

THE ATTORNEY GENERAL



STATE OF UTAH
STATE CAPITOL · SALT LAKE CITY 84114
(801) 533-5261

· ROBERT B. HANSEN
ATTORNEY GENERAL
· MICHAEL L. DEAMER
DEPUTY ATTORNEY GENERAL

September 5, 1979

Mr. Eugene S. Lambert
Executive Director
Department of Business Regulation
330 East Fourth South
Salt Lake City, UT 84111

Dear Mr. Lambert:

This letter is in response to your request for an opinion from this office regarding the authority of the Executive Director of the Department of Business Regulation to act as the State Securities Commission.

For many years there existed in Utah a "Commission of Business Regulation," the legislature obviously intending to vest in the "Commission" broad administrative powers. Section 13-1-12, U.C.A. 1953 (passed originally in 1941) states:

The members of the commission of business regulation shall be the members of the public service commission, of the state securities commission and of the trade commission of Utah. The banking department shall be within the department of business regulation. The department of registration shall be under the supervision and control of the commission of business regulation and it shall appoint the director of registration and such other administrative officers as may be necessary efficiently and economically to perform the functions of the department of business regulation. (Emphasis added.)

It is notable that this section creates a Commission of Business Regulation to serve as the Public Service Commission, the State Securities Commission, and the Trade Commission. However, in 1969 the legislature reorganized the Department of Business Regulation. The purpose of that Act is stated in Section 13-1-1.1, U.C.A. 1953, as amended:

The purpose of this act is to reorganize the department of business regulation of the state of Utah by separating the administrative

Mr. Eugene S. Lambert
September 5, 1979
Page Two

functions from the quasi-judicial and rule-making functions, and providing for an executive director who shall exercise all administrative functions within the department of business regulation and continuing the public service commission of Utah in existence within the department of business regulation but removing it from the administrative channels. (Emphasis added.)

The 1969 reorganization takes the Public Service Commission out of the Commission of Business Regulation and makes it independent in most respects from the Department of Business Regulation. (See §13-1-1.3.) However, as stated in Section 61-1-18, U.C.A. 1953 as amended (passed in 1963 as part of the Utah Securities Act), the Securities Commission is still embodied in the "Commission of Business Regulation":

(1) This act shall be administered by the state securities commission which shall consist of the three members of the commission of business regulation. The commission shall appoint one of its members to be the chairman; any two members of the commission shall constitute a quorum. The commission shall hold weekly meetings on such dates as it may fix, and may hold special meetings upon the call of the chairman. (Emphasis added.)

Pursuant to the 1969 reorganization, the legislature passed Section 13-1-1.2 which changed the definition of the "Commission of Business Regulation":

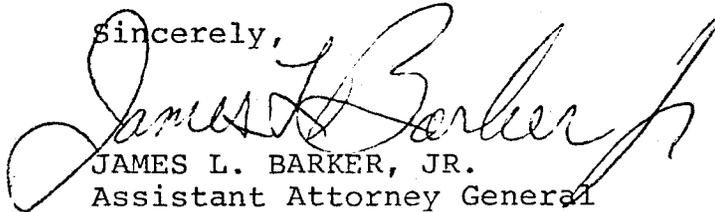
The term "commission of business regulation" means department of business regulation, and whenever the statutes of the state of Utah provide for the performance of duties by the members of the commission of business regulation, unless a different context clearly appears, such powers and duties shall be exercised by the director of business regulation. (Emphasis added.)

It is clear then, that subsequent to the passage of Section 13-1-1.2 as part of the reorganization of the Department of Business Regulation, the Executive Director of the Department of Business Regulation has authority to exercise all powers and duties originally delegated by statute to the Commission of Business Regulation, including those of the Securities Commission.

Mr. Eugene S. Lambert
September 5, 1979
Page Three

If I can be of any further assistance in this matter,
please feel free to contact me.

Sincerely,

A handwritten signature in cursive script, reading "James L. Barker, Jr.", written in black ink. The signature is fluid and somewhat stylized, with a large initial "J" and a long, sweeping tail on the "r".

JAMES L. BARKER, JR.
Assistant Attorney General

JLB/cd