

Opinion No. 63-60

June 3, 1963

BY: OPINION OF EARL E. HARTLEY, Attorney General

TO: Mr. John W. Gott, Director Department of Finance and Administration State Capitol Santa Fe, New Mexico

QUESTION

QUESTION

May the Director of the Department of Finance and Administration delegate to the State Highway Department the responsibility for pre-audit of vouchers, the drawing of warrants and the custody of the Director's signature plate for signing of those warrants subject to the condition that the Chief Highway Engineer execute a bond in the penal amount of \$ 50,000 to the joint favor of the Director of the Department of Finance and Administration and the State of New Mexico, guaranteeing the observance of all laws and regulations relating to proper execution of such delegated responsibilities?

CONCLUSION

See analysis.

OPINION

{*129} ANALYSIS

The applicable statutory provisions requiring our consideration are contained in Chapter 252, Laws of 1957. Section 3 of this act, compiled as Section 11-2-65, N.M.S.A., (P.S.) provides:

{*130} "Legality and authority for proposed expenditures determined by division of financial control -- Encumbering funds. -- Before any vouchers or purchase orders are issued or contracts are entered into involving the expenditure of public funds by any state agency, the authority for such proposed expenditure shall be determined by the division of financial control. After the authority for such expenditure is determined, the appropriate fund shall be shown by the division to be encumbered to the extent of such proposed expenditure."

Section 5, Chapter 252, Laws of 1957 (§ 11-2-67, N.M.S.A., 1953 Compilation (P.S.) specifies:

"Warrants issued by director -- Powers and duties of state auditor regarding warrants and transfer of funds imposed upon director. -- 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 or the transfer of funds are imposed upon the director."

Section 13, Chapter 252, Laws of 1957 (§ 4-4-9, N.M.S.A., (P.S.)), states:

"Disbursement of funds -- Warrant from director -- Interest. -- It shall be unlawful for the state treasurer to disburse or pay out any funds in his hands, the proceeds of any regular or special tax, or any moneys that may come to his hands as treasurer of the state of New Mexico, except on warrant of the director of the department of finance and administration: . . ."

The authority, however, for the Director of the Department of Finance and Administration to delegate or except certain state agencies from the above requirements is set out in § 11-2-71, N.M.S.A., 1953 Compilation. This section provides:

"Director may authorize state agencies to issue warrants -- Director may except state agencies from submission of proposed vouchers, purchase orders, or contracts. -- The director of the department of finance and administration may, when he determines that efficiency or economy so requires, authorize state agencies to issue warrants and except state agencies from the requirement of prior submission of proposed vouchers, purchase orders, or contracts to the division of financial control as provided in Section 3 (11-2-65) of this act. Such authorization or exception shall be made by the order of the director in writing. The order shall state the extent of the authorization or exception and the reasons therefor."

This office has held previously in Attorney General's Opinion No. 60-57, dated March 28, 1960, that the Director of the Department of Finance and Administration has the authority to authorize the Chief Highway Engineer to sign warrants issued by the Highway Department. Under the provisions of § 11-2-71, supra, we believe that specific authority is given to the Director of the Department of Finance and Administration to permit the Chief Highway Engineer of the State Highway Department to draw and issue state warrants for such department and to utilize the director's signature plate for this purpose. This same section, in our opinion, empowers {**131*} the director in his discretion to delegate to the Chief Highway Engineer the authority to make a prior determination as to the actual authority for a proposed expenditure of public funds by the Highway Department, and which would otherwise be required by the division of financial control of the Department of Finance and Administration pursuant to § 11-2-65, N.M.S.A., 1953 Compilation (P.S.).

Since Section 11-2-71, N.M.S.A, 1953 Compilation (P.S.) states that the Director of the Department of Finance and Administration may condition such authorization to issue state warrants upon such conditions as he shall determine by written order to be necessary, it is our opinion that the written order should include a specification that the Chief Highway Engineer execute a surety bond issued by an authorized surety company in the penal amount felt necessary by the director to insure against violations or defalcation. Such bond should be in a penal amount payable to the state of New

Mexico and conditioned upon the faithful performance of such specifically delegated fiscal duties stated in the written order of the director, and in addition, such bond should guarantee the observance by the person bonded of all laws and regulations of the state of New Mexico pertaining to such fiscal matters.

In our opinion, however, such bond should be payable **only** to the State of New Mexico, not in the joint favor of the state and the Director of the Department of Finance and Administration. In the case of **Keeter v. Board of County Commissioners, Guadalupe County** (1960) 67 N.M. 201, 354 P. 2d 135, it was held that under Section 11-2-37, N.M.S.A., 1953 Compilation, an official bond is one made payable to the State of New Mexico for its indemnification in case of wrongdoing on the part of the bonded person and not one made payable to a private individual.

By: Thomas A. Donnelly

Assistant Attorney General