



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

February 18, 1998

Mr. Earl L. Yeakel, III
Chair, Texas Commission of Licensing
and Regulation
P.O. Box 12157
Austin, Texas 78711

Letter Opinion No. 98-009

Re: Whether the Commission of Licensing and
Regulation may, absent specific statutory authority,
create an advisory committee (RQ-999)

Dear Mr. Yeakel:

You ask whether the Commission of Licensing and Regulation (the "commission") may, absent specific authority, create an advisory committee to aid in its regulation of the staff leasing services industry. We conclude that it may not.

As you point out, nothing in the Staff Leasing Services Act, chapter 91 of the Labor Code, authorizes the creation of such an advisory committee. Nor does article 9100, V.T.C.S., the commission's enabling statute, provide "a procedural mechanism for creating advisory boards."¹ By comparison, among the industries regulated by the Department of Licensing and Regulation, which the commission oversees, "there are seven advisory boards and one council with quasi judicial power. All boards and councils are created through the specific statute regulating the particular industry."²

Section 2110.001 of the Government Code defines an advisory committee as a committee, council, commission, task force, or other entity in the executive branch of state government that: (1) is not a state agency; (2) *is created by or under state law*; and (3) has as its primary function advising a state agency. (Emphasis added).

There must therefore be some basis in state law for the creation of such a body. We know of no such basis here. An administrative agency, such as the commission, "has only such powers as are expressly conferred on it by statute together with those necessarily implied from powers and duties expressly given or imposed." 2 TEX. JUR. 3D, *Administrative Law*, § 11 (1979). The power to create advisory committees is not expressly given to the commission by statute, nor is it

¹Letter from Earl L. Yeakel, III, Chair, Texas Commission of Licensing and Regulation, to The Honorable Dan Morales, Office of Texas Attorney General (Sept. 16, 1997).

²*Id.*

necessarily implicit in the commission's general rule-making authority³. Were it so implicit, there would have been no need for the legislature to have set up by statute the seven advisory boards and one council which now advise the commission. "The legislature is never presumed to do a useless act." *State v. Broaddus*, 952 S.W.2d 598, 601 (Tex. App.--Houston [14th Dist.] 1997, pet. filed). Here, eight legislative acts would be presumptively unnecessary.

The commission therefore is without authority to create the body contemplated here. Such a creation is the province of the legislature.

S U M M A R Y

The Commission of Licensing and Regulation may not create an advisory board to aid in its regulation of the staff leasing services industry absent specific statutory authority to do so.

Yours very truly,



James E. Tourtelott
Assistant Attorney General
Opinion Committee

³We note that, pursuant to section 2001.031(b) of the Government Code, "A state agency may appoint committees of experts or interested persons or representatives of the public to advise the agency about contemplated rulemaking." This power, however, is limited by the statutory language to advice about rulemaking, and does not in our view constitute authority for the creation of a standing body of the sort your question appears to contemplate.