



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 10, 1994

Honorable Bob Bullock
Lieutenant Governor of Texas
P.O. Box 12068
Austin, Texas 78711-2068

Letter Opinion No. 94-002

Re: Whether the Sunset Act of the Government Code chapter 325, provides the exclusive means of reviewing the Public Utility Commission during the 73d Legislative Session and prevents interim legislative committees from studying the regulation of public utilities and the Public Utility Commission (ID# 22682)

Dear Governor Bullock:

You have requested an opinion about a possible conflict between the Texas Sunset Act, the Public Utility Regulatory Act, and House Concurrent Resolution 101,¹ which authorizes the lieutenant governor and speaker of the house of representatives to create joint interim legislative study committees. Your specific questions focus on the Sunset Act and two interim committees created pursuant to the House Concurrent Resolution.

Under the Texas Sunset Act, Gov't Code ch. 325, state agencies are scheduled for abolition on a specific date unless the legislature enacts legislation continuing the agency. The Sunset Advisory Commission (the "commission"), created to administer this process, consists of four members of the senate and one public member appointed by the lieutenant governor and four members of the house of representatives and one public member appointed by the speaker of the house. Gov't Code § 325.003. "Before September 1 of the even-numbered year before the year in which a state agency and its advisory committees are abolished," the Sunset Advisory Commission shall review the agency's performance and report to the legislature its recommendation on the abolition, continuation, or reorganization of the agency. *Id.* §§ 325.008, 325.011, 325.012. The report must include drafts of legislation necessary to carry out its recommendations and must recommend appropriation levels for the agency. *Id.* § 325.012.

Section 5a of the Public Utility Regulatory Act provides as follows:

The Public Utility Commission of Texas and the Office of Public Utility Counsel are subject to Chapter 325, Government Code (Texas

¹House Concurrent Resolution 101 was approved by the House on April 1, 1993, approved by the Senate on April 30, 1993, and signed by the governor on May 14, 1993.

Sunset Act). Unless continued in existence as provided by that chapter, the commission and the office are abolished and this Act [the Public Utility Regulatory Act] expires September 1, 1995.

V.T.C.S. art. 1446c, § 5a *as amended* by Acts 1993, 73d Leg., ch. 859, at 3374. The Public Utilities Commission is therefore subject to review by the Sunset Advisory Commission before September 1, 1994. See Gov't Code § 325.008(a).

House Concurrent Resolution 101² authorizes the lieutenant governor and the speaker of the house "to create by mutual agreement such joint committees as they consider necessary during the term of this legislature." Tex. H.R. Con. Res. 101, 73d Leg., R.S. 1993 Tex. Gen. Laws. Pursuant to this resolution, the lieutenant governor and the speaker have established the Joint Interim Committee on Telecommunications and the Joint Interim Committee on the Public Utility Commission. Each committee will consist of five senators and five representatives, appointed by the lieutenant governor and the speaker respectively.

Each house of the legislature, having power under article III, section 11 of the Texas Constitution to make its own rules, is authorized to appoint interim committees to gather information about the operation of existing laws and the need for their amendment or repeal. *Terrell v. King*, 14 S.W.2d 786 (Tex. 1929) (committee created by concurrent resolution and consisting of senators, representatives, and members of the public); see also Gov't Code § 301.013(b) (the two houses of the legislature, by concurrent resolution, may determine the number, composition, function, membership, and authority of joint committees).

The Joint Interim Committee on Telecommunications and the Joint Interim Committee on the Public Utility Commission are charged with studying specific issues relating to the regulation of telecommunications and the organization, procedures, and functions of the Public Utility Commission and the Office of Public Utility Counsel. You have provided copies of the documents creating each committee, which set out the charges to each committee, reporting requirements, and budget and staff matters. Your questions are limited to the committee charges, and we will limit our discussion to this subject.

