

## Opinion No. 65-143

August 3, 1965

**BY:** OPINION OF BOSTON E. WITT, Attorney General Oliver E. Payne, Deputy Attorney General

**TO:** Commissioner Murray E. Morgan, Chairman, New Mexico State Corporation Commission, Santa Fe, New Mexico

### QUESTION

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Is the office of the state fire marshal a separate department or division of the corporation commission?

#### CONCLUSION

Yes.

### OPINION

#### {\*239} ANALYSIS

The issue of what divisions or departments exist within a state agency has been the subject of certain questions because of paragraph I of Section 5-4-31, N.M.S.A., 1953 Compilation (P.S.). This section permits the head of a division of an agency to have not more than two unclassified assistants.

As we pointed out in Opinion No. 63-33, historically divisions of state agencies have been created by means of legislative action and by executive order. In the same opinion we noted that the legislature took cognizance of this fact when it enacted the 1963 amendments to the Personnel Act. We there said:

"Numerous instances in the organizational pattern of New {\*240} Mexico state government may be cited where state agencies, boards, commissions and departments have acted in the past to organize administratively subordinate divisions within such state body. Examination of the various legislative general appropriation acts reveal that **legislative appropriations have from time to time been made to certain administratively organized and designated divisions of state agencies.**" (Emphasis added).

Section 4-16-1, N.M.S.A., 1953 Compilation, originally enacted in 1955, created the position of state fire marshal and the next section provided that the marshal had the power to hire a deputy state fire marshal and other employees.

To us this certainly indicates that the office of the state fire marshal is a legislatively created division within the corporation commission.

The same law creating the office of the state fire marshal (Chapter 214, Laws 1955) appropriated specifically for this office the sum of \$ 15,000, vouchers for which were to be signed by the marshal.

Then in 1957 the state fire marshal was included in the General Appropriation Act separately and was granted a specific appropriation. Chapter 235, Laws 1957. The same was true in 1959 (Chapter 288, Laws 1959), in 1961 (Chapter 254, Laws 1961), in 1963 (Chapter 287, Laws 1963), in 1964 (Chapter 2, Laws 1964), and in 1965 (Chapter 313, Laws 1965).

We can think of no way in which legislative recognition of the office of state fire marshal as a separate division could be more clearly manifested. This was the basis upon which we recognized in Opinion No. 61-28 that the fire marshal, the superintendent of insurance and the insurance board were separate departments within the corporation commission.

We are not here dealing with an executive **reorganization**; rather we have a situation where both the legislature and the executive commission, i.e., the corporation commission, have recognized from the very first that the state fire marshal's office is a separate division of the corporation commission.