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### OFFICIAL OPINION NO. 27

November 6, 1975

Mr. William H. Lanam  
Commissioner of Labor  
Room 1013 State Office Building  
Indianapolis, Indiana 46204

Dear Commissioner Lanam:

This is in response to your request for an official opinion as to whether the Indiana Occupational Safety Standards Commission may adopt standards promulgated by the United States Secretary of Labor without holding hearings of its own pursuant to Indiana Code of 1971, Sections 4-22-2-1, *et seq.*

#### ANALYSIS

Acts 1971, Public Law Number 356, as amended by Acts 1973, Public Law Number 241, which added to the Indiana Code of 1971 Sections 22-8-1.1-1 to 22-8-1.1-50, the Indiana Occupational Safety and Health Act (IOSHA), establishes an Occupational Safety Standards Commission to adopt and promulgate safety and health standards in the State of Indiana. Section 10 of the 1973 amendment added, *inter alia*, Code Section 22-8-1.1-13.1 to the Act. Code Section 22-8-1.1-13.1 provides the following:

“—All federal occupational safety and health standards as amended which are in effect as of the passage of this chapter (April 1, 1971) are hereby made and adopted as standards of the Indiana occupational safety standard commission. All federal occupational safety and health standards which the United States secretary of labor shall hereafter promulgate, or amend in accordance with the previous Federal Occupational Safety and Health Act of 1970 shall become the standards or amendments to standards of the Indiana occupational safety standard commission within sixty (60) days after the effective date set by the

secretary of labor, or as soon as the provisions of IC 1971, 4-22-2 (4-22-2-1—4-22-2-11) have been followed, whichever period is shorter: *Provided, however, That the commission may adopt and promulgate an alternate standard which it finds is at least as effective in providing safe and healthful employment as the federal standard under the procedures set forth in sections 14 and 15 (22-8-1.1-14, 22-8-1.1-15).*" (Emphasis mine.)

This section does two things:

First, it adopts as Indiana standards all federal occupational safety and health standards already in effect at the time IOSHA was enacted in 1971 and, second, it would adopt as Indiana standards all occupational safety and health standards which subsequently are promulgated by the United States Secretary of Labor. These future regulations are to be effective as Indiana standards sixty (60) days after their promulgation (or sooner if the procedures under Code Sections 4-22-2-1, *et seq.* can be followed in less than sixty (60) days). It also has the proviso suggesting the better method of having the State Commission adopt and promulgate its own alternate standard.

When the 1973 Indiana General Assembly passed the IOSHA amendments, I advised the Governor that the Provision in Code Section 22-8-1.1-13 which would automatically enact unknown future regulations of the United States Secretary of Labor as the state standard under Indiana Law would be an unconstitutional delegation of the state's legislative power by the Indiana General Assembly to an appointive federal agent. (1972 O.A.G. book, p. 224)

Because of that constitutional defect, the automatic adoption provision for federal regulations would seem to me to be ineffective; and the Commission should itself adopt standards it believes equal to those in accordance with Indiana law.

## CONCLUSION

It is, therefore, my Official Opinion that the Indiana Occupational Safety Standards Commission may adopt occupa-

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tional safety and health standards similar to those promulgated by the United States Secretary of Labor if they conform with Indiana law *but only after due notice and public hearing*. The constitutionally proper method is suggested by the Indiana Act itself in these words:

*“ . . . the commission may adopt and promulgate an alternate standard which it finds is at least as effective in providing safe and healthful employment as the federal standards under the procedures set forth in sections 14 and 15 (22-8-1.1-14, 22-8-1.1-15).”*

In either case, due process of law requires public notice and a public hearing and the other requisite legal procedures prior to promulgation.