The Joint Interim Committee on Telecommunications is to study and develop a long term telecommunications policy and to study and make recommendations on specific matters relating to this policy. The Joint Interim Committee on the Public Utility Commission is charged with studying and making recommendations regarding tax issues

²House Concurrent Resolution No. 101 states that the Texas Legislature "for each of the last five regular sessions has adopted a concurrent resolution authorizing the creation and appointment of joint interim legislative study committees by the lieutenant governor and speaker of the house of representatives." Tex. H.R. Con. Res. 101, 73d Leg., R.S. 1993 Tex. Gen. Laws.

for public utilities, the structure and organization of the Public Utility Commission, proceedings before the Public Utility Commission, and any other changes to the Public Utility Regulatory Act that the committee determines are needed. Copies of each committee's final report, accompanied by a draft bill prepared by the Texas legislative council containing any recommended statutory changes, are to be submitted to the governor, the lieutenant governor, the speaker, and the Legislative Reference Library.

You first ask whether chapter 325 of the Government Code provides the exclusive means by which the Public Utility Commission may be reviewed, in effect prohibiting or limiting the two interim committees from performing their charges.

A concurrent resolution of the legislature does not have the effect of statute and cannot amend a law. *Terrell Wells Swimming Pool v. Rodriguez*, 182 S.W.2d 824 (Tex. Civ. App.—San Antonio 1944, writ ref'd); *Mosheim v. Rollins*, 79 S.W.2d 672 (Tex. Civ. App.—San Antonio 1935, writ dism'd w.o.j.); Attorney General Opinion WW-345 (1958). In the event of conflict between the Texas Sunset Act and House Concurrent Resolution No. 101, the former would prevail.

However, we do not find any facial conflict between the Sunset Act and the provision subjecting the Public Utility Commission to it on one hand, and House Concurrent Resolution No. 101, on the other. While chapter 325 of the Government Code and section 5a of article 1446c, V.T.C.S., place a mandatory duty on the Sunset Commission to review the Public Utility Commission and make certain recommendations to the legislature, Gov't Code §§ 325.008, 325.011, 325.012, neither statute includes any provision that attempts to limit the legislature's power to establish committees to study the Public Utility Commission. Moreover, the Sunset Act expressly provides as follows:

(b) This chapter does not prohibit the legislature from:

(1) terminating a state agency or advisory committee subject to this chapter at a date earlier than that provided in this chapter;
or

(2) considering any other legislation relative to a state agency or advisory committee subject to this chapter.

Gov't Code § 325.015(b).

The statute thus recognizes that the legislature, by enacting the Sunset Act, has not divested itself of its constitutional authority to adopt legislation. *See* Tex. Const. art. III, § 1 (legislative power of the state is vested in Senate and House of Representatives). The legislature may not bind itself to enact any legislation recommended by the Sunset Advisory Commission nor may it limit itself to considering only the recommendations of the commission. Article III, section 1 of the Texas Constitution vests the legislative power of the state in the senate and house of representatives, acting together as the

"Legislature of the State of Texas." *Id.* Pursuant to this constitutional provision, the legislature has the power to make, amend, and repeal laws, subject only to limitations based on the state and federal constitutions. *Charles Scribner's Sons v. Marrs*, 262 S.W. 722 (Tex. 1924); *see Walker v. Baker*, 196 S.W.2d 324 (Tex. 1946). Moreover, nothing in the Sunset Act changes the legislature's authority under article III, section 11 of the Texas Constitution to adopt rules of procedure establishing committees to study the subject matter of proposed legislation, nor could it validly do so. Accordingly, chapter 325 does not prohibit or limit the two interim committees from performing their charges.

You next ask whether the charge to either committee conflicts with the Texas Sunset Act.

The Sunset Advisory Commission's report to the legislature must include its "specific findings regarding each of the criteria prescribed by Section 325.011." Section 325.011 sets out the criteria that the commission shall consider in determining whether a public need exists for continuing a state agency or its advisory committees. These criteria include, among others, the efficiency with which the agency operates; the extent to which the agency has achieved the objectives that it was intended to address; an assessment of less restrictive or alternative methods of performing its regulatory duties; whether the agency has recommended to the legislature statutory changes that would benefit the public rather than the regulated industry; the extent to which the agency issues and enforces rules relating to potential conflicts of interest of its employees; and the extent to which the agency complies with the open records law and the open meetings law. The report to the legislature must also include recommendations on the abolition, continuation, or reorganization of the agency and on appropriation levels, and may include "other information the commission considers necessary for a complete evaluation of the agency." Gov't Code § 325.010; *see also id.* §§ 325.011, 325.012.

