

Opinion No. 51-5386

July 19, 1951

BY: JOE L. MARTINEZ, Attorney General

TO: Mr. Robert D. Castner State Auditor State of New Mexico Santa Fe, New Mexico

{*74} In reply to your letter of May 2, 1951, requesting an interpretation of the law regarding the legality and feasibility of the use of an enclosed printed instruction, promulgated by the State Comptroller and State Purchasing Agent and approved by the State Board of Finance, which indicates that it will be the future policy to make payment upon a certified original invoice and no longer requires the use of a certified purchase voucher.

§ 7-107, New Mexico Statutes Annotated, 1941, p.s., reads as follows:

"It shall be the duty of every state and county official and employee, and the officials and employees of every state and county institution, penal, reformatory, educational and charitable, every charitable institution or hospital for which legislative appropriation is made, every incorporated city, town or village, every municipal, consolidated, union high or rural school district, every drainage or irrigation district, every building and loan association and every public corporation, board, bureau or commission, to keep all the books, records and accounts in their respective offices in the form prescribed and to make all reports as may be required by the state comptroller (state board of finance). The State comptroller (state board of finance) shall formulate, prescribe and install the form of vouchers to be used by all state and county officials and employees, all officials and employees of the state and county institutions, penal, reformatory, educational and charitable, all the officials and employees of each incorporated city, town or village, all the officials and employees of each drainage or irrigation district, and all officials and employees of such boards, bureaus, commissions or corporations as handle, receive or disburse public moneys, and all payments of moneys by such officials and employees to any claimant for moneys due for supplies furnished or for services rendered and properly chargeable against and due from public funds shall be made on vouchers as so formulated, prescribed and installed. Such vouchers shall be designed so as to clearly show the supplies furnished or the services rendered and in case of supplies {*75} furnished, the original bill of the claimant must be attached to such voucher, and in case reimbursement is claimed by any public official or employee, the voucher appertaining thereto must have receipts attached for all moneys claimed. All such vouchers, before payment is made thereon, must have the approval in writing of the head office or department to which the claim appertains thereon, and it must be duly signed and sworn to by the applicant. Provided, that a receipt signed only by the official or employee claiming the right to reimbursement shall be null and void. Provided further, that the state comptroller may accept in lieu of a notarization, a signature witnessed in writing by two (2) or more disinterested parties."

Under the above quoted section, the State Comptroller (Board of Finance) has only authority to change the form of vouchers but not to abolish them. The State Comptroller (Board of Finance) has the right to make rules and regulations but they must not be contrary to existing laws.

The use of the certified original invoice is all right so long as it is used with a purchase voucher and not alone. Such use of the invoice might be practical for I understand the Federal government follows this practice and obviates delayed payments. Under our State statute the use of a certified purchase voucher cannot be totally abolished until and unless the existing statute herein above quoted is amended or repealed.

By way of a comment, to follow this regulation you would be required to make a warrant for each individual purchase and if a department made purchases from a merchant at different times during the month, you would have to make a warrant for each purchase and the issuance of warrants would increase a thousand fold.

Also, if more than one certified invoice was submitted at one time, a simple mathematical error in extending prices and totals could result in an incorrect warrant being issued. There would be hundreds of different sizes and types of certified original invoices submitted to your office for payment, which would in turn make a simplified and uniform system of filing paid invoices impossible. You would likely have to increase your office force and office space and I doubt that you can do that under your present appropriation.

I would like to call your attention to a portion of Section 12 of a Committee Substitute for House Bill No. 300 recently passed by the State Legislature, which reads as follows:

"No appropriations except those for State institutions, whose manner of payment is more fully set out herein, shall be paid pursuant to this Act except upon vouchers submitted to and approved by the State Auditor, such vouchers to be properly prepared and supported by itemized invoices and such other data as required by the Auditor. All vouchers for the expenditure of funds covered by this appropriation must be duly certified by the State official or department head authorizing the expenditure, or a duly authorized agent of such official or department head, and must be signed by the payee; however, it will not be required that the signature of the payee be notarized except on payroll vouchers and vouchers for reimbursement. Anyone found guilty of making fraudulent claims shall be subject to the penalties provided in Section 17 of this Act. Payments of appropriations for interest and sinking funds may be made directly by the State Treasurer. All appropriations to State departments and agencies shall be paid in twelve equal monthly installments, except that in cases of emergency, the State Board of Finance may allow {*76} quarterly appropriations.

"No officer or employee of the State shall be allowed or paid any sum for transportation, lodging or subsistence except when traveling away from his designated post of duty on official business, nor in excess of necessary traveling expenses actually incurred and paid; except that State officers and department heads may allow in lieu of actual

expenses for lodging and subsistence a sum not to exceed ten dollars (\$ 10.00) per day, the rate allowed being subject to the approval of the State Comptroller and the State Board of Finance. Expenses for lodging and subsistence also may be allowed not to exceed ten dollars (\$ 10.00) per day. The maximum rate which may be allowed for travel by privately owned cars shall be seven cents (7c) per mile unless otherwise provided by special statute. Any state officer or department head authorizing the use of a privately owned car shall file such written authorization with the State Auditor prior to submitting vouchers in payment for such use.

"Out of state travel must be approved by the Governor in writing before such travel is incurred, such approval being on regular forms prescribed by the State Comptroller. Out of state per diem for lodging and subsistence shall be at the discretion of the Governor. All expense incurred in traveling shall be governed by rules and regulations issued by the State Comptroller, who is authorized and directed to issue such rules and regulations not in conflict with the provisions of this Act."

You will note that this section provides specifically that vouchers have to be used and be certified by state officials and department heads, which authorizes the expenditure of money.

Section 17 of the same Act provides a penalty for any member or members of any board of control, persons, officials or agency of the State who shall violate the provisions of this Act, shall be guilty of a felony and upon conviction thereof shall be punished by a fine of not more than ten thousand dollars (\$ 10,000.00) nor less than five hundred dollars (\$ 500.00) or imprisonment for a term of not more than ten years, or both, and in addition thereto, shall be liable for the payment to the State of all amounts to be expended out of any purchase made in violation thereof.

Although this Act does not become effective until June 9, still after June 9 all state officials and state departments, etc., will have to comply with the provisions herein above quoted.

It is therefore my opinion that the regulation that you enclosed, and which was approved by the State Comptroller, State Purchasing Agent and State Board of Finance, is contrary to existing law.

Trusting that this fully answers your inquiry, I am