

## **Opinion No. 57-315**

December 5, 1957

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

**TO:** Mr. Ben Chavez, State Auditor, Capitol Building, Santa Fe, New Mexico

### **QUESTION**

#### QUESTION

". . . Which of the following items should the City Clerk be chargeable for on her bond: Office equipment and furniture in the city hall, fire equipment of the volunteer fire department, city trucks, water department equipment. If any of these items are not her responsibility who should be responsible for them?"

#### CONCLUSION

See opinion.

### **OPINION**

#### ANALYSIS

The above stated inquiry is premised in a presentment of facts to the effect that only the City Clerk of Jal and her assistant were bonded during the audit period considered.

The statute given rise to the questions put is found at § 4-4-2. 16, N.M.S.A., 1953 Compilation, 1957 Supplement, and provides as follows:

"The state auditor or his employees shall at the time of the annual audit conduct a physical inventory of the chattels and equipment of all state agencies and local public bodies. Such inventories shall be maintained by the state agency or local public body. Such inventories upon completion, shall be certified by the governing authority of the state agency or local public body and the state auditor, his employee, or independent contract auditor as to correctness. The official or governing authority of the state agency or local public body shall be chargeable upon his official bond for the chattels and equipment as shown in said inventory, together with all additions made thereto since the prior inventory.

"No bondsmen or sureties upon the official bonds of any officer or employee of any state agency or local public body shall be released from liability until a complete accounting has been had by their respective principals therefor.

"All official bonds written after the effective date of this act shall provide or be written in such a manner as to include inventories."

Considering this language, may it be said that the bonded city clerk is responsible and accountable for the public property specified? From the facts presented, we think not.

Section 14-15-7, N.M.S.A., 1953 Compilation, specifically establishes the public body in which all municipal corporate power vests and further sets out the areas of responsibility for management and control of finances and public property, as follows:

"The city council shall possess all the powers granted by law, and other corporate powers of the city not herein, or by some ordinance of the city council, conferred on some officer of the city; they shall have the management and control of the finances, and all the property, real and personal, belonging to the corporation; they shall determine the times and places of holding their meetings, which shall at all times be open to the public, and the mayor and any three (3) members may call special meetings by notice to each of the members of the council, personally served or left at his usual place or residence; they shall appoint or provide by ordinance that the qualified electors of the city, or of the wards or districts, as the case may require, shall elect all such city officers as may be necessary for the good government of the city and for the due exercise of its corporate powers, and which shall have been provided for by ordinance as to whose election or appointment provisions have not herein been made; and all city officers whose terms of service are not prescribed, and whose powers and duties are not defined by law, shall perform such duties, exercise such powers, and continue in office such period, not exceeding, one (1) year and until their successors are appointed and qualified, as shall be prescribed by ordinance; but all officers, to be elected shall be elected at the regular election for municipal corporation. The officers of cities shall receive such compensation and fees for their services as the council shall by ordinance prescribe."

And further, by § 14-17-1, N.M.S.A., 1953 Compilation, we find the bonding requirements for elected or appointed city, town and village officers:

"All officers elected or appointed in any municipal corporation shall take an oath or affirmation to support the Constitution of the United States and the Constitution and laws of the state of New Mexico, and faithfully to perform the duties of their officers, and the trustees or council of any municipal corporation shall require from the treasurer and such other officers as they may think proper, a bond with proper penalty and surety, for the care and disposition of corporation funds in their hands, and the faithful discharge of the duties of their office, and such trustees or council shall have the power to declare the office of any person appointed or elected to any office who shall fail to take the oath of office, or give bond when required for ten (10) days after he shall have been notified of appointment or election, vacant, and proceed to appoint as in other cases of vacancy."

From the foregoing statutory provisions, we must conclude that the city clerk would not be responsible, on the bond, for the property stated, unless, by stated condition, or ordinance provided, the duties and responsibilities of the clerk were made specific. In the absence of such delegation of responsibility, the local governing body, or the city council must be looked to for accountability.

In the case of equipment belonging to a volunteer fire department, § 58-5-21, N.M.S.A., 1953 Compilation, 1957 Supplement, provides in part as follows:

"The expenditure of such funds (fire protection) shall be under the direction of the city council, commission or board of trustees, as the case may be, and in no event shall the moneys in any fire fund be diverted into any other use than those expenditures that relate specifically to fire fighting equipment and fire protection . . . . The Chief of the fire department in the city town or village where said fire department is a volunteer department serving without pay, and any person responsible for the expenditure of said funds contrary to the provisions hereof, shall be liable to the state for all amounts so wrongfully expended, in an action to be brought for that purpose by the Attorney General or the district attorney."

Accordingly, it is our opinion, that the fire chief, if having delegated responsibility, would be responsible for the equipment of his department. Otherwise, the city council or comparable body must be looked to.

Final responsibility for all other property stated would likewise necessitate a finding of specific delegation of such responsibility, except in the case of a city treasurer, whose duties and responsibilities are generally fixed by law. Sections 14-18-1 and 14-18-2, N.M.S.A., 1953 Compilation.