

4 FEB 7 1969

4 MEMORANDUM FOR THE HONORABLE EDWARD L. MORGAN
4 DEPUTY COUNSEL TO THE PRESIDENT

4 Re: Advisory Commission on Intergovernmental
Relations.

You have asked whether this Commission can be placed under the "jurisdiction" of the Vice President, and in particular whether it can be treated as an "office" under him with its head as an "assistant to the Vice President."

1. The Commission was created by statute (P.L. 86-380, 50 U.S.C. 1501) as an independent agency, intended to be a "genuine interlevel body, not an agency to be dominated or controlled by any one level of government". House Rept. No. 742, 86th Cong., 1st Sess., p. 14 (July 31, 1959). Transfer of an agency of such statutory character from independent status to subordinate status in the Office of the Vice President would require either legislation or, assuming the Reorganization Act, 5 U.S.C. 901 et seq., is extended by the legislation recently proposed, by submission to the Congress by the President of a reorganization plan.

2. With respect to the status of the "head" of the Commission, it should be noted that the Commission has a full-time Executive Director (Level V) at the head of its professional staff, who is appointed by the Commission (P.L. 86-380, §6(c)). The Commission itself is led by a Chairman, who is designated by the President from among the members, all of whom he appoints for two-year terms (§§3, 4(b)).

Accordingly, I believe the objective you have in mind could be achieved if the President were to appoint the Vice President a member of the Advisory Commission, and then designate him as its Chairman. The Vice President would then preside over and lead the Commission, while the Executive Director and staff would report primarily to the Vice President in his capacity as Chairman.

The only legal question affecting this suggestion is whether the Vice President fits in the category of membership described in §3(a)(1), which authorizes three Presidential appointees who "shall be officers of the executive branch of the Government". (Clearly no other category of §3(a) fits the Vice President.) The Vice President, of course, occupies a unique position under the Constitution. For some purposes, he is an officer of the Legislative Branch, and his status in the Executive Branch is not altogether clear. Nevertheless, the Vice President has been made an Executive officer by law for a number of purposes. For example, he is a statutory member of the National Security Council (50 U.S.C. 402(a)), and a member and chairman of the National Aeronautics and Space Council (42 U.S.C. 2471) and of the National Council on Marine Resources and Engineering Development (33 U.S.C. 1102). These are all Executive agencies.

Moreover, the Vice President has been named by each of the recent Presidents beginning with President F. D. Roosevelt to carry out significant Executive duties, including the chairmanship of inter-agency committees such as the President's Committee on Government Contracts (held by Presidents Nixon and Johnson when Vice President). Vice President Humphrey was given, on a more informal basis, duties of liaison with the Nation's mayors. In light of these precedents, the Vice President has now assumed a particular place in Government in which his status may be characterized as Legislative or Executive depending on the context, and in which his availability for inter-agency or inter-governmental coordination duties at the designation of the President seems well established.

All three Executive Branch seats on the Commission are presently vacant due to departures from office of officials appointed to the Commission by President Johnson. It would seem particularly appropriate to name Vice President Agnew to the Commission Chairmanship, on the basis of his experience and qualifications. He has been elected to county, state, and now national office. Hence he represents in himself three of the areas from which Commission membership is drawn by statute. Moreover, he has been a member of the Commission, as a Governor, serving as an appointee of President Johnson during 1968 and until January 19 in 1969.

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