

## **Authority to fill vacancy on commission on ethics**

**Number:** AGO 76-152

**Date:** November 13, 1998

**Subject:**  
Authority to fill vacancy on commission on ethics

### GOVERNOR--POWER TO FILL VACANCY ON COMMISSION ON ETHICS

To: Reubin O'D. Askew, Governor, Tallahassee

Prepared by: Staff

#### QUESTION:

Does the Governor have constitutional authority to appoint the ninth member of the Florida Commission on Ethics in the event of a vacancy?

#### SUMMARY:

Pursuant to s. 1(f), Art. IV, State Const., and ss. 112.321(1) and 114.04, F. S., the Governor has the constitutional authority to appoint the ninth member of the Florida Commission on Ethics.

Section 112.320, F. S., provides for the creation of a Commission on Ethics "to serve as guardian of the standards of conduct" for state employees and officers at all levels of government. In its original version, the commission was to be composed of nine members: Four members appointed by representatives of the legislative branch, and the remaining five appointed by the Governor, subject to confirmation by the Senate. Chapter 74-176, Laws of Florida. As amended by Ch. 75-199, Laws of Florida, s. 112.321(1), F. S., maintains the nine-member commission, but reduces the number to be appointed by the Governor from five to four. It is the ambiguity created by this inconsistency which has prompted your question regarding the appointment of a ninth commission member.

There is no doubt that there must exist a legal vacancy before the executive power to appoint is activated, s. 1(f), Art. IV, State Const.; *cf.* Gray v. Bryant, 125 So.2d 846 (Fla. 1960); and the existence of such a vacancy in the present situation has been determined by the Legislature:

"Every office shall be deemed vacant in the following cases:

\* \* \* \* \*

(6) When any office created or continued by the constitution or laws shall not have been filled by election or appointment under the constitution or law creating or continuing such office." [Section 114.01(6), F. S.]

Because s. 112.321(1), F. S., as amended by Ch. 75-199, Laws of Florida, "created or continued" the office of the ninth member of the Commission on Ethics originally created by Ch. 74-176, Laws of Florida but failed to provide for an appointment while so doing, the office must be deemed vacant.

The vacancy existing on the Florida Commission on Ethics, because a vacancy in a state office, shall be filled by appointment by the Governor pursuant to s. 1(f), Art. IV, State Const., and s. 114.04, F. S.

Any issues respecting confirmation by the Senate have not been explored at this time, and no opinion regarding the same is intended to be expressed herein.