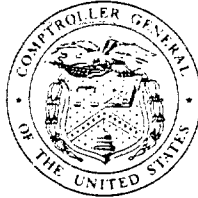


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**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20548

9638

FILE: B-194074

DATE: March 26, 1979

MATTER OF: Status of National Commission on Air Quality

DLG01378

**DIGEST:** Legislation creating the National Commission on Air Quality does not specifically designate it as a legislative or executive agency. Commission's reporting and advisory responsibilities are only to Congress; it has no regulatory or executive powers, and 4 of its 11 members are designated officers of Congress or are appointed by Congress. Notwithstanding that other seven members are appointed by President, Commission is a legislative branch agency.

This is in response to a request by the Chairman of the National Commission on Air Quality (NCAQ) for a decision on whether the Commission is a legislative or executive branch agency. The question is significant in determining where financial disclosure statements required under Pub. L. No. 95-521 are to be filed, among other reasons.

The Chairman sent a copy of a letter from the Bureau of Executive Personnel of the Civil Service Commission (now the Office of Personnel Management) stating that the NCAQ's employees are not in the executive branch of the Government, and a memorandum from the Congressional Research Service, Library of Congress, concluding that NCAQ should be considered a legislative agency. We agree with these opinions.

The NCAQ was established by section 313 of the Clean Air Act Amendments of 1977, Pub. L. No. 95-95, August 7, 1977, 91 Stat. 685, 785, to study and report to the Congress on eight specific areas related to economic, technological, legal, and environmental implications of implementing clean air programs. Deadlines are specified for certain reports, with the final report containing the result of all Commission studies and investigations not included in the earlier studies to be completed not later than August 7, 1979.

Four of the 11 Commission members are the Chairmen and ranking minority members of the Senate Committee on Public Works and the House Committee on Interstate and Foreign Commerce, or their delegates, appointed by them from among representatives of their respective committees. The seven other members are appointed by the President from among members of the public. Apart from the Presidential.

[COMMISSION DESIGNATION as LEGISLATIVE or EXECUTIVE AGENCY]  
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appointment of the public Commission members and a general requirement for the heads of executive branch departments, agencies and instrumentalities to cooperate with the Commission in meeting the requirements of the Act and in furnishing information which the NCAQ deems necessary, there is no involvement of the executive branch with Commission activities.

The legislative history of the section creating the NCAQ indicates that the Congress intended the Commission to be its own advisory body, to conduct research and make recommendations to it in connection with the Clean Air Act.

The House Report on the Act, in describing the creation of the NCAQ, indicated that its sole responsibility would be to Congress:

"This section also establishes a National Commission on Air Quality which shall study and report to Congress on a variety of issues \* \* \*."  
H.R. Rep. No. 95-294, 95th Cong., 1st Sess. at 10 (1977).

Advisory responsibility to executive branch agencies or executive branch functions were neither mentioned nor, apparently, contemplated.

The Senate Report on the Clean Air Act Amendments included a longer discussion of the role and responsibilities of the Commission, but also provided no executive branch involvement except in the appointment of the public members of the Commission. S. Rep. No. 95-127, 95th Cong., 1st Sess. at 102-103 (1977).

Furthermore, as the Congressional Research Service noted in the memorandum supplied with the Chairman's request, the Supreme Court held in Buckley v. Valeo, 424 U.S. 1 (1976), that the Appointments Clause (Article II, § 2, clause 2 of the Constitution) "by clear implication" prohibits Congress from appointing "Officers of the United States." In that decision, the Court asserted that the Congress could validly appoint members of a Commission having powers that were "essentially of an investigative and informative nature, falling in the same general category as those powers which Congress might delegate to one of its own committees." As we have noted, the NCAQ's functions are of that type--investigative and informative--and are performed exclusively for the Congress, despite the presence on the NCAQ of Presidentially-appointed members.

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Therefore, in light of the nature of the NCAQ's functions, and the absence in its charter of any responsibility to the executive branch or any executive powers, we conclude that the NCAQ is a legislative branch agency.

A handwritten signature in dark ink, appearing to read "R. F. K...", is written over the printed text of the title.  
Deputy Comptroller General  
of the United States