

## Opinion No. 60-101

June 2, 1960

**BY:** OPINION of HILTON A. DICKSON, JR., Attorney General

**TO:** Robert D. Castner State Auditor Santa Fe, New Mexico

### QUESTION

#### QUESTIONS

1. Does the State Auditor have the power of final approval of all audit contracts made for the services of public accountants to audit state agencies defined by § 4-4-2.1, N.M.S.A., 1953 Comp. (P.S.)?
2. Should payment of public accountants so employed be made from the "Public Auditing Fund"?

#### CONCLUSIONS

1. Yes.
2. Yes, with the exception of payment for audits of agencies having nontransferable budget items for the payment of such expenses.

### OPINION

#### {\*469} ANALYSIS

An affirmative answer to the first question is clearly dictated by §§ 4-4-2.1 et seq., N.M.S.A., 1953 Comp. (P.S.). Section 4-4-2.2 requires annual audits of every state agency and public body. Section 4-4-2.3 provides that annual audits shall be conducted by the State Auditor, personnel of his office designated by him, **or by independent auditors, approved by the State Auditor.** Even if the above language were not held to be conclusive, the issue is resolved beyond any shadow of doubt by § 4-4-2.7 which declares in pertinent part as follows:

"The state auditor shall have the power to approve or disapprove any and all contracts for auditing entered into between any officer of any state agency or local public body, and any private accountant or auditor or firm of accountants or auditors. No such contract shall be binding or of any effect whatever unless and until it shall have been approved in writing by the state auditor. . . ."

The second question is answered by the Laws of 1959, Chapter 288, § 3, entitled "Public Auditing." That section provides that each department, office, agency and

institution shall include in its budget an item for payment of audit expenses. The subject section then proceeds to declare as follows:

"The sums budgeted for audit expense by the state highway department, employment security commission, department of public welfare, state land office, and the department of game and fish shall be a non-transferable budget item which shall be expended by these offices and departments as a regular administrative expense in payment of the cost of audits conducted by the state auditor . . . The sums budgeted for audit expense by all other departments, offices, agencies and institutions shall be transferred in full within thirty days after the beginning of the fiscal year by voucher to the state auditor **to be credited to the public auditing fund and to be used by the auditor with the approval of the state board of finance in conducting the audits . . .**" (Emphasis added).

It is clear from the above that except as regards the enumerated agencies, all moneys budgeted for audit expenses are to be transferred to the "public auditing fund." Since the only audits required and authorized by statute are those referred to in §§ 4-4-2.1 et seq., it {470} is apparent that it was the intention of the Legislature that this fund be used to pay public auditors who perform their services for a state agency pursuant to an audit contract approved by the State Auditor.

By: F. Harlan Flint

Assistant Attorney General