

Opinion No. 71-91

July 22, 1971

BY: OPINION OF DAVID L. NORVELL, Attorney General

TO: Representative Robert Jordan 708 Wagon Train, S.E. Albuquerque, New Mexico 87111

QUESTIONS

FACTS

On July 7, 1961, Governor Edwin L. Mechem issued an Executive Order creating the Inter-Agency Services. This Order is attached as Exhibit I. Apparently, numerous state agencies had developed their own small printing departments. The judgment was made that such a situation was highly inefficient and duplicative, and that the proper remedy was to create a central printing services center, with the responsibility for all of the participating agencies' printing needs.

On September 27, 1968, Governor Cargo attempted to shift the IAS from the State Purchasing Agent's responsibility and place it within the State Commission of Public Records as a division thereof. See Executive Order 9, attached hereto as Exhibit II. Governor Cargo's action, however, was voided by Opinion of the Attorney General No. 69-3, issued January 22, 1969, in which this office concluded that the Governor could not create a new division in the Commission of Public Records by Executive Order, and that it was proper for the Commission to refuse such an assignment of new responsibilities. See Attorney General Opinion 69-3, attached as Exhibit III.

On March 19, 1969, Governor Cargo issued Executive Order 2, attached as Exhibit IV, which again created IAS as a division of the office of the State Purchasing Agent. This Order places full responsibility for IAS operation on the State Purchasing Agent. Responsibility for "all the printing and duplicating services in the executive branch of government" is placed with IAS, and all requests for printing and duplicating services are to be reviewed and approved by IAS. At the present time, Governor Cargo's Executive Order 2 is the sole legal authority for the existence and operation of IAS.

IAS owns equipment which has an estimated value of about \$ 160,000, and bills about \$ 300,000 yearly, which is about 10% of the total state printing bill.

QUESTIONS

Is Inter-Agency Services a legally constituted arm of the executive branch of government within the meaning of "State Agency" as contemplated by Section 6-5-34; N.M.S.A.; 1953 Compilation?

CONCLUSION

No.

OPINION

{*131} ANALYSIS

The legal issue here presented is whether IAS is a legally constituted part of the executive branch of the state government. There is no legislative act creating IAS or defining its function. It exists wholly by virtue of Governor Cargo's Executive Order 2, (see Exhibit IV). The scope of permissible action through the device of an executive order was discussed in Opinion of the Attorney General No. 60-3, (see Exhibit III), in which this office concluded that an executive order could not establish a new division within the Commission of Public Records; which was not contemplated by the Legislature in passing the legislation creating that Commission. The question to be answered here thus becomes "does the Public Purchases Act contemplate the creation by executive order within the State Purchasing Agent's office of a central printing services operation such as IAS?"

{*132} The Public Purchases Act, Sections 6-5-17 through 6-5-35, N.M.S.A., 1953 Comp. (1969 Supp.) creates the office of "state purchasing agent" and sets out the powers and duties of that office.

The act contains no provision, however, that the office shall have authority or responsibility to undertake or administer printing or duplicating services for the state government. Yet Executive Order 2 attempts to do just that. It states:

"NOW THEREFORE, I David F. Cargo, to meet the needs and requirements of efficiency in government do hereby establish the offices of the division of Inter-Agency Services in the Offices of the State Purchasing Agent."

Therefore, we can only conclude that Executive Order 2 could not create IAS as a new division in the Office of the State Purchasing Agent, and that IAS therefore is not a legally constituted part of the executive branch of state government.

To paraphrase Opinion of the Attorney General No. 69-3, the Office of Governor carries with it broad powers to administer the affairs of government through executive orders and otherwise. In all likelihood, this includes the power to establish a service agency to meet governmental printing, duplicating and other needs. However, in our opinion, the state's chief executive has no constitutional or statutory power to establish such an agency as a new division of an agency whose existence and scope of functioning is based on a legislative enactment which cannot fairly be construed to include authority to undertake such services.

I conclude that Inter-Agency Services was not properly created by the executive order which attempted to do so, and thus IAS has no legal existence. It is not a properly constituted arm of the state government. This being the case, IAS cannot be considered as falling under the exemption in the Public Purchases Act which reads:

"6-5-34. EXEMPTIONS. -- The provisions of the Public Purchases Act shall not apply:

A. Purchases of materials, services, or real property by a state agency . . . from a state agency"

Obviously, if IAS is allowed to function at all, it is not exempt from the requirements of the Public Purchases Act. If allowed to continue functioning, every printing or duplicating job must hereafter be contracted competitively at the best obtainable price when bids are not required and to the lowest responsible bidder when bids are required. IAS is not outside of the requirements of the Public Purchases Act.

