

Opinion No. 72-59

October 20, 1972

BY: OPINION OF DAVID L. NORVELL, Attorney General Jane E. Pendleton, Assistant Attorney General

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

QUESTIONS

QUESTIONS

Does the Public Records Act, Sections 71-6-1 through 71-6-24, NMSA, 1953 Comp., take precedence over prior existing laws which pertain to records retention?

CONCLUSION

No.

FACTS

The Cattle Sanitary Board was required by Section 47-2-18 (e), NMSA, 1953 Comp. to keep a permanent record of its acts and of the acts and reports of its inspectors. This board was replaced by the Livestock Board in 1967, and all the books and records of the Cattle Sanitary Board were transferred to the New Mexico Livestock Board by Section 47-23-2D, NMSA, 1953 Comp. (1971 P.S.). The State Records Center now has on file the records of both boards and seeks an answer to the question of whether the Administrator may establish a disposal schedule for the records of the Cattle Sanitary Board.

OPINION

{*93} ANALYSIS

It is unnecessary to determine if the State Records Center is required to keep records designated as permanent by a law that has been repealed, Section 47-2-18 (e), **supra**. The records referred to in that statute are now the property of the Livestock Board by virtue of Section 47-23-2, **supra**. Whether or not the records are permanent is now determined by the Livestock Board Act, {*94} Section 47-23-1 through 47-23-7, NMSA, 1953 Comp. (1971 P.S.). Section 47-23-7 A, **supra**, provides:

"Reports of inspectors -- Prosecution of violations of livestock laws. -- A. The New Mexico livestock board shall keep a permanent record of its acts and of the acts and reports of its veterinarians and inspectors."

The Livestock Board merely absorbed the Cattle Sanitary Board, as shown by Section 47-23-2, **supra**:

"New Mexico livestock board created -- Transfer of powers -- Transfer of property. -- A. In order to achieve the purposes set forth in section [47-23-11], there is here-by created a board to be known as the 'New Mexico Livestock Board.' The New Mexico Livestock Board shall have all powers which have heretofore been held by the cattle sanitary board or the sheep sanitary board and those powers are hereby transferred to the New Mexico livestock board.

B. Wherever in the New Mexico Statutes Annotated, 1953 Compilation, the term 'board' or 'sanitary board' is used in relation to the sheep sanitary board or the cattle sanitary board, it shall mean the New Mexico livestock board. Wherever in the New Mexico Statutes Annotated, 1953 Compilation, the terms 'sheep sanitary board' or 'cattle sanitary board' are used it shall mean the New Mexico livestock board."

Therefore it is evident that all designated records are to be kept permanently, regardless of whether they originated with the Livestock Board or with its forerunner the Cattle Sanitary Board.

By virtue of the Public Records Act, these records can be transferred to the State Records Center. More specifically, Section 71-6-2, NMSA, 1953 Comp. (1971 P.S.) defines public records as:

"C. 'Public records' means all books, papers, maps, photographs or other documentary materials, regardless of physical form or characteristics, made or received by any agency in pursuance of law or in connection with the transaction of public business and preserved, or appropriate for preservation, by the agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations or other activities of the government, or because of the informational and historical value of data contained therein. Library or museum material of the state library, state institutions and state museums, extra copies of documents preserved only for convenience of reference, and stocks of publications and processed documents are not included;"

Records of the Livestock Board fall within this definition and within Section 71-6-8, NMSA, 1953 Comp. which provides:

"Records center. -- A records center is established in Santa Fe under the supervision and control of the administrator. The center, in accordance with the regulations established by the administrator and the commission, shall be the facility for the receipt, storage or disposition of all inactive and infrequently used records **of present or former state agencies** or former territorial agencies which at or after the effective date of this act [71-6-1 to 71-6-17] **may be in custody of any state agency** or instrumentality, and which are not required by law to be kept elsewhere, or which are not ordered destroyed by the commission." (Emphasis supplied)

Section 71-6-6, NMSA, 1953 Comp. (1971 P.S.) provides:

"The administrator shall establish records disposal schedules for the orderly retirement of records and adopt regulations necessary for the carrying out of the Public Records Act. Records disposal schedules shall be filed with the librarian of the Supreme Court library, and shall not become effective until thirty [30] days after the date of filing. Records so scheduled may be transferred to the records center at regular intervals, in accordance with the regulations of the administrator."

However this does not mean that all records kept at the Records Center {95} must eventually be destroyed. Section 71-6-11, NMSA, 1953 Comp. (1971 P.S.) provides to the contrary:

"Destruction of records. -- If it is determined by the administrator, attorney general and agency head that destruction of records will be recommended, the administrator shall have prepared a list of records, together with a brief description of their nature, and shall place upon the agenda of the next meeting of the commission the matter of destruction of the records. The records may be stored in the center awaiting decision of the commission.

The commission's decision with reference to destruction of the records shall be entered on its minutes, together with the date of its order to destroy the records and a general description of the records which it orders to be destroyed. A copy of the commission's order shall be filed with the librarian of the Supreme Court library.

No public records shall be destroyed if the law prohibits their destruction.
(Emphasis supplied)

In this case, it would appear that the law, Section 47-23-7 A, **supra**, prohibits destruction of these records. Therefore we are of the opinion that while Section 71-6-6, **supra**, requires schedules for orderly retirement of records, this does not apply to records required by other laws to be retained permanently.