

affairs of citizens. See also *Opinions of the Justices*, 328 Mass 655; 102 NE2d 79 (1951); *United States v Orman*, 207 F2d 148 (1953); and *Dubois v Gibbons*, 2 Ill 2d 392; 118 NE2d 295 (1954).

The committee is therefore limited in that the information received must be restricted to use in connection with the legislative purpose. In addition, the purpose of the investigation must not become transformed into an inquiry solely of the private lives of the participants in the study.

It should also be noted that the legislature may, if it wishes, place express limitations on the right of an investigative committee to obtain records and files in the course of an inquiry.

This may be done in one of two ways: First, in drafting a resolution creating an investigative committee, the legislature may affirmatively state that information to which a statutorily confidence attaches may not be subpoenaed by the committee. For example, House Resolution 171 could have precluded the committee from obtaining confidential records involved in a "medical research project" as defined in 1957 PA 39, *supra*.

Second, the legislature may amend 1952 PA 46, *supra*, and provide that a legislative investigating committee may not obtain specifically described materials or any information made confidential by other statutes.

In summary, therefore, you are advised that the department must provide the committee with the names, addresses and clinical data obtained in the PBB study as demanded by subpoena issued by the committee. However, your presentation of these materials to the committee pursuant to its subpoena does not absolve the members of the committee from their duty to respect the right of privacy enjoyed by the participants in the study.

FRANK J. KELLEY,  
*Attorney General.*

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**ATOMIC ENERGY:** Control of transport of nuclear waste

**PUBLIC HEALTH, DEPT. OF:** Control of transport of nuclear waste

**UNITED STATES:** Preemption of state law

The state is preempted, by congressional enactment of the Atomic Energy Act, from controlling the transport of nuclear waste, spent fuel elements and other radio active materials. This responsibility is under the sole control of the Federal Nuclear Regulatory Commission in the absence of a turnover agreement vesting the state with duties and powers to control such transport.

Opinion No. 4979

April 23, 1976.

Maurice S. Reizen, M.D., Director  
Michigan Department of Public Health  
3500 North Logan Street  
Lansing, Michigan

You have asked my opinion on the following:

To what degree is the state preempted by the Nuclear Regulatory

Commission and the U. S. Department of Transportation from controlling the transport of nuclear waste, spent fuel elements and other radio active materials; and to what extent does 1972 PA 305, Section 11(c) limit the department's control over such transport?

An analysis of the Atomic Energy Acts of 1946 and 1954, being 60 Stat 755 and 68 Stat 960; 42 USCA 2011 *et seq.*, as well as the 1959 amendment to the Atomic Energy Act of 1954, (73 Stat 688; 42 USCA 2021), specifically as they pertain to the right of a state to enact and enforce health and safety regulations in the nuclear energy field is to be found at OAG 1961-62, No 4073, p 565 (October 31, 1962). Pertinent portions of that opinion are:

"We have approached the question you ask upon the assumption that Congress has the Constitutional power to exclusively regulate health and safety aspects of radiation protection of peacetime atomic energy operations grounded upon its power over disposition and use of Government property, its power to regulate interstate commerce, to provide for the common defense, and probably others. . . .

"We are convinced that . . . Congress intended to place the exclusive and primary responsibility for regulation of radiation hazards . . . in the Atomic Energy Commission and . . . it has preempted this field of regulation. . . .

"We are not in a position to determine sources of radiation, outside the scope of the act, which are subject to State regulation, and involve radiation hazards. But the opinion has been expressed that there are at least three categories of radiation sources not covered by the Act, namely, natural radiation emitting elements, such as radium, which are not included in the definition of 'source material' in the act; X-ray and gamma ray machines, including fluoroscopes; and radioisotopes produced in high energy machines such as particle accelerators, and by processes *other than* exposure to radiation in reactors." OAG 1961-62, No 4073, pp 569-570; Emphasis in Original [Citing: 60 Mich L Rev 41, 60]

73 Stat 688, 42 USCA 2021 provides:

"(a) It is the purpose of this section —

"(1) to recognize the interests of the States in the peaceful uses of atomic energy, and to clarify the respective responsibilities under this chapter of the States and the Commission with respect to the regulation of byproduct, source, and special nuclear materials;

"(2) to recognize the need, and establish programs for, cooperation between the States and the Commission with respect to control of radiation hazards associated with use of such materials;

"(3) to promote an orderly regulatory pattern between the Commission and State governments with respect to nuclear development and use and regulation of byproduct, source, and special nuclear materials;

"(4) to establish procedures and criteria for discontinuance of certain of the Commission's regulatory responsibilities with respect

to byproduct, source, and special nuclear materials, and the assumption thereof by the States;

“(5) to provide for coordination of the development of radiation standards for the guidance of Federal agencies and cooperation with the States; and

“(6) to recognize that, as the States improve their capabilities to regulate effectively such materials, additional legislation may be desirable.

