

Opinion No. 59-65

June 22, 1959

BY: FRANK B. ZINN, Attorney General

TO: State Board of Finance State Capitol Building Santa Fe, New Mexico. Attention: Mr. Robert D. Castner, Secretary

1. The House Committee created by House Resolution No. 6 of the 24th session of the Legislature to examine and report on the finances, organization and policies of the State Highway Department is not a properly created committee to function after adjournment of the legislature and therefore has no legal status.
2. The State Board of Finance would, therefore, not be acting lawfully in granting funds to this committee.

OPINION

{*104} This is written in reply to your recent request for an opinion on the following questions:

1. What is the legal status of the committee created by House Resolution No. 6 of the House of Representatives during the 24th session of the Legislature?
2. Whether the State Board of Finance would be acting lawfully if it granted any funds to this committee?

It is my opinion that the committee created by House Resolution No. 6 is not a properly created committee to function after adjournment of the legislature; and therefore, it is further my opinion that the State Board of Finance would not be acting lawfully if it granted funds to this committee.

It is clear that a legislative body has inherent power to conduct investigations in aid of prospective legislation and for the purpose of securing information necessary for the proper discharge of its legislative functions. This power it may exercise directly or through a properly constituted committee.

It is generally conceded, without question, that a legislative committee which is to function **during** sessions of the legislature may be created by either a separate resolution of one house of the legislature or by a concurrent resolution of both houses. **Dickinson v. Johnson**, 117 Ark. 582, 176 S. W. 116; **Fergus v. Russell**, 270 Ill. 304, 110 N.E. 130. This is so because each house of the legislature has the power to entertain bills and may use a committee to investigate and report upon any matter necessary to enable it to perform its part in the legislative function.

It is also true that a legislative committee authorized to function after adjournment sine die of the legislature may be appointed by a regularly passed act of the legislature. However, when the committee is appointed by a resolution of only one house of the legislature and is to function after adjournment of the legislature, the rule, almost without exception, is that it is not a properly created committee and cannot legally function. **Tipton v. Parker**, 71 Ark. 193, 94 S.W. 298; **Commonwealth v. Costello**, 21 Pa. Dist. R. 238; **Commercial & F. Bank v. Worth**, 117 N.C. 146, 23 S.E. 160; **State ex rel Robinson v. Fluent**, 30 Wash. 2d. 194, 191 P. 2d 241; **In Re Southard**, 13 Cal. 2d 497, 83 P. 2d 932; **State v. Guilbert**, 75 Ohio St. 1, 78 N.E. 931; **State v. Childers**, 90 Okla. 11, 215 P. 773; **Brown v. Brancato**, 32 Pa. 54, 184 A. 89.

The California Supreme Court **In Re Southard**, supra, expressed this general rule as follows:

"The overwhelming weight of authority is to the effect that neither house of a legislature may lawfully appoint a committee by single house resolution with power to sit after adjournment sine die, in fact, **every state court that has considered this problem has so held.**" (Emphasis supplied.)

{*105} The basis for this rule is found in Art. IV, Section 1 of the Constitution of New Mexico, which states in part:

"The legislative power shall be vested in a senate and house of representatives which shall be designated the legislature of the state of New Mexico . . ."

Since the legislative power is vested in both the senate and house of representatives, that power can only be exercised by the concurrence of both houses. The committee which is a mere agency of the house which creates it, dies when the creating body dies, e.g., upon adjournment sine die. To allow such a committee to function after adjournment of the body which creates it would be allowing one house of the legislature to pass a resolution having the effect of law. This can only be done by concurrence of a majority of both houses of the legislature. Art. IV, Section 17, Constitution of New Mexico provides:

"No bill shall be passed except by a vote of a majority of the members present in each house . . ."

It is clear, then, that the committee created by House Resolution No. 6 to examine the State Highway Department was not properly created to function after adjournment of the legislature and therefore it has no legal status whatsoever since its existence ended when the House of Representatives finally adjourned.

In view of the fact that the committee was not properly created and has no legal status, the State Board of Finance would not be acting lawfully if it granted funds to this committee.

Boston E. Witt