its ministerial responsibilities should be exercised by the Chairman and in his absence by the Vice-Chairman, there is nothing in the statute to prevent such an arrangement. The case would be entirely different, of course, if the bylaws purported to place discretionary powers and duties in the hands of the Chairman. Such an attempted delegation would contravene the intention of the Legislature in creating the Public Service Commission to exercise its authority in a collegial manner.

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CREDIT UNIONS: Automated Teller Machines.

WORDS AND PHRASES: "Signature."

The use by credit union members with a line of credit of a personal identification number in lieu of a written signature to withdraw funds is not prohibited by the Michigan Credit Union Act.

Opinion No. 4864

April 10, 1975.

Russell S. Kropschot
Chief Deputy Commissioner
Financial Institutions Bureau
Department of Commerce
Law Building
Lansing, Michigan 48913

You have requested my opinion regarding the use by a state chartered credit union of an automated teller machine (ATM). Your memorandum states:

"We have been informed that one of our state chartered credit unions is considering the purchase of an Automated Teller Machine (ATM) which would be placed in the credit union. One purpose or use of the machine would be to dispense cash to members who have an approved line of credit with that credit union. The use of the ATM by the credit union will provide the member with an additional convenient service. The problem that arises is the fact that the customer when obtaining an advance through the use of the ATM does not sign a request but instead enters a personal identification number, in lieu of his signature, which allows him to receive his cash advance. On this basis, it would appear that Section 10 of the Credit Union Act