

**Opinion No. 56-6498**

July 19, 1956

**BY:** RICHARD H. ROBINSON, Attorney General

**TO:** Mr. D. M. Smith, Jr., State Comptroller, Santa Fe, New Mexico

In answer to yours of July 9, 1956 in which, as we understand it, the following issue is raised:

Specifically, you inquire whether your office has the power to approve audit contracts entered into by the Elephant Butte Irrigation District and a private firm of auditors. We note that the question is raised because a previous opinion of this office, No. 5658, dated February 3, 1953, stated that the Middle Rio Grande Conservancy District was exempt from audit control of your office as the result of certain provisions of the current Conservancy Law. The matter was further clouded by issuance of opinion in the 1937-38 Report of the Attorney General of New Mexico at pages 166, 170 and 173, which would appear to hold to the contrary.

We ask that you note that the Middle Rio Grande Conservancy District was formed under enabling acts pertinent to it, in 1927 -- containing, among other things, provisions for audit control not involving your office. On the other hand, the Elephant Butte In Act of 1919, which Act contains no rigation District was formed (we are told by Mr. Bliss, former State Engineer) under the Irrigation equivalent auditing exemptions as hereinbefore referred to. Consequently, the general provisions of the law, as pertains to your office, apply -- specifically, New Mexico Statutes, §§ 11-1-10 and 11-1-21, 1953.

We are aware of the similarity, if not unanimity, of purpose of irrigation districts and conservancy districts, and we are not relying solely on the variance in entitlement. However, it is not the function of this office to legislate. We, therefore, confine our analysis to the acts enabling the Middle Rio Grande Conservancy District and the Elephant Butte Irrigation District to be formed.

The opinion of this office is that the State Comptroller has power to approve auditing contracts of the Elephant Butte Irrigation District.

By Howard M. Rosenthal

Assistant Attorney General