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**OFFICERS:
Ex Officio Members -
Rights and Privileges**

**Honorable George Ray Hudson
Illinois State Representative
Chairman, Illinois Commission
on Atomic Energy
111 East Monroe Street
Springfield, Illinois 62706**

Dear Representative Hudson:

I have your letter in which you ask whether ex officio members of the Illinois Commission on Atomic Energy have the same rights and privileges as any other member of the Commission. Specifically you ask whether ex officio members have the same right to vote and to hold office in the Commission as other members.

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Section 1 of "AN ACT to create the Illinois Commission on Atomic Energy, defining the powers and duties of the Commission, and making an appropriation therefor" (Ill. Rev. Stat. 1975, ch. 127, par. 541) provides in part:

"There is created a permanent Commission to be known as the Illinois Commission on Atomic Energy, hereinafter called the Commission, to consist of 4 members of the General Assembly, 2 appointed by the President of the Senate and 2 appointed by the Speaker of the House; 2 citizens representing industry, 2 citizens representing labor, 2 citizens representing science and technology, 2 citizens representing medicine and health, one citizen representing the insurance industry, one citizen representing the legal profession, all appointed by the Governor; and the Director of Public Health, the Director of the Civil Defense Agency, the Secretary of Transportation, the Director of Mental Health and Developmental Disabilities, the Director of Agriculture, the Director of Labor, the Director of Business and Economic Development, the Director of the Environmental Protection Agency, the Director of Law Enforcement and the Chairman of the Illinois Commerce Commission as ex officio members. * * * "

The statute makes no distinction between ex officio and appointed members concerning the rights and privileges of those members.

The Illinois Supreme Court has explained the meaning of the term "ex officio" in discussing a provision which made the county treasurer the ex officio supervisor of assessments

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in his county. In Foote v. Lake County, 206 Ill. 185, the court said at page 188:

" * * * The term 'ex officio' implies that the county treasurer shall be supervisor of assessments from or by virtue of his office as county treasurer and as appertaining to such office. His authority to act as supervisor of assessments, under the statute, is derived from his official character as county treasurer, and the duties of supervisor are annexed to his official position as a consequence thereof, without any other appointment or authority than that conferred by the office of county treasurer. * * * "

Applying this definition to the present situation, I conclude that an ex officio member of the Illinois Commission on Atomic Energy derives his authority to act as a member of the Commission from his official position as Director, Secretary or Chairman, respectively, of one of the departments, agencies or commissions of state government. This conclusion is further supported by the holding of the court in State ex rel. Hennepin County v. Brandt, 31 N.W. 2d 5 (Minn. 1948) that an ex officio member of a board is a member "by virtue of his office, and without further warrant or appointment". Thus it appears that the term "ex officio" simply describes the source of a member's authority to serve on the Commission and not the nature of his rights and privileges as a member of the Commission.

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While I have been able to find no Illinois cases on the specific question of whether ex officio members of a commission have the same rights and privileges as the appointed members of the commission, several cases from other states have held that ex officio members of a public body are members of that body for all purposes. (Barber Pure Milk Co. of Montgomery, Inc. v. Alabama State Milk Control Board, 156 So. 2d 351 (Ala., 1963); Louisville & Jefferson County Planning and Zoning Commission v. Ogden, 210 S.W. 2d 7771 (Ky., 1948); Seiler v. O'Maley, 227 S.W. 141 (Ky. 1921).) In Barber the statute involved provided that the Commissioner of Agriculture and Industry was an ex officio member of the Alabama State Milk Control Board. The court held that the Commissioner had authority to vote as a member of the Board. The court held in Ogden that ex officio members of a public body must be counted in determining the total number of that body for the purpose of computing the number necessary for a quorum. In Seiler the court held that an ex officio member who is present at the board meeting must be counted in determining whether a quorum is present. In so holding the court explained at page 143 the rationale for deciding that ex

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officio members have the same rights as other members of a public body:

" * * * [W]e can see no logical reason nor has one been presented to us, why an ex officio member of a representative body should not have, in cases where he is not personally interested all of the authority of other members. In the one case his power and authority as such member is conferred upon him by that department of the sovereignty having authority to create the board because of the fact of his holding some office, while the other members receive their power and authority because of their election or appointment in the manner provided by the same governmental department. We have no doubt but that it would be competent in the creation of the board to provide that it should be composed entirely of ex officio members, and because some of the members are selected in the manner pointed out in the law creating the board, while others are selected by the terms of the law itself, whether it be a statutory or constitutional provision cannot possibly affect the extent of the power and authority of the members. They are each vested with full power and authority to do any and all things necessary and essential to carry out the purpose of the law in creating the board or body, whether they be ex officio members or selected in the manner provided by law. If, as contended by appellants, an ex officio member cannot be counted in forming a quorum, we fail to see any additional reason why such a member should have the right to vote or should have his vote counted in the transaction of any other business of the body. To our minds the rule contended for, pursued to its only logical conclusion, would result in depriving the ex officio member of all voice in the proceedings of all meetings and render his position on the board void of all effect except perhaps to entitle him to be present at the meeting. Such an absurd consequence was never contemplated.

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On the contrary, when one is made by the proper authority an ex officio member of a created body or board, it is to be presumed that those responsible for its creation had some purpose in view in designating the ex officio member. Manifestly that purpose was to constitute that individual a member of the board or body because of his holding some office or trust, and that whoever held that office should perform, in addition to his official duties, also those incumbent upon the board of which he was made an ex officio member.

* * *

These cases leave no doubt that ex officio members of a commission have the same rights and privileges as the other members of the commission.

Therefore, it is my opinion, based on the definition of the term "ex officio" by the Illinois Supreme Court and on the cases from other states discussed above, that ex officio members of the Illinois Commission on Atomic Energy have the same rights and privileges, including the right to vote and to hold office in the Commission, as any other member of the Commission.

Very truly yours,

A T T O R N E Y G E N E R A L