



STATE OF ARKANSAS  
OFFICE OF THE ATTORNEY GENERAL  
JUSTICE BUILDING, LITTLE ROCK 72201

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ATTORNEY GENERAL

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OPINION NO. 85-144

June 19, 1985

Honorable Jodie Mahony  
Honorable Bobby G. Newman  
Arkansas House of Representatives  
406 Armstrong Building  
El Dorado, AR 71730

Dear Representatives Mahony and Newman:

This is in response to your request for an Attorney General's opinion regarding the effect which Act 680 of 1985 will have on the number of Oil and Gas Commission members necessary to constitute a quorum or to adopt rules and regulations. As you stated in your letter, Act 680 expands the Commission from seven(7) to nine(9) members, but makes no mention of whether the requisite number of members for a quorum or a vote on rules and regulations remains as it was prior to the new Act or changes in light of the expanded membership.

Prior to the passage of Act 680, pursuant to Act 105 of 1939 (as amended) the Commission consisted of seven(7) members and the pertinent voting requirements were as follows:

A majority of said Commission shall constitute a quorum, and four [4] affirmative votes shall be necessary for adoption or promulgation of any rule, regulation or order.

Ark. Stat. Ann. §53-103 (Repl. 1971).

It is my opinion that there must be a majority, or five(5) members of the new nine(9) member Commission to constitute a quorum. Section 53-103 requires a "majority" for a quorum and, since the new Act does not change this requirement, a majority of the nine(9) member Commission would be required just as a majority of the old seven(7) member Commission was necessary.

Even though it is a more difficult question, it is further my opinion that there must be five(5) affirmative votes of the nine(9) member Commission in order to promulgate rules, regulations or orders. The old Act only required four(4) votes, and nothing in Act 680 changes this on its face. However, the threshold and overriding consideration in construing the purpose and meaning of a statute is to ascertain and give effect to the intent of the legislature. Refunding Board of Arkansas v. Bailey, 190 Ark. 558, 80 S.W.2d 61 (1935); Duty v. City of Rogers, 225 Ark. 309, 500 S.W.2d 347 (1973); Shinn v. Heath, 259 Ark. 577, 535 S.W.2d 57 (1976).

It seems clear that when the 1939 General Assembly enacted Act 105 establishing a seven(7) member Commission, it intended to require that a majority (4) of members affirmatively vote for a rule, regulation or order before it could go into effect. Subsequent Legislatures have maintained this requirement as they have amended the Act over the years. Nothing in Act 680 evidences any intention on the part of the 1985 General Assembly to require less than a majority affirmative vote to promulgate rules, regulations and orders. Were it now possible for four(4) out of nine(9) members to pass a measure, this would effectively violate the intent of the earlier Act. Reading Acts 105 of 1939 (as amended) and Act 680 of 1985 together, it is my opinion that the legislative intent is that a majority affirmative vote of five(5) members is now required.

The foregoing opinion, which I hereby approve, was prepared by Assistant Attorney General Jeffrey A. Bell.

Sincerely,

  
STEVE CLARK  
Attorney General

SC/ljm