

Opinion No. 51-5465

December 14, 1951

BY: JOE L. MARTINEZ, Attorney General

TO: Mr. Ed Hartman State Comptroller Santa Fe, New Mexico

{*175} You recently requested an opinion of this office as to whether Chapter 65 of the Laws of 1941 (§ 7-109, N.M.S.A.) gives the State Comptroller the authority to charge state offices, departments, commissions, etc. for auditing services performed by the Comptroller's staff.

You referred to a former opinion of the Attorney General dated September 12, 1931, issued to J. M. Lujan, State Comptroller, in which the following statement was made:

"The State Comptroller must audit state offices, departments and the like without cost thereto."

You are correct in your contention that this opinion was based upon the then existing law, Chapter 134, Section 507, New Mexico Statutes Annotated, 1929. The former law provided for payment to the State Comptroller for audits performed by him of various political bodies, other than state offices, departments, boards, commissions, etc.

The former law read as follows:

"§ 7-109. Audits. -- The state comptroller or any of his assistants shall have the power to examine into all financial affairs of every state and county public office or officer, and every state and county institution, bureau, board or commission, whether penal, reformatory, educational or charitable, every charitable institution or hospital for which legislative appropriation is made, every incorporated city, town or village, every municipal, consolidated, union or rural school district, every drainage or irrigation district, every building and loan association and every other office of official or board, bureau, commission or corporation of a purely public nature. * * *."

The fourth sentence of the former law read as follows:

"Whenever any county, incorporated city, town or village, school district, drainage district, irrigation district or other official, institution, governing board or corporation of a public nature shall cause an audit to be made as hereinbefore provided, such audit shall be paid for upon a basis of payment to be determined by the comptroller."

{*176} That law has now been changed and as it now reads it provides that the comptroller has the power to make audits of state offices, departments, etc. The fourth sentence now reads as follows:

"Whenever any unit hereinbefore mentioned shall cause an audit to be made, or when the governor or the state comptroller may deem it necessary or advisable that such audit be made, the cost of such audit shall be borne by the unit or political subdivision so audited on a basis to be agreed upon by the state comptroller and the governing board of the unit or political subdivision."

It follows, therefore, that under the provisions of existing law if the State Comptroller performs an audit of any state department, board, etc., the cost of the audit shall be borne by such unit on a basis to be agreed upon by the head of the department and the State Comptroller.

It is to be noted in this connection that Section 109 of Chapter 7 provides that if any department does not have funds to pay for such audit, it shall include in its next budget an item to cover this cost.

Your attention is respectfully called to the fact that notwithstanding the power of the Comptroller to make such audits of state departments, units, etc., and to charge for such services, the disposition of the funds obtained therefor is governed by the same section of the statute.

Your attention is also respectfully called to the fact that the same section permits the governing authorities of any political subdivision, unit, bureau, etc., to cause independent audits to be made.

I trust this fully answers your inquiry.