

Opinion No. 79-32

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OPINION OF: Jeff Bingaman, Attorney General

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TO: Joseph Halpin, Administrator, State Records and Archives, 404 Mentezuma Street, Santa Fe, New Mexico 87503

PUBLIC RECORDS

Orders and decisions issued by state agencies, which are not rules for purposes of the State Rules Act, are not invalid or unenforceable if not filed.

QUESTIONS

Are orders and decisions issued by state agencies which are not "rules" for purposes of the State Rules Act, Sections 14-3-24, 14-3-25 and 14-4-1 to 14-4-9 NMSA 1978, invalid or unenforceable if not filed?

CONCLUSIONS

No.

ANALYSIS

Section 14-4-3 of the State Rules Act requires the filing of "rules" issued or promulgated by state agencies. In addition, Section 14-4-5 provides that:

"No rule shall be valid or enforceable until it is so filed and shall only be valid and enforceable upon such filing and compliance with any other law."

OPINION

Apparently, this provision has prompted some state agencies to file all their orders and decisions without regard to the definition of rule set out by the Act. However, upon the adoption of State Records Center Rule 79-3 prescribing a new style and format for rules filed with the center, the fact that certain orders and decisions were no longer in compliance raised the question of whether the filing of all orders and decisions was legally necessary.

A "rule," as that term is used in the State Rules Act, is defined at Section 14-4-2 which states, in part, that:

"An order or decision or other document issued or promulgated in connection with the disposition of any case or agency decision upon a particular matter as applied to a specific set of facts shall not be deemed such a rule nor shall it constitute specific adoption thereof by the agency."

Accordingly, an agency may determine that a ruling upon a particular matter "as applied to a specific set of facts" need not be filed as a "rule" pursuant to the Act. This exclusion would apply, for example, to a wage decision issued by the Labor and Industrial Commission on a particular geological formation and based on a specific set of facts or to a special pool rule issued as an order of the Oil Conservation Commission governing a particular geological formation and based on a specific set of facts.

The statutory definition of "rule," including the exceptions, pertains wherever the word is used in the Act. See 2A **Sutherland Statutory Construction**, Section 47.07 (4th ed.). Thus, where Section 14-4-5 states "no rule shall be valid . . . , etc.," it refers only to {*78} those documents which are defined as rules by Section 14-4-2. Orders and decisions which are excluded by definition from the class of rules to which the Act applies are not subject to the provisions of the Act and, in particular, are not governed by Section 14-4-5. Documents which do not have to be filed cannot be held invalid or unenforceable by reason of not being filed.

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