

# JOURNAL OF THE SENATE

FRIDAY, May 24, 1974.

The chief clerk makes the following entries under the above date.

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## PETITIONS AND COMMUNICATIONS

State of Wisconsin  
Department of Justice  
Madison

May 20, 1974

The Honorable, The Senate  
State Capitol  
Madison, Wisconsin

Dear Senators:

By 1973 Senate Resolution 33 you have asked for my opinion concerning the composition of the joint committee on finance, the board on government operations, the joint committee for review of administrative rules, the joint legislative council, and the committee to visit state properties. The question asked is whether the statutory membership of these committees constitutes a denial of the equal protection and equal representation provisions of the United States and the Wisconsin Constitutions or Art. IV, sec. 1 of the Wisconsin Constitution.

The United States Constitution's Fourteenth Amendment guarantee of equal protection of the laws includes the right of voters to have equal representation in the state legislature. In *Reynolds v. Sims* (1964), 377 U.S. 533, 565, 84 S.Ct. 1362, 12 L.Ed. 2d 506, the court said:

“\*\*\* Full and effective participation by all citizens in state government requires, therefore, that each citizen have an equally effective voice in the *election* of members of his state legislature.” (Emphasis added.)

The guarantee of the Wisconsin Constitution is substantially identical to that of the federal constitution. See *State ex rel. Reynolds v. Zimmerman* (1964), 22 Wis. 2d 544, 564, 126 N.W. 2d 551.

Legislative committees, therefore, would come within the “one man-one vote” principle if and only if they exercised legislative

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power. The Wisconsin Constitution, however, provides that all legislative power is vested in the senate and the assembly. Article IV, sec. 1, Wis. Const. Thus, if any such committee were granted legislative powers, those powers would be null and void as constituting an unconstitutional delegation of legislative powers.

It follows that the precise question raised by 1973 Senate Resolution 33 is whether any of the named committees have been given legislative powers.

I have this day issued my opinions in response to 1973 Assembly Resolutions 44 and 58 that the joint committee for review of administrative rules has been unconstitutionally given the power to suspend administrative rules. The premise to those opinions is that a law, which includes a valid administrative rule, can be voided only if the legislature makes presentment of a bill to the governor.

The joint committee on finance is established by sec. 13.09, Stats. This committee may appoint a subcommittee to "act" on bills not exceeding \$10,000 and claims not exceeding \$2,500, but the "act" is only recommendatory since sec. 13.09 provides:

\*\*\*\* The subcommittee shall meet and hold hearings at the direction of the committee and report its *recommendations* to the committee. \*\*\*\* (Emphasis added.)

The committee's own power as to federally aided programs is to make a recommendation to the legislature. Sec. 13.095, Stats. Further, the committee has only recommendatory powers as to the fiscal needs of veterans housing (sec. 45.355, Stats.) and as to state revenues and appropriations (sec. 16.48, Stats.).

The Board on Government Operations (BOGO) is given power to supplement appropriations. Section 13.58 (2), Stats., provides:

"BOGO is authorized to supplement the appropriation of any department, board, commission or agency, which is insufficient because of unforeseen emergencies or insufficient to accomplish the purpose for which made, if the board finds:

- (a) That an emergency exists;
- (b) That no funds are available for such purposes;
- (c) That the purposes for which a supplemental appropriation or transfer is requested have been authorized or directed by the legislature."

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The power of supplemental appropriation is not the power to impose a tax or similarly to raise revenues. It is the power to draw on already raised revenues to aid in the fulfillment of an already declared legislative objective upon finding the facts as to an emergency, the unavailability of funds, and the proposed use of the funds as fitting within the legislative authorization. BOGO is prevented from granting monies for purposes not legislatively authorized. See 43 OAG 202 (1954). Although BOGO's powers contain an element of discretion, see 58 OAG 174, 178 (1969), it is my opinion that such discretion is sufficiently confined to the implementation of laws rather than the creation of laws so that there is no unconstitutional delegation of legislative power. See *State ex rel. Board of Regents v. Zimmerman* (1924), 183 Wis. 132, 140-141, 197 N.W. 823.

This conclusion is equally valid with respect to BOGO's power to transfer funds. For such funds can be transferred only if "legislative intent will not be changed." Sec. 13.58 (2a), Stats.

