Commission on ethics and authority before confirmation

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Subject:
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COMMISSION ON ETHICS--EFFECTIVE DATE -- MEMBERS' AUTHORITY PRIOR TO SENATE CONFIRMATION

To: A. M. Fontana, Representative, 107th District, Miami

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QUESTIONS:

1. What is the effective date of Ch. 74-176, Laws of Florida, which establishes the Commission on Ethics?

2. Are the members of the commission who are required to be confirmed by the Senate authorized to act prior to such confirmation?

SUMMARY:

The effective date of Ch. 74-176, Laws of Florida, as amended by Ch. 74-177, Laws of Florida, is July 1, 1974. The members of the Commission on Ethics whose appointments are subject to confirmation by the Senate may be appointed for an ad interim term, expiring not later than the last day of the next ensuing session of the state Senate.

AS TO QUESTION 1:

Chapter 74-176, Laws of Florida, which creates the Commission on Ethics, originally provided in s. 4: "This act shall take effect October 1, 1974." However, s. 10 of Ch. 74-177, Laws of Florida, amended the effective date clause of Ch. 74-176, *supra*, to read: "This act shall take effect *July* 1, 1974." (Emphasis supplied.) Thus, the effective date of Ch. 74-176, *supra*, is July 1, 1974.

AS TO QUESTION 2:

Section 2 of Ch. 74-176, *supra*, creates a new s. 112.321(1), F. S., which provides that the Commission on Ethics shall be composed of nine members, five of whom "shall be appointed by the governor . . . subject to confirmation by the Senate." The appointments of the other four members do not require confirmation by the senate.

The governor's power of appointment to fill a vacancy in such an office is exercised under the provisions of Art. X, s. 3, State Const., which provides that a vacancy shall occur upon the

creation of an office, and s. 1(f) of Art. IV, *id*., which authorizes the governor to fill vacancies in office, as implemented by s. 112.071, F. S. Under these provisions of constitutional and statutory law, the governor's appointee serves "for an ad interim term only, expiring not later than the last day of the next ensuing session of the state Senate." *In re* Advisory Opinion to the Governor, 171 So.2d 539, 542 (Fla. 1965). *Also see In re* Advisory Opinion to the Governor, 247 So.2d 428 (Fla. 1971). And it necessarily follows that the officials appointed by the governor in the exercise of his power to fill a *vacancy* in office are authorized to exercise the powers of the office to which they are appointed, even though the *original* power of appointment specified by the act -- appointment by the governor confirmed by the Senate -- cannot be exercised until the next session of the Senate.