Mr. Walter F. Jones, Jr.,  
Public Counsellor,  
401 State House,  
Indianapolis 4, Indiana.

Dear Mr. Jones:

The question presented is whether the Public Service Commission of Indiana or its staff members and agents have authority to offer evidence in any controversial proceeding held or conducted by said Commission or its agents pursuant to statutory authority.

As a creature of the legislature, the Public Service Commission of Indiana is a body of delegated powers and possesses no authority except that which is expressly granted or necessarily implied by the legislature.

In re Northwestern Indiana Tel. Co., 201 Ind. 667, 171 N. E. 65;

It follows that the Commission has authority to introduce evidence in controversial proceedings which it conducts only if (1) the Indiana General Assembly by proper enactment has granted such authority, (2) such authority has not been taken away by legislative enactment, and (3) such authority is not violative of any constitutional principle.

Acts of 1941, Ch. 101, Section 5 (Burns 54-112) reads as follows:

"Duty of commission—Hearings—Authority of commission. The commission created by this act (Burns 54-102, 54-109, 54-120) shall in all controversial proceedings heard by it be an impartial fact-finding body and shall make its orders in such cases upon the facts impartially found by it. The commission shall in no such proceeding, during the hearing, act in the role either of a proponent or opponent on any issue to be decided by it. All evidence given in any such proceeding shall be offered on behalf of the respective
parties to, or appearing in, the proceeding and not in the name or behalf of the commission itself. If in any such proceeding the public interest is not otherwise adequately represented by counsel, in the opinion of the commission, it shall be the duty of the public counselor, if requested by the commission, to make adequate preparation for the presentation of the interests of the public in such proceeding and he shall at the hearing represent the public interests therein involved: Provided, however, That nothing in this section contained shall prevent the public service commission of Indiana from instituting, prosecuting, hearing or determining any investigation or proceeding which it is authorized to do, or make, on its own motion by any law with the administration of which it is charged."

This section of the State's public service commission law has not been directly or indirectly repealed by subsequent legislation. Therefore an answer to the instant question necessitates an interpretation of this statute.

In the construction and interpretation of statutes, the manifest intent of the legislature is controlling, and certainly the language of the statute is evidence of legislative intent.

Crawford, The Construction of Statutes, Sections 164, 198, 158, 159.

It is fundamental that, if the statutory language is unambiguous and its meaning is clear, the statute must be accorded the expressed meaning.

Ibid;
Sutherland, Statutory Construction, 3rd Ed., Sections 4502-4702, 5504;
Eastman v. State, 109 Ind. 278, 10 N. E. 97.

This is true regardless of whether we say, as many courts have, that, if the statute is plain, certain and free from ambiguity, a bare reading suffices and interpretation is unnecessary, or whether we label as interpretation the process by which we arrive at the conclusion that the statutory language is unambiguous. The important thing is that any de-
viation from statutory language which is clear and free from ambiguity constitutes an invasion of the province of the legislature.

Crawford, The Construction of Statutes, Section 161.

A spurious interpretation should, therefore, be avoided.

There would seem to be no ambiguity in the language that "all evidence given in any such proceeding shall be offered on behalf of the respective parties to, or appearing in, the proceeding and not in the name or behalf of the commission itself." Undoubtedly this is a specific manner in which the legislature sought to implement the general policy provision that "the commission * * * shall in all controversial proceedings heard by it be an impartial fact-finding body * * *" and that it "shall in no such proceeding, during the hearing, act in the role either of a proponent or opponent on any issue to be decided by it." Quite obviously this purpose would be defeated if the commission itself were permitted to offer evidence in the name or behalf of any party to, or appearing in, the proceeding.

The question remaining is whether the meaning of that part of the statute concerning the offering of evidence is modified by the provision "that nothing in this section contained shall prevent the public service commission of Indiana from instituting, prosecuting, hearing or determining any investigation or proceeding which it is authorized to do or make on its own motion by any law with the administration of which it is charged."

The latter provision is a saving clause and as such it should be strictly construed.

Sutherland on Statutory Construction, 3rd Ed., Section 4932.

Strict construction of this clause is required because the legislative purpose set forth in the general enactment expresses the legislative policy and only those subjects expressly exempted should be freed from the operation of the statute.

