

Opinion No. 78-23

December 19, 1978

OPINION OF: Toney Anaya, Attorney General

BY: Deborah A. Moll, Assistant Attorney General

TO: Mr. Joseph Halpin, State Records Administrator, State Records Center and Archives 404 Montezuma Santa Fe, New Mexico 87501

PUBLIC RECORDS ACT; STATE EDUCATIONAL INSTITUTIONS; MICROFILMING OF RECORDS

Pursuant to Section 71-6-15, N.M.S.A. 1953 Comp., the State Records Administrator does not have the broad authority of review and of approval or disapproval over the microphotography systems of state educational institutions that the administrator has over the microphotography systems of state agencies.

QUESTIONS

Does the State Records Administrator have the authority to review and approve or disapprove the microphotography systems of the state educational institutions?

CONCLUSIONS

See Analysis.

ANALYSIS

Section 71-6-15, N.M.S.A. 1953 Comp. (1976-1977 Interim Supp.) refers generally to the reproduction of public records on film and provides in particular that:

"A. Reproduction on film--Evidence--Review, inventory and approval of systems.-- Any public officer of the state or of any district or political subdivision may cause any public records, papers or documents kept by him to be photographed, microphotographed or reproduced on film.

B. The state records administrator shall review any proposed state agency microphotography system and shall advise and consult with the agency. The administrator has the authority to approve or disapprove the system of any state agency.

C. The microphotography system used pursuant to this section shall comply with the minimum standards approved by the New Mexico commission of public records. The

microphotography system used to reproduce such records on film shall be one which accurately reproduces the original in all details.

D. The administrator shall establish and maintain an inventory of all microfilm equipment owned or leased by state agencies. The administrator is authorized to arrange the transfer of microphotography equipment from a state agency which does not use it, and which has released it, to a state agency needing such equipment for a current microphotography system.

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G. For the purposes of this section "state agency" shall include the district courts."

OPINION

The state educational institutions which are the subject of the question here are those established by Article XII, Section 11 of the New Mexico Constitution.

Pursuant to Section 71-6-15(B), **supra**, the State Records Administrator has broad authority to review and to approve or disapprove of any microphotography system proposed by **state agencies**. However, it is our conclusion that this authority to advise and to approve microphotography systems as a whole applies only to state agencies and not to other governmental organizations, specifically, not to state educational institutions.

Section 71-6-2(D), N.M.S.A. 1953 Comp. (1976-1977 Interim Supp.) defines "agency" as used in the Public Records Act as follows:

"D. 'Agency' means any state agency, department, bureau, board, commission, institution, or other organization of the state government . . ."

"State agency" is used in this act to indicate a specific type of governmental organization and not state governmental entities generally. Once the term state agency has been given a specific definition in the Public Records Act, its application should be similarly restricted. Therefore, Section 71-6-15(B), **supra**, should be construed as applying only to those governmental organizations which are considered state agencies and not to governmental organizations generally. State institutions are considered to be distinct governmental organizations not included within the term state agency. State educational institutions, as state institutions, are not, therefore, considered to be state agencies within the terms of the Public Records Act.

The conclusion that Section 71-6-15(B) applies only to state agencies is further supported by Section 71-6-15(G), **supra**, which provides that for the purposes of Section 71-6-15, **supra**, "state agency" shall include the district courts." That the legislature thought it necessary to expressly include the district courts within the definition of state agency for that particular section would indicate that it intended "state

agency" as used in the Act as a whole to have a specific and limited meaning. Furthermore, that the legislature listed only state agencies in Section 71-6-15(B), **supra**, would indicate that it intended to exclude other governmental organizations from the operation of Section 71-6-15(B).

Therefore, because state institutions are considered to be governmental entities separate from state agencies and because they are not included within the terms of Section 71-6-15(B), **supra**, the State Records Administrator does not have the broad authority of review over the microphotography systems of state educational institutions that the administrator has over the microphotography systems developed by state agencies.

However, Section 71-6-15(C), **supra**, provides that any microphotography system used pursuant to Section 71-6-15, **supra**, must meet minimum standards approved by the Public Records Commission and must accurately reproduce the original records in all detail. Section 71-6-15(A), **supra**, is a general grant of authority to public officers of the state to microfilm the records kept by them. Therefore, any microphotography done by public officers of public records pursuant to Section 71-6-15(A), **supra**, comes within the provisions of Section 71-6-15(C), **supra**. Any microphotography system used by any public officers, including those of the state educational institutions, must comply with certain minimal standards as set out in Section 71-6-15(C).

Furthermore, the State Records Administrator would have the authority, pursuant to the Public Records Act, to insure compliance by the state educational institutions, specifically, and public officers of the state, generally, with standards established pursuant to Section 71-6-15(C). Section 71-6-6, N.M.S.A. 1953 Comp. grants to the State Records Administrator the "overall administrative responsibility for carrying out the purposes of the Public Records Act." It is clear from the terms of the Act that one of its purposes is to achieve high quality record maintenance. Section 71-6-15(C) is specifically addressed to the quality of microphotography undertaken by the public officers of the state. It would, therefore, be the responsibility of the State Records Administrator to implement the requirements of Section 71-6-15(C). To the extent necessary to insure that the microphotography done pursuant to Section 71-6-15, **supra**, meets the standards set forth in 71-6-15(C), **supra**, the Administrator could review and approve or disapprove the microphotography systems used by the public officials of the state, including state educational institutions.

Finally, with respect to Subsection D of Section 71-6-15, **supra**, we would conclude that it applies only to state agencies and not to state educational institutions. Section 71-6-15(D), **supra**, requires that the State Records Administrator maintain an inventory of all microfilm equipment owned or leased by **state agencies**. Subsection D also gives the administrator the power to transfer equipment from one state agency to another as needed. As with Subsection B of Section 71-6-15, **supra**, Subsection D is limited by its terms to state agencies. For the reasons given above with respect to Subsection B, Subsection D of Section 71-6-15, **supra**, applies only to state agencies and not, by definition, to state institutions. Therefore, the administrator does not have the authority

to inventory or allocate the microphotography equipment held by state educational institutions.

In summary, it is our conclusion that the State Records Administrator only has the authority to insure that state educational institutions comply with the standards for microphotography established pursuant to Section 71-6-15(C), **supra**. The administrator does not have the authority to review and to approve or disapprove the microphotography systems of state educational institutions in their entirety.

ATTORNEY GENERAL

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