



State of Alabama  
**Department of Public Health**  
 State Office Building  
 Montgomery, Alabama 36104



IRA L. MYERS, M. D.  
 STATE HEALTH OFFICER

July 18, 1980



Mr. John F. Wolf, Chairman  
 Atomic Safety and Licensing Board  
 3409 Shepherd Street  
 Chevy Chase, Maryland 20015

Re: Docket No. 70-2909

Dear Mr. Wolf:

Enclosed is a copy of the Alabama Attorney General's opinion relating to my representation in this matter.

At this time I designate, in my absence, Mr. Aubrey V. Godwin or Mr. William T. Willis as my representative in this matter.

Sincerely,

Ira L. Myers, M.D.  
 State Health Officer

ILM:ka

Enclosure

*C*

# THE ATTORNEY GENERAL

STATE OF ALABAMA · MONTGOMERY, ALABAMA 36104



February 26, 1975

WILLIAM J. BAXLEY  
ATTORNEY GENERAL

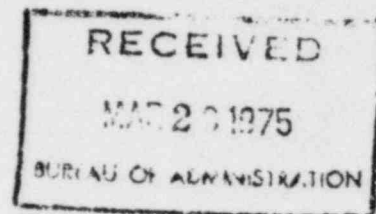
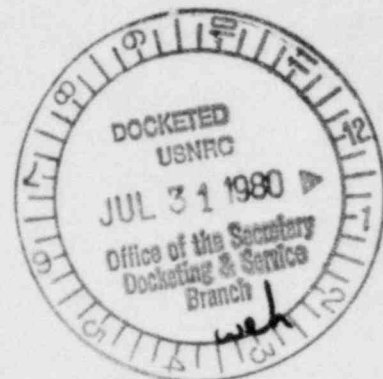
GEORGE L. BECK  
DEPUTY ATTORNEY GENERAL

E. RAY ACTON  
EXECUTIVE ASSISTANT

WALTER S. TURNER  
CHIEF ASSISTANT ATTORNEY GENERAL

LUCY M. RICHARDS  
CONFIDENTIAL ASSISTANT

JACK D. SHOWS  
CHIEF INVESTIGATOR



Dr. Ira L. Myers, M.D. *I.L.M.*  
State Health Officer  
State of Alabama  
Room 380, State Office Building  
Montgomery, Alabama 36104

Dear Dr. Myers:

This is in response to your request for an opinion dated February 10, 1975, in which you asked:

Whether the State Health Officer is authorized by the laws of the State of Alabama to represent, either pro se or by a representative, the Board of Health and the Radiation Control Agency of the State of Alabama before administrative boards, commissions and committees of other branches of government whether local, state or federal?

In my opinion, the answer to this question is in the affirmative.

In Title 22, Section 1, Code of Alabama, 1940 (1958 recomp.), the State Board of Health is constituted. In Section 6, the Board of Health is vested with the "sole control of public health".

Title 22, Section 2(3), of the Code creates the office of State Health Officer and Section 3 clothes the Health Officer with all of the powers of the Board of Health.

When neither the said committee (Committee of Public Health) nor the board (Board of Health) are in session, the State Health Officer as the executive officer of the department of health, shall act for said board and said committee....

Title 22, Section 9 of the Code fixes a statutory duty on the State Health Officer to:

keep himself informed in regard to all diseases which may be in danger of invading the state, and, as far as authorized by law, take prompt measures to prevent such invasions; keep the Governor informed as to the health conditions prevailing in the state....

From a reading of these statutes, there being no court made authority, it is clearly not only the authorized act of the Health Officer to represent the Board of Health in all matters over which the Board of Health has jurisdiction, but the legislatively mandated duty.

As to whether the State Health Officer represents the Radiation Control Agency, I cite Title 22, Chapter 13, Code of Alabama. In Section 295, the legislature acknowledges the responsibility of the state to protect the public health and safety and consonant with this responsibility, the legislature constituted the Radiation Control Agency with a mandate:

to institute and maintain a regulatory program for sources of ionizing radiation...and  
to institute and maintain a program to permit development and utilization of sources of ionizing radiation for peaceful purposes consistent with the health and safety of the public.