The Joint Interim Committee on Telecommunications is charged with studying and developing a long term telecommunications policy that promotes "technological innovation, economic competitiveness, customer service and universal service while protecting consumers of monopoly services." In addition, it is to study and make recommendations for the following: an appropriate regulatory framework to promote the state's telecommunications policy, including necessary statutory changes; changes to the Public Utility Regulatory Act; and other legislative changes needed to implement the state's telecommunications policy. The Joint Interim Committee on the Public Utility Commission is charged with studying and making recommendations on the following topics: tax issues, including investment tax credits and other specified issues, for public utilities excepting gas utilities; the structure and organization of the Public Utility Commission and the Office of Public Utility Counsel"; proceedings before the Public Utility Commission; and any other changes to the Public Utility Regulatory Act that the committee determines are needed.

The two committees, unlike the Sunset Advisory Commission, are charged with studying and making recommendations about specific policy matters related to public utilities regulation, while the commission is required to consider general criteria designed for sunset review of any state agency. Nonetheless, the commission may report to the legislature any information necessary for a complete evaluation of an agency, and in an appropriate case, this might include information about policy matters relevant to the agency under study. There is also some overlap between the committee charges and the duties of the Sunset Advisory Commission. For example, the Joint Interim Committee on the Public Utility Commission is to "[s]tudy and make recommendations regarding any other changes to the Public Utility Regulatory Act that the Committee determines are needed." This duty could overlap with some of the criteria governing the commission's review of the Public Utility Commission.

Although the charges to the two joint committees may differ from the statutory charge to the Sunset Advisory Commission in some respects and may overlap in others, these similarities and differences do not result in a facial conflict between the committee charges and the Texas Sunset Act. We see nothing in the committee charges that would prevent the commission from carrying out its statutory duty to study the Public Utility Commission and to report its findings to the legislature. We have concluded in answer to your first question that the legislature may seek advice on public utility regulation from entities other than the Sunset Advisory Commission. Based on our review of chapter 325 of the Government Code and of the charges to the Joint Interim Committee on Telecommunications and the Joint Interim Committee on the Public Utility Commission, we conclude in answer to your second question that the Sunset Act and the committee charges are not in conflict. It must be stressed, nonetheless, that neither a concurrent resolution nor an interim committee established pursuant to a concurrent resolution has authority to usurp the functions of the Sunset Advisory Commission or otherwise to prevent it from carrying out its statutory duties.

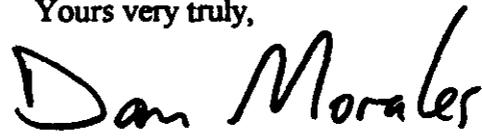
S U M M A R Y

Pursuant to House Concurrent Resolution 101 of the 73d Legislature, the lieutenant governor and the speaker of the house have created the Joint Interim Committee on Telecommunications and the Joint Interim Committee on the Public Utility Commission to study and make recommendations on specific issues relating to the regulation of telecommunications and the organization, procedures, and functions of the Public Utility Commission and the Office of Public Utility Counsel.

The Sunset Act, Government Code chapter 325, requires the Sunset Advisory Commission to review the Public Utility Commission and Office of Public Utility Counsel by September 1, 1994. The Sunset Act does not provide the exclusive means by

which the Public Utility Commission may be reviewed, and does not prohibit or limit either of the two interim committees from performing their charges. The charges to the two committees are not in conflict with the Texas Sunset Act. Neither a concurrent resolution nor an interim committee established pursuant to a concurrent resolution has authority to usurp the functions of the Sunset Advisory Commission or otherwise to prevent it from carrying out its statutory duties.

Yours very truly,

A handwritten signature in black ink that reads "Dan Morales". The signature is written in a cursive, slightly slanted style.

Dan Morales
Attorney General