EXECUTIVE ORDER

July 7, 1961

TO: State Departments

Santa Fe

SUBJECT:

Establishing

"Inter-Agency Services"

FROM:

Governor Edwin L. Mechem

1. ESTABLISHING "INTER-AGENCY SERVICES"

a. There is hereby established a Division of the Office of the State Purchasing Agent titled "Inter-Agency Services".

2. PURPOSE

To centralize various common activities of the State Government.

3. PARTICIPANTS

a. The following Departments shall participate:

Adjutant General, Bank Examiner, Barber Examiners Bd., Basic Science Board, Bd. of Prof. Engineers, Capitol Custodian, Comm. on Alcoholism, Comm. on Indian Affairs, Contractors Lic. Board, Cosmetology Board, Dept. of Development, Dept. of Fin. & Admin., Dept. of Game & Fish,

Educational Fin. Bd., Educational Retirement Bd., Fair Employment Pr. Comm., Forest Conserv. Comm., Gov. { *133 } Vet. Approval Comm., Interstate Streams Comm., Labor & Industrial Comm., Liq. Petroleum Gas Comm., Medical Examiners Board, Motor Vehicle Department, Museum of Int. Folk Art, Museum of New Mexico, N.M. Historical Society

Office of Civil Defense Mobile, Oil Conservation Comm., Oil & Gas Accounting Comm., State Park Commission, Parole Board, Personnel Office, State Planning Office, Public Employees Ret. Bd., Public Health Department, Public Service Commission, Public Welfare Department, Bureau of Revenue,

Soil Conservation Comm., State Engineer, State Investment Council, State Library Comm., State Police, State Purchasing Agent, State Records Center, State Tax Commission, Traffic Safety Commission, Veterans Service Commission, Veterinary Examiners Board

b. The following Departments may participate:

Department of Education, Governor, Highway Department, State Land Office, State Library Law, Legislature, Legislative Council, Legislative Fiscal Analyst,

Lieutenant Governor, Penitentiary, Secretary of State, State Treasurer, Supreme Court, Surplus Property Agent, Any other Departments not mentioned above.

4. EQUIPMENT

a. All duplicating equipment and related items shall be transferred to "Inter-Agency Services".

b. This shall include all furniture and fixtures currently utilized in your duplicating facilities, with the exception of photocopiers.

5. SUPPLIES

a. All supplies utilized in your duplicating facilities will be transferred to "Inter-Agency Services".

6. PERSONNEL

a. All personnel currently employed full time, in your duplicating facility will be under the complete control of "Inter-Agency Services".

b. Salaries will be paid by Department where they are currently employed until December 31, 1961, at which time they will be transferred completely to "Inter-Agency Services".

7. COOPERATION

a. Your wholehearted cooperation in establishing this "Inter-Agency Services" is urgently requested.

8. RESPONSIBILITY

a. The State Purchasing Agent shall be responsible for the efficient operation of "Inter-Agency Services".

To accomplish the services recommended by the Printing Industry of New Mexico and provide the state with better printing and duplicating services, all requests for printing and duplicating will be reviewed and approved by the division herein created.

The State Purchasing Agent shall not accept any purchase requisition for printing or duplicating equipment or services that does not bear the approval of the State Commission of Public Records.

This order shall become effective October 1, 1968.

EXECUTIVE ORDER 9

WHEREAS, after a thorough investigation into the operations of Inter-Agency Services, the Printing Industry of New Mexico Inc. has recommended that the scope of operations of that agency be changed, and

WHEREAS, New Mexico Statutes Annotated 1953 Compilation, Section 71-6-20 charges the State Commission of Public Records with promulgating uniform standards of style and format for publications and related printing ^{*134} documents; and

WHEREAS, in the interest of economy and quality of publications a consulting service to state agencies regarding their printing needs is desirable,

NOW THEREFORE, I David F. Cargo, to meet the needs and requirements of both the State Commission of Public Records and the Inter-Agency Services, do hereby establish in the State Commission of Public Records the division of Inter-Agency Services.

The division herein established will be responsible for all the printing and duplicating services in the executive branch of the government.

In this regard, and to accomplish the purpose of Inter-Agency Services, the State Records Administrator shall have custody and control of all printing and duplicating equipment which is the property of or leased by the executive branch of the state and shall make rules governing the maintenance and use of all printing and duplicating equipment under his control.