The powers of the joint legislative council are clearly recommendatory only. See sec. 13.81 (3), Stats. The joint legislative committee to visit state properties is given the power to visit and inspect all state properties. Sec. 13.47 (2), Stats. Such power does not entail the power to make a law.

In summary, then, it is my opinion that none of these committees is invalid by virtue of the one man-one vote principle inasmuch as they do not, and indeed cannot, possess legislative powers. The only exception is the joint committee for review of administrative rules which has been unconstitutionally delegated the legislative power to suspend administrative rules, as is more fully explained in my answer to 1973 Assembly Resolution 58. As to this committee, the invalidity follows from the delegation of a legislative power. Therefore, it is unnecessary to answer whether the composition of the committee accords with the one man-one vote principle.

Sincerely yours,

ROBERT W. WARREN

Attorney General

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### CAPTION:

The one man one vote principle is inapplicable to legislative committees since that principle applies only to the exercise of legislative powers and such powers cannot constitutionally be delegated to these committees. There has been no such unconstitutional delegation as to the joint committee on finance, the board on governmental operations, the joint legislative council or the committee to visit state properties. As to the joint committee for the review of administrative rules, however, the legislature has unconstitutionally delegated to it the power to suspend a law.

State of Wisconsin  
Department of Justice  
Madison

May 20, 1974

The Honorable, The Senate  
State Capitol  
Madison, Wisconsin

Dear Senators:

Senate Resolution 40 (1973) requests my opinion on the authority of community relations--social development commissions authorized under sec. 66.433, Stats.

The resolution specifically inquires:

I. Does the commission have the authority to operate programs and provide direct services to individual citizens?

The answer to this question is "yes."

The resolution further requests that the opinion clearly delineate the functions of such a commission.

It is impossible to clearly delineate the functions of such a commission in view of the broad statute under which it was created. Such a commission has all of the powers and functions expressly given by statute and those which are necessarily implied. A reading of the whole statute makes it clear that the powers of such commission are not limited to:

"... study, analyze and recommend solutions for major social, economic and cultural problems which affect people residing or working within the municipality ..."

Section 66.433 (3), Stats., provides:

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**“(3) PURPOSE AND FUNCTIONS OF COMMISSION.** (a) The purpose of the commission is to study, analyze and recommend solutions for the major social, economic and cultural problems which affect people residing or working within the municipality including, without restriction because of enumeration, problems of the family, youth, education, the aging, juvenile delinquency, health and zoning standards, and discrimination in housing, employment and public accommodations and facilities on the basis of class, race, religion or ethnic or minority status.

“(b) The commission may:

“1. Include within its studies problems related to pornography, industrial strife and the inciting or fomenting of class, race or religious hatred and prejudice.

“2. Encourage and foster participation in the fine arts.

“(c) The commission shall:

“1. Recommend to the municipal governing body and chief executive or administrative officer the enactment of such ordinances or other action as they deem necessary:

“a. To establish and keep in force proper health standards for the community and beneficial zoning for the community area in order to facilitate the elimination of blighted areas and to prevent the start and spread of such areas:

“b. To insure to all municipal residents, regardless of race or color, the rights to possess equal housing accommodations and to enjoy equal employment opportunities.

“2. *Co-operate with state and federal agencies and nongovernmental organizations having similar or related functions.*

“3. Examine the need for publicly and privately sponsored studies and programs in any field of human relationship which will aid in accomplishing the foregoing objectives, and *initiate such public programs and studies and participate in and promote such privately sponsored programs and studies.*

“4. Have authority to conduct public hearings within the municipality and to administer oaths to persons testifying before it.

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"5. Employ such staff as is necessary to implement the duties assigned to it." (Emphasis added.)

Under sec. 66.433 (3) (c) 2, 3, Stats., there is some authority to operate programs and provide direct services to individual citizens.

Further, sec. 66.433 (7), Stats., provides:

**"(7) DESIGNATION OF COMMISSIONS AS CO-OPERATING AGENCIES UNDER FEDERAL LAW.**

(a) The commission may be the official agency of the municipality to accept assistance under title II of the federal economic opportunity act of 1964. No assistance shall be accepted with respect to any matter to which objection is made by the legislative body creating such commission, but if the commission is established on an intergovernmental basis and such objection is made by any participating legislative body said assistance may be accepted with the approval of a majority of the legislative bodies participating in such commission.

