

Opinion No. 53-5658

February 3, 1953

BY: RICHARD H. ROBINSON, Attorney General

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

{*45} This is in reply to your request for an opinion upon the question of whether § 7-107 N.M.S.A., 1941 Comp., as amended, Laws of 1941, Ch. 46, § 1, would cover an audit of the Middle Rio Grande Conservancy District, or is this section superseded by § 77-2927 N.M.S.A., 1941 Comp., as amended, Laws of 1927, Ch. 45, § 527.

Your attention is directed to Attorney General's Opinions Nos. 1800, 1787 and 1784, appearing in the 1937-38 Report of the Attorney General of New Mexico at pages 173, 170 and 166. In substance, those opinions held that § 7-107 N.M.S.A., 1941 Comp., as amended, did not intend to exempt the Middle Rio Grande Conservancy District from control by the State Finance Board and the State Comptroller, and that under the provisions of § 77-2927 N.M.S.A., 1941 Comp., as amended, the intention of the Legislature was to provide for an annual audit for the political subdivision, but did not exempt them from control of the State Comptroller. This office has taken due consideration of the opinion of Judge Threet, attorney for the Middle Rio Grande Conservancy District, and in respect to the history of § 7-107 N.M.S.A., 1941 Comp., as amended, it feels that Judge Threet has in fact pointed out a very material and important factor. At no point since the original passage of the Comptroller's bill in 1923 has the Legislature repealed § 77-2927, but such corrections or changes that have been made to § 7-107 have been made by amendment and the original character of the act remains, whereas the 1927 enactment (§ 77-2927) would appear to designate, without {*46} other legislative conflict, that the Middle Rio Grande Conservancy District was exempt from "audits" of the State Comptroller's office. This office is in concurrence with the spirit and theory of the previous Attorney General's opinions above cited, but this concurrence is with the reservation that the Laws of 1927, § 77-2927, specifically provide an exemption from audit.

The word "audit as defined in 7 CJS, p. 1275, has been defined as meaning "an examination into accounts or dealing with money or property, especially an examination by proper officers or persons appointed for that purpose to compare the charges with the vouchers, examine witnesses, and state the results; an official verification of accounts or claims; a hearing, on examination, an adjustment, an audience, an investigation; an official examination of the account, comparing the vouchers with the charges and fixing the balance." It appears to this office that such an audit as contemplated in § 77-2927 N.M.S.A., 1941 Comp., as amended, would be a complete supervisory check of all the books and records of the Middle Rio Grande Conservancy District.

Looking again into § 7 -107 N.M.S.A., 1941 Comp., as amended, this would not derogate against the power of the State Comptroller to enforce the law requiring the Middle Rio Grande Conservancy District 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," and so forth.

In regard to the second phase of your inquiry as to whether your orbit of control extends to the approval of audit contracts entered into by conservancy districts and private auditors under § 77-2742 N.M.S.A. it would appear that under § 77-2743 N.M.S.A., 1941 Comp., as amended, the Middle Rio Grande Conservancy District has been specifically exempted from the provision of this law requiring that such audit shall be made by a private firm or auditor approved by the State Comptroller.

In summation, this office is in concurrence with prior Attorney General's opinions and with the spirit of the law requiring those persons handling public moneys and being in the nature of public corporations, boards or commissions, to follow procedures outlined by the State Comptroller in the supervision of their accounts. This is modified by the fact that the law specifically exempts the Middle Rio Grande Conservancy District from an "audit" by the Comptroller's office, which law has never been repealed or amended by implication or otherwise.

It is the opinion of this office that if the State Comptroller should desire that such an exception be eliminated, and that orderly conformity be established, § 77-2927 N.M.S.A., 1941 Comp., as amended, should be repealed and re-enacted, stating therein more clearly the fact that such audit is for the purposes only of the district courts and local policing of the state or county political subdivisions. As an alternative measure § 7-107 N.M.S.A., 1941 Comp., as amended, could be repealed in toto and re-enacted which would then have the effect of repealing by implication the statute mentioned above.

We sincerely hope that this answers your questions in this matter.

By: William J. Torrington

Assist. Attorney General