

## **Opinion No. 70-52**

May 15, 1970

**BY:** OPINION OF JAMES A. MALONEY, Attorney General

**TO:** Mr. Joseph F. Halpin Records Administrator State Records Center & Archives 404 Montezuma Santa Fe, N.M. 87501

### **QUESTIONS**

#### **FACTS**

Some state agencies with a policing responsibility for other state agencies, particularly in the expenditure of funds, such as the State Auditor, Department of Finance and Administration and Legislative Finance Committee, have requested that they be permitted to withdraw and inspect another agency's records from the State Records Center without the knowledge of that agency.

#### **QUESTION**

Is the State Records Center authorized to permit a state agency charged with policing another state agency to withdraw the agency's records for inspection without the approval of the originating agency?

#### **CONCLUSION**

See analysis.

### **OPINION**

#### **{\*84} ANALYSIS**

The State Records Center was established by law in Santa Fe as "the facility for the receipt, storage or disposition of all inactive and infrequently used records of present or former state agencies . . . which are not required by law to be kept elsewhere," Section 71-6-8, N.M.S.A., 1953 Comp. (1969 P.S.). The state records administrator is designated as the official custodian and trustee for the state of all public records and archives which are transferred to the records center by any public office of the state. Section 71-6-6, N.M.S.A., 1953 Comp. (1969 P.S.).

Section 71-6-8, N.M.S.A., 1953 Comp., makes it clear that all records which are retained by the State Records Center and which are required by law to be confidential shall not be made available for public inspection except as otherwise provided by law. Thus, if the records are required by law to be confidential, the policing agency should not be allowed to inspect the records or withdraw the same without the knowledge and

permission of the creating agency unless the policing agency has some independent statutory authority to inspect and withdraw these records.

Section 71-6-8, supra, also provides that records which are not required to be confidential shall be open for public inspection. This section provides in part:

"Records required to be confidential by law and which are stored in the center shall be available promptly when called for by the originating agency, but shall not be made available for public inspection except as provided by law. All other records retained by the center shall be open to the inspection of the general public, subject to reasonable {\*85} rules and regulations prescribed by the administrator. Facilities for the use of these records in research by the public shall be provided in the center."

Section 71-5-2, N.M.S.A., 1953 Comp. also requires that:

"All officers having the custody of any state, county, school, city or town records in this state shall furnish proper and reasonable opportunities for the inspection and examination of all the records requested of their respective offices and reasonable facilities for making memoranda abstracts therefrom, during the usual business hours, to all persons having occasion to make examination of them for any lawful purpose."

However, it is noted that neither of these sections which authorize the inspection of public records require that the custodian permit the withdrawal of the records. Section 71-6-8, supra, does give the state records administrator the authority to prescribe reasonable rules and regulations for the inspection of public records and we feel that the administrator could adopt a rule which would allow withdrawal of public records under certain circumstances since such a rule would be a proper means of insuring that the records would not be placed in jeopardy of loss, mutilation or deterioration.

If the administrator desires to allow withdrawal under certain limited circumstances, we feel he should formally adopt a rule setting forth the requirements of withdrawal or, if he desires to disallow withdrawal, we do not see how these policing agencies will be harmed since their real need is merely to see the records and once the matter is public record the material cannot be altered, thus the investigative function of the policing agency would not be impeded. Thus, the question of withdrawal of public records is one of administrative policy which can be allowed by rule or regulation or disallowed without the need for any rule or regulation.

By: Ray Shollenbarger

Assistant Attorney General