Sutherland on Statutory Construction, 3rd Ed., Section 4933.
The saving clause is not in itself a grant of power, but rather a reservation of certain powers already possessed by the commission. In order to determine its effect on the instant question, therefore, we must look to other parts of the public service commission law, as well as the section above quoted, in order to determine under what, if any, circumstances the commission is permitted to introduce evidence in controversial proceedings.

Certainly the prohibition of the introduction of evidence in behalf of the commission in no way interferes with the power of the commission to “institute, * * * hear and determine” any investigation or proceeding. The question, then, is reduced to whether the commission has power to “prosecute” and, if so, whether the introduction of evidence in behalf of the commission is a necessary part of such power. Clearly, the “prosecution” of an informal investigation is in no way restricted.

The term “prosecute” is is not used elsewhere in the public service commission law with reference to the commission’s powers. In several instances the commission is given authority to act on its own motion or initiative, but in no instance is the commission granted express power to introduce evidence in its own name or behalf. If such power was a necessary part of the commission’s express powers prior to enactment of the 1941 law, such power can no longer be inferred. The 1941 Act provides that “if in any (controversial) proceeding the public interest is not otherwise adequately represented by counsel, in the opinion of the commission, it shall be the duty of the public counselor, if requested by the commission, to make adequate preparation for the presentation of the interests of the public in such proceeding and he shall at the hearing represent the public interests therein involved.”

The office of public counselor is a statutory office and the public counselor is appointed by the same authority (the Governor) which appoints the members of the public service commission.

Burns’ Indiana Statutes Annotated, Sec. 54-111.

It is not to be assumed that the legislature created a duplicate authority in the public service commission to offer evi-
dence in hearings before the commission when this power is clearly granted to the public counselor.

If by instituting a controversial proceeding on its own motion the commission were thereby empowered to offer evidence in such proceeding, the commission could by this device nullify the entire effect of the legislative enactment that “all evidence given in any such proceeding shall be offered on behalf of the respective parties to, or appearing in, the proceeding and not in the name or behalf of the commission itself.”

It is inconceivable that the saving clause in question should be construed as a grant of power to the commission to nullify the provisions of the general enactment. The legislature is not presumed to do a foolish thing, nor can it be presumed to destroy at birth its own enactment.

Sutherland on Statutory Construction, 3rd Ed., Section 4932.

Common sense dictates that that construction should not be adopted which defeats the clear purpose of the law-makers.

Crawford, The Construction of Statutes, Section 177.

It seems reasonable to conclude that the term “prosecute” was used to describe those things which the commission can lawfully do to initiate a proceeding and press it to a termination. In ordinary usage the word “prosecute” has different meanings when used in different relations. (See definitions of the word in Words and Phrases and Webster's New International Dictionary.)

“Frequently, words of general meaning are used in a statute, words broad enough to include the act in question, and yet a consideration of the whole legislation, or of the circumstances surrounding its enactment, or of the absurd results which would follow from giving such broad meaning to the words, make it unreasonable to believe that the legislature intended to include the particular act.”

Crawford, The Construction of Statutes, Section 178 at page 295.
The commission's powers in this regard are broad, but it is clear that such powers do not include the authority to introduce evidence in controversial commission proceedings.

By limiting the class of proceedings to those which are controversial it was the intention of the legislature to include only those proceedings which involve administrative adjudication and to exclude from the operation of the statute all other proceedings such as those connected with the rule-making process. This is obvious from a reading of the statute as a whole and especially because of the reference therein to "parties," "impartial fact-finding," "orders" and other terms applicable to the process of administrative adjudication.

It is axiomatic that an agent's authority cannot exceed the scope of his principal's powers. Therefore, the commission's staff members and agents have no authority which is not possessed by the commission itself.

Because the statutory law of the State prohibits the introduction of evidence by the public service commission in controversial proceedings conducted by said commission, it is unnecessary to consider the constitutionality of a statute purporting to create such authority.

OFFICIAL OPINION NO. 71

August 20, 1951.

Senator Leo J. Stemle,
524 Main Street,
Jasper, Indiana.

Dear Sir:

I have your request for an official opinion in which you ask the following questions:

"1. Can a person who was a candidate on either the Republican or Democratic ticket in the primary election and who was defeated, run as a candidate on an independent ticket in the general city election this fall for the same office that he sought the nomination for in the primary election?

"2. Can an independent ticket for the election of various city offices be filed with the election commis-