In Section 298 the State Board of Health is designated as the Radiation Control Agency with authority to

...advise, consult and cooperate with other agencies of the state, the federal government, other states and interstate agencies...concerned with the control of sources of ionizing radiation.

Section 298 also provides that the State Health Officer:

shall be the director of the Agency...who shall perform the functions vested in the Agency pursuant to the provisions of this chapter.

If the State Health Officer is the "director" of the agency, he must necessarily "represent" the agency before other boards, commissions and committees, of other governmental entities.

Dr. Ira L. Myers  
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Reading the statutes which empower the Health Officer to act for the Board of Health and to act for the Radiation Control Agency in para materia, it follows that the State Health Officer is authorized and directed by the legislature to "represent" both bodies in his official capacity. "Represent" is used in its generic sense and contemplates making official appearances and the like, but does not imply authority to act in a court of law as an attorney for the State of Alabama in general but merely to appear for these two agencies specifically, it being generally understood that only the Attorney General can "represent" the State as a whole.

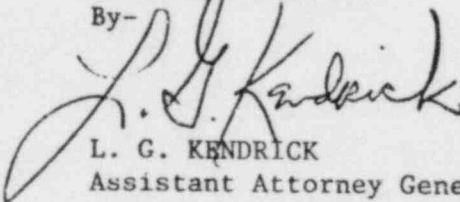
There may arise instances when several different state agencies are appearing before a board, commission or committee, each of which may have separate goals. In this instance, it would be difficult for the Attorney General to "represent" any one of these agencies. In this sense, the State Health Officer is the only authorized representative of the Board and of the Radiation Control Agency.

I trust that this opinion has sufficiently answered your question. Should you desire additional opinions, I shall be happy to oblige.

Sincerely,

WILLIAM J. BAXLEY  
Attorney General

By-

A handwritten signature in cursive script, appearing to read "L. G. Kendrick". The signature is written in dark ink and is positioned above the typed name of the signatory.

L. G. KENDRICK  
Assistant Attorney General

LGK:ln

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the matter of )  
)  
APPLICATION OF WESTINGHOUSE ELECTRIC )  
CORPORATION FOR A SPECIAL NUCLEAR )  
MATERIAL LICENSE FOR THE ALABAMA )  
NUCLEAR FUEL FABRICATION PLANT (ANFFP) )  
TO BE LOCATED NEAR PRATTVILLE, ALABAMA )



CERTIFICATE OF SERVICE

I hereby certify that copies of Dr. Ira L. Myers' letter dated July 18, 1980, with enclosure has been served on the following by deposit in the United States Mail, first class, this the 23 day of July, 1980:

John F. Wolf, Esq., Chairman  
Atomic Safety and Licensing Board  
3409 Shepherd Street  
Chevy Chase, MD 20015

Donald R. Marcucci, Esq.  
Law Department  
Westinghouse Electric Corp.  
P. O. Box 355  
Pittsburgh, PA 15230

Dr. Harry Foreman, Member  
Atomic Safety and Licensing Board  
Box 395, Mayo  
University of Minnesota  
Minneapolis, MN 55455

Julian L. McPhillips, Jr., Esq.  
P. O. Box 64  
516 South Perry Street  
Montgomery, AL 36101

Dr. Martin J. Steindler, Member  
Atomic Safety and Licensing Board  
Argonne National Laboratory  
9700 South Cass Avenue  
Argonne, IL 60439

David L. Allred, Esq.  
231 Oak Forest Drive  
Montgomery, AL 36109

Barton Z. Cowan, Esq.  
Eckert, Seamans, Cherin & Mellot  
Forty-Second Floor  
600 Grant Street  
Pittsburgh, PA 15219

Sherwin Turk  
Legal Staff  
U.S. Nuclear Regulatory Comm.  
Washington, D.C. 20555

Atomic Safety and Licensing Board  
Panel  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Docketing and Service Section (7)  
Office of the Secretary  
U.S. Nuclear Regulatory Comm.  
Washington, D.C. 20555

Atomic Safety and Licensing Appeal  
Panel (5)  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

A handwritten signature in cursive script, appearing to read "Aubrey V. Godwin".

Aubrey V. Godwin, Director  
Division of Radiological Health