

Department of Public Safety and Correctional Services. Subsection (c). All of its appointed members have terms of three years. Subsection (c)(3). It not only gives advice to the Secretary on correctional standards, but also has such powers as that of giving technical assistance to the extent authorized in the Budget, subpoenaing witnesses, issuing orders to correctional facilities to cease operations which are in violation of mandatory standards, subsection (d), and confirming or countermanding orders of inspectors closing correctional facilities, subsection (e). As positions on the Commission are created by law, involve continuing and important public duties, have, with respect to the appointed members, a definite term, and clearly involve an exercise in sovereignty, members of the Commission hold an office.

Although members of the Commission hold an office, they do not hold an office "of profit," as Section 7C(c)(7) expressly provides that the members shall not receive a salary, but shall only be reimbursed for their lawfully incurred expenses. Accordingly, legislators who are appointed to the Commission would not be holding two offices of profit, in violation of Article 35 of the Declaration of Rights. While members of the Commission do not hold offices of profit, the 1976 Opinion noted that there is a distinction between an office of profit and an office of trust. As members of the Commission might reasonably be regarded as holding offices "of trust," although not of profit, we believe that persons holding these positions would thereafter be ineligible to serve as Senator or Delegate under the terms of Article III, Section 11. Quite clearly, Article III, Section 17 would bar a Senator or Delegate from serving in an office which was created during the term for which he was elected to the Legislature. Finally, as the Commission is an agency of one of the principal Departments of the Executive Branch of government, it is also clear that a legislator serving on the Commission would be exercising the powers of more than one branch of government, in violation of Article 8 of the Declaration of Rights. However, as was noted in the 1976 Opinion, legislation could be enacted providing for the appointment of legislators to this Commission in an advisory, non-voting capacity.

Very truly yours,
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House Bill No. 27

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