

Advisory Opinion No. 75-7

QUESTION:

COVERAGE OF A GIVEN BOARD ESTABLISHED IN THE REVISED STATUTES OF THE 1975 SESSION OF THE NEVADA STATE LEGISLATURE. Since according to the Attorney General's Opinion #193, Boards which are purely advisory are not bound to the disclosure requirements of Nevada Ethics in Government Law; you ask whether the Board in question is bound by these requirements. You note that those sections of the 1975 Statutes which established the Board provide that the said board is an advisory body to the Director of the Division and that these same sections set out its advisory functions. Subsequent sections, as you note, appear to grant some policy making authority to the Board, and therefore, you have asked the Nevada State Ethics Commission (NSEC) for an opinion on the Board's obligation to disclose, or whether the Board is to be considered purely advisory or not? In raising the question you referred to the fact that the particular function which raises the question, i.e., the power over the applications for a certificate of qualification, was placed in the law in 1969 and has never been used and that the Board, therefore, has never functioned in anything but a purely advisory manner.

RESPONSE:

It is the opinion of NSEC that it is not a relevant question as to whether the Board has actually used the power conferred upon it by law or not. As long as the power and duty to so act and/or decide remain upon the Statutes of this state, the Board may invoke and use it at any time. The fact that the power has not so been used in the past does not prevent it from being so used at any time in the future. While it is true that those section of the 1975 Statutes which establish the Board in question refer to the Board as "Advisory" and assign responsibilities which would be solely advisory in nature, that section of the 1975 Statutes which give the Board power over the applications for the certificates of qualification leaves no reasonable doubt that the Board has more than "solely advisory functions." This becomes very clear when one refers to the Senate Bill in the version in which it passed through the 1975 State Legislature. The section conferring the power over the applications is a revision of previous language in the Nevada Revised Statutes; in this previous language, the Board was referred to five times as "Advisory"; in the Senate Bill referred to above, on each of these five occasions, the word "Advisory" is bracketed indicating its deletion. It must be concluded, therefore, that the Legislature considered in conferring the powers of the section in question that the Board was to that extent no longer "purely advisory". Furthermore, the final sentence of the subsection relating to the Board's powers over these applications reads: "The decision of the Board is final." Any Board which can make a final decision is by that very fact not solely "advisory."

November 6, 1975.