"(b) The commission may be the official agency of the municipality to accept assistance from the community relations service of the U.S. department of justice under title X of the federal civil rights act of 1964 to provide assistance to communities in resolving disputes, disagreements or difficulties relating to discriminatory practices based on race, color or national origin which may impair the rights of persons in the municipality under the constitution or laws of the United States or which affect or may affect interstate commerce."

Public Law 88-452, August 20, 1964, is known as the "Economic Opportunity Act of 1964." Title II of such act is concerned with "Urban and Rural Community Action Programs." The purpose of Part A of Title II is to provide stimulation and incentive for urban and rural communities to mobilize their resources to combat poverty through community action programs. While the program does provide for study, planning, and mobilization of resources of a community to attack poverty, sec. 202 (a) (2) contemplates that a community action program should *provide services*, assistance, and other activities to help eliminate poverty through "developing employment opportunities, improving human performance, motivation, and productivity, or bettering the conditions under which people live, learn, and work." Part B of Title II is concerned with "Adult Basic Education Programs." Its

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purpose in part is to "initiate programs of instruction for persons who have attained age eighteen and whose inability to read and write the English language constitutes a substantial impairment of their ability to get and retain employment commensurate with their real ability ..." It is clear that local educational agencies, which include boards of education, are to be utilized to carry out programs of instruction for individuals. Part C of Title II is concerned with a "Voluntary Assistance Program For Needy Children." A section of the Office of Economic Opportunity was to establish an information and coordination center to encourage voluntary assistance for deserving and needy children by persons who voluntarily desire to financially assist such children.

Public Law 88-352, July 2, 1964, is known as the "Civil Rights Act of 1964." Title X thereof provides for the "Establishment of Community Relations Service." The Federal Service had the duty "to provide assistance to communities and persons therein in resolving disputes, disagreements, or difficulties relating to discriminatory practices based on race, color, or national origin which impair the rights of persons in such communities under the Constitution or laws of the United States or which affect or may affect interstate commerce. ..." It is clear that the federal officers and employees may work directly with individual citizens in resolving disputes, etc., and the agency is authorized to "utilize the cooperation of appropriate state or local, public or private agencies." A local community action commission could cooperate and would necessarily have to work with individual citizens in most cases.

The present Economic Opportunity Act is greatly expanded over the Act of 1964, and Urban and Rural Community Action Programs appear in Title 42, U.S.C.A. secs. 2781-2837. Many programs contemplate that the community action commission cooperate in providing direct assistance to individual citizens. Among the various programs are: Project Headstart, Comprehensive Health Services, Emergency Food and Medical Services, Family Planning, Senior Opportunities and Services, Alcoholic Counseling and Recovery, Drug Rehabilitation, Environmental Action, Rural Housing Development and Rehabilitation, Training, Research and Technical Assistance with respect to the aforesaid, Neighborhood Centers, Youth Recreation and Sports Programs, and Consumer Action Programs.

It is true that sec. 66.433 (7) (a), Stats., only made reference to the "federal economic opportunity act of 1964" and did not use the

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words "as amended" which are used in sec. 22.13 (2) (m), Stats., which grants the Wisconsin Department of Local Affairs and Development, power to assist in the development and administration of human resource programs. A court might hold, however, that local community relations--social development commissions have power to carry out at least some of the expanded functions authorized by the present federal economic opportunity act. The precise limits cannot be determined in a legal opinion. The facts and circumstances in any specific situation would in part determine the outcome of any court test.

In *State ex rel. Cities Service Oil Co., v. Bd of Appeals* (1963), 21 Wis. 2d 516, 527, 124 N.W. 2d 809, the court held that where a city of the first class by ordinance,

"... adopts a particular section of ch. 62, Stats., ... *such adoption embraces any subsequent amendment which the legislature may thereafter make in the adopted statute which is not wholly incompatible with such statute as it stood at the time the adopting ordinance was enacted. ...*" (Emphasis added.)

Sincerely yours,  
**ROBERT W. WARREN**  
Attorney General

### CAPTION:

Functions of a community relations -- social development commission authorized under sec. 66.433, Stats., are not limited to study, analysis and planning, but have authority to carry out some human relations programs providing services directly to citizens.

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### CHIEF CLERK'S REPORT

The chief clerk records:

**Senate Bill 105**

Correctly enrolled and presented to the Governor on Thursday, May 23, 1974.