

**Opinion No. [59-1388]**

July 24, 1959

**BY:** Hilton A. Dickson, Jr., Attorney General

**TO:** Hon. Stanley J. Brasher State Representative Bernalillo County P. O. Box 217  
Cedar Crest, New Mexico

{\*136} In Opinion 59-79, in the analysis at pages 11 and 12, reference is inadvertently made to Section 11-1-1, N.M.S.A. 1953, as amended by Laws 1957, Ch. 47, Section 1, as the currently effective law relating to composition of the State Board of Finance. This reference should have been to Section 11-1-1, N.M.S.A. 1953 as amended by Chapter 8, Laws of 1959, which added the Lieutenant Governor as a member of the Board, and is substantially identical with the previous statute in material part. The second full paragraph on page 11 of the opinion, as corrected to reflect the statutory references, will then read as follows:

"If the foregoing analysis should leave any doubt upon the question, this office is satisfied, for reasons already stated, that the State Board of Finance, established by Section 11-1-1, N.M.S.A., 1953 (originating in Laws 1923, Chapter 76, Section 3; amended Laws 1925, Ch. 85, Sec. 1, Laws 1953, Ch. 161, Sec. 1; Laws 1957, Ch. 47, Sec. 1; Laws 1959, Ch. 8), is an executive agency, charged with the execution of the laws passed by the Legislature in the ". . . general supervision of the fiscal affairs of the state . . .", and vested with no powers and no duties which can be deemed legislative in their nature."

The last full paragraph at page 12 of the opinion, as corrected to reflect the statutory references, will then read as follows:

"The State Board of Finance is constituted pursuant to Section 11-1-1, N.M.S.A., 1953, as amended, which originated in Laws 1923, Ch. 76, Section 3. Although the principal function of the Board, since that first enactment, has been ". . . the general supervision of the fiscal affairs of the state . . .", the organization and composition of the Board has been changed from time to time; and Laws 1953, Ch. 161, Section 1, for the first time provided for legislative members of the Board. The statute, as currently effective, provides for a Board of eight members: the Governor, the Lieutenant Governor, the State Auditor, and three members appointed by the Governor with the advice and consent of the senate, no more than two from the same political party; and

'(5) one member from each house of the legislature to be appointed in the same manner and at the same time standing committees of the respective houses are appointed.'"

In the same manner, reference in the conclusion should be corrected to reflect the 1959 amendment, and to read as follows:

"The net effect of this opinion is to uphold the powers of the State Board of Finance, but to invalidate the statutory provision pursuant to which two legislators serve on the Board by reason of the ineligibility {*\*137*} of legislators to serve as provided, in view of Article IV, Section 28. Although this ruling is made because compelled by the law as we understand it, and the result is to leave in operation a six-man State Board of Finance, we suggest that the importance of a final ruling in the matter from the viewpoint of the public interest, is such that a ruling in the matter should be obtained, if possible, from the Supreme Court of New Mexico, in order to set the matter to rest."

Correction of these statutory references has no bearing upon the conclusions stated in Opinion 59-79, and leaves these conclusions, and the analysis upon which they are based, unimpaired.