

Opinion No. 47-5060

August 4, 1947

BY: C. C. McCULLOH, Attorney General

TO: Mr. C. R. Sebastian, State Comptroller, Santa Fe, New Mexico.

{*75} This will acknowledge receipt of your letter of July 31, 1947 with reference to the matter of audit of municipal records.

You state in your letter that there are several instances where the municipalities have drawn an ordinance concerning the audit of municipal records and specifying that such an audit shall be made by a certified public accountant.

You request our opinion as to whether such a contract violates Sub-section 4 of Section 7-120, New Mexico 1941 Compilation.

Sub-section 4 of Section 7-120 provides, in part, as follows:

"The state comptroller shall have power to approve or disapprove any and all contracts for auditing entered into between any officer of this state or of any county, municipality, department or institution thereof, and any private accountant or auditor or firm of accountants or auditors. **No such contract shall be binding or of any effect whatever unless and until it shall have been approved in writing by the state comptroller or his duly authorized assistant.** It shall further be the duty of the state comptroller, personally or through his duly authorized assistant, to examine all audits made pursuant to such contracts hereinabove mentioned, and payment for services rendered by any accountant or auditor or firm of accountants or auditors pursuant to any such contract shall not be made unless and until such examination has first been made and the state comptroller shall have determined and made a written finding that such audit has been made in a competent manner and in accordance with the terms of such contract, * * * *"

The language of the above section is specific. It provides **that no contract by a municipality for auditing shall be binding or of any effect unless approved in writing by the State Comptroller or his duly authorized assistant.**

The above section further specifically provides that payment for services rendered by an accountant for a municipality shall not be made until the State Comptroller or his duly authorized assistant shall have examined the audits and shall have made a written finding that such audit has been made in a competent manner and in accordance with the terms of the contract.

Although an ordinance drawn by a municipality, which prescribes the qualifications as to who shall make the audits, may not conflict with the above section, yet no contract for

auditing entered into between a municipality and an accountant is binding unless first approved by the State Comptroller, and this is true whether the contract { *76 } be by ordinance or other means.

Trusting the above sufficiently answers your inquiry, I remain

By: WILLIAM R. FEDERICI,

Asst. Atty. General