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OFFICIAL OPINION NO. 10

July 30, 1975

Honorable Otis R. Bowen, M.D.
Governor of Indiana
Room 206 State House
Indianapolis, Indiana 46204

Dear Governor Bowen:

This is in response to your request for an official opinion on the following questions:

- “1. According to the Indiana Code of 1971, Section 4-13-11, the Governor serves as the Permanent Chairman of the Indiana State Office Building Commission. In your opinion, does this mean that the Governor would have to physically attend the meetings of the Indiana State Office Building Commission while he serves as its Permanent Chairman?
- “2. Is the Governor required by law to preside at meetings of the Indiana State Office Building Commission or may the Governor delegate the responsibility to another Commission member?
- “3. May the Governor, as Chairman of the Commission, authorize another Commission member to sign contracts representing the Commission in agreements with other parties?”

ANALYSIS

The Indiana Code of 1971, Section 4-13-11-2, as amended by the Acts of 1975, Public Law Number 26, Section 4 (Senate Enrolled Act Number 316), provides the following:

“Sec. 2. The commission consists of the following eleven (11) members:

- (1) the governor, *who serves as chairman.*
- (2) the lieutenant governor, who serves as *vice-chairman.*

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- (3) the state budget director, who serves as secretary.
- (4) the state treasurer, who serves as treasurer.
- (5) the commissioner of the department of administration.
- (6) six (6) persons appointed by the governor, no more than three (3) of whom may be of the same political party." (My emphasis.)

Although Section 4-13-11-2 of the Indiana Code of 1971 differs in several important respects from the original membership provisions in the State Office Building Commission law, found in Acts of 1953, Ch. 221, § 2, it is unchanged in providing that the Governor serves as the Chairman of the Commission. It is clear that Section 4-13-11-2 does *not* authorize the Governor to delegate his authority and title as Chairman to any other member of the Commission or to any assistant or other state employee.

In spite of this clear statutory provision, the Commission, presumably pursuant to authorization granted it by Section 4-13-11-1 of the Indiana Code of 1971 to make rules and by-laws for the management and regulation of its affairs, has erroneously adopted a certain by-law designated as Art. III, § 1(6), revised on April 4, 1974, which purports to authorize the Governor to appoint one of his six appointees to be Chairman and to assume for himself the title of "Permanent Chairman."

Such a provision is contrary to the intent of the Indiana General Assembly that the Lieutenant Governor, as Vice-Chairman, preside at meetings of the Commission in the Governor's absence. The general authority given to the Commission to manage its affairs cannot be construed as a specific delegation of legislative power with respect to Commission membership. Therefore, such a section of the by-laws is contrary to law and void.

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The construction of the by-law noted above does not prevent the Commission from adopting a workable and legal by-law designed to take care of a situation where neither the Governor nor the Lieutenant Governor can be physically present to preside over a called meeting of the Commission. Such a by-law should specifically describe the situation intended to be covered thereby and provide the procedure to be followed by the Commission members for selecting a temporary Acting Chairman to preside over the particular meeting; nor does this construction prevent the Commission from adopting a by-law to prescribe a procedure for voting by proxy.

In answer to your third question, all written public contracts and agreements must be signed by the state officer or official who has been given such authority by the Indiana General Assembly. The duty cannot be delegated to another agency member or to another state employee. Such documents must be signed, as required by law, that is, in this instance, by the Governor in his official capacity as Chairman of the Commission, even though they also must be approved by him, in turn, in his official capacity as Governor of the State of Indiana.

CONCLUSION

It is, therefore, my Official Opinion that:

1. The Governor serves as the statutory Chairman (the term "Permanent Chairman" being a misnomer) of the Indiana State Office Building Commission but is not required by law physically to attend all meetings of the Commission. However, the Commission may adopt a by-law permitting the Governor or other member to vote by written proxy when unable to attend a particular meeting.
2. The Governor is not authorized by law to delegate to another his statutory duties and authority as Chairman of the Commission. In his absence, the Lieutenant Governor, as the statutory Vice-Chairman, may preside.
3. Finally, the law does not provide for the Governor to delegate to another his authority to sign Commission contracts.