“(b) Except as provided in subsection (c) of this section, the Commission is authorized to enter into agreements with the Governor of any State providing for discontinuance of the regulatory authority of the Commission under subchapters V, VI, and VII of this chapter, and section 2201 of this title, with respect to any one or more of the following materials within the State —

“(1) byproduct materials;

“(2) source materials;

“(3) special nuclear materials in quantities not sufficient to form a critical mass.

“During the duration of such an agreement it is recognized that the State shall have authority to regulate the materials covered by the agreement for the protection of the public health and safety from radiation hazards.

“(c) No agreement entered into pursuant to subsection (b) of this section shall provide for discontinuance of any authority and the Commission shall retain authority and responsibility with respect to regulation of —

“(1) the construction and operation of any production or utilization facility;

“(2) the export from or import into the United States of byproduct, source, or special nuclear material, or of any production or utilization facility;

“(3) the disposal into the ocean or sea of byproduct, source, or special nuclear waste materials as defined in regulations or orders of the Commission;

“(4) the disposal of such other byproduct, source, or special nuclear material as the Commission determines by regulation or order should, because of the hazards or potential hazards thereof, not be so disposed of without a license from the Commission.”

\* \* \*

Your question is directed specifically to the transport of nuclear waste, spent fuel elements and other radioactive materials. Clearly, absent a “turnover agreement,” there can be no regulation of the transportation of the byproduct, source, or special nuclear waste materials by the State for protection against radiation hazards. *Northern States Power Co v Minnesota*, 447 F2d 1143, (CA 8, 1971), Aff’d 405 US 1035; 31 L Ed 2d

576; 92 S Ct 1307 (1972). In *Northern States Power Co., supra*, it was noted:

“There can be no doubt but that AEC control over ‘the construction and operation of any production or utilization facility’ necessarily includes control over radioactive effluents discharged from the plant incident to its operation. In analyzing §2021(c) (1) in the Hearings before the Joint Committee on Atomic Energy, Mr. Lowenstein of the AEC at p 306 explained:

“‘The activities covered under this provision include but are not limited to the possession and storage at the site of the licensed activity of nuclear fuel, and of source special nuclear material and byproduct materials used or produced in the operation of the facility; *and the transportation of nuclear fuels to and from the reactor site . . .*’” [Emphasis supplied] 447 F2d 1149

Additionally, it was stated in 60 Mich L Rev, 41, 51, (1961-62) that states can neither authorize nor prohibit shipments once they are in the possession of interstate carriers which are subject to regulations imposed by federal agencies upon interstate carriers which handle shipments of dangerous materials.

It should be noted, however, that 42 USCA 2021(k) recognizes by virtue of the following language the authority of any state or local agency to regulate activities (e.g. transportation) for purposes other than protection against radiation hazards:

“(k) Nothing in this section shall be construed to affect the authority of any State or local agency to regulate activities for purposes other than protection against radiation hazards.”

Your question refers to MCLA 325.461(c); MSA 14.528(311) (c), of 1972 PA 305, being MCLA 325.451 *et seq*; MSA 14.528(301) *et seq*, and asks the extent to which Section 11(c) limits the department's control over such transportation. This section reads:

“Section 3 to 10 shall not apply to the following sources or conditions except as noted:

\* \* \*

“(c) Any radioactive material while being transported under the jurisdiction of and in conformity with regulations adopted by the federal atomic energy commission or department of transportation, or their successors, specifically applicable to the transportation of such radioactive material.”

It is therefore my opinion that the state is preempted from controlling the transport of nuclear waste, spent fuel elements, and other radioactive materials. This responsibility is under the sole control of the Nuclear Regulatory Commission in the absence of a turnover agreement vesting the state with duties and powers pursuant thereto.

FRANK J. KELLEY,  
*Attorney General.*