

Opinion No. 57-182

July 24, 1957

BY: OPINION OF FRED M. STANDLEY, Attorney General Hilton A. Dickson, Jr.,
Assistant Attorney General

TO: Major General Charles G. Sage, The Adjutant General, Santa Fe, New Mexico

QUESTIONS

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Are the provisions of § 9-9-7, N.M.S.A., 1953 Compilation, valid after July 1, 1957?

CONCLUSION

Yes.

OPINION

ANALYSIS

Section 9-9-7 provides:

"It shall be the duty of the **auditor** of the state of New Mexico, upon receipt of a certificate executed by the adjutant-general of the state of New Mexico, and setting forth that a surplus exists in any fund created for the support and maintenance of the national guard of the state of New Mexico, over and above the amount necessary to meet the expenses for which said fund is created, to make a transfer of such surplus money, as may be requested by the adjutant-general, to any fund in which the certificate of the adjutant-general may show a deficiency to exist, or which may exist, or to any fund the adjutant-general may deem necessary to create for the purpose of providing storage and safe-keeping of all arms, ammunition and equipment of the national guard; said moneys when so transferred to be disbursed in the same manner as other moneys are authorized to be disbursed by his office." (Emphasis Supplied).

Prior to July 1, 1957, the considered section did in no way violate existing provisions governing the authority of the State Auditor, State Comptroller of State Budget Director, and for all purposes may, in our opinion, be considered as a valid law under the New Mexico Constitution.

The 1957 Legislature, in its enactment of Chapter 252 of the Session Laws of that year, in effect stripped the State Auditor of many duties which had previously been imposed by statute. Generally affected by the aforesaid legislation was an imposition upon the newly created Director of Public Finance and Administration of pre-audit responsibilities

and, in turn, an imposition upon the State Auditor of those obligations and responsibilities involved in the post-auditing of all public transactions.

Specifically and with reference to the question herein considered, we find in § 5 of the aforesaid Session Laws, the same being § 11-2-67, N.M.S.A., 1953 Compilation, 1957 Pocket Part, as follows:

"All warrants upon the state treasury shall be issued by the director. All the powers and duties of the state auditor relating to the issuance of warrants of the **transfer of funds** are imposed upon the director." (Emphasis Supplied).

In keeping with the language of the law last quoted, it becomes apparent that the manifest intent of the Legislature was to impose in the new Director of Finance and Administration all duties relative to the transfer of funds previously exercised by the State Auditor.

The New Mexico Supreme Court, in *Torres v. Grant*, 62 N.M. , in a decision dated July 12, 1957, upheld the constitutionality of Chapter 252, *supra*, and stated in its opinion that:

"Chapter 252, Laws 1957 admittedly strips the State Auditor of many of the more important statutory duties and powers previously performed by him. But in view of what is later said, that does not render the Act unconstitutional. We notice that Article 5, Section 1, New Mexico Constitution, adopted January 21, 1911, in designating the executive officers of our state government, among which is the office of State Auditor, is silent as to the duties appertaining to the office of State Auditor. This being so, the legislature had power to transfer purely statutory duties of the office previously performed by the auditor to another officer of its own choosing."

In keeping with the *Torres* case, it is our opinion that § 9-9-7, N.M.S.A., 1953 Compilation, was a valid and enforceable statute prior to July 1, 1957, and that subsequent to the aforesaid date that a duty imposed upon the State Auditor by said section becomes a duty of the Director of the Department of Finance and Administration, and that the provided for certificates for a transfer of appropriated funds by the Adjutant General should be directed to that officer.