

Opinion No. 80-01

January 15, 1980

OPINION OF: Jeff Bingaman, Attorney General

BY: Jill Z. Cooper, Deputy Attorney General

TO: Al Romero, Director, Local Government Division, Dept. of Finance and Administration, Santa Fe, New Mexico 87503

Section 4-45-1 NMSA 1978 requires an affidavit of the payee before issuing a county warrant has been superceded by Section 6-5-8, NMSA 1978.

QUESTIONS

Is Section 4-45-1 NMSA 1978 which requires an affidavit of the payee before issuing a county warrant superceded by the procedures defined by Section 6-5-8 NMSA 1978?

CONCLUSIONS

Yes.

ANALYSIS

Section 4-45-1 NMSA 1978 was enacted by Laws 1884, Ch. 87, Section 1, and provides the following:

"All accounts, for whatever purpose, before being allowed and warrants drawn for same, shall be verified by affidavit, to be administered by the county clerk or by other officer authorized to administer such oaths, in the following words, to be endorsed upon the bill or attached thereto under seal: 'I do solemnly swear (or affirm) that the within and before mentioned account is true and correct, and that the services have been rendered (or articles have been furnished) as stated, and that no part thereof has been paid.'"

OPINION

Referring to county government only, this section imposes a condition on the payment of county funds. It requires an oath for affirmation from the payee to the effect that an amount is in fact owing before it may be paid. Section 4-45-2 NMSA 1978 provides that county clerks and commissioners who fail to perform the duties prescribed by Section 4-45-1 shall be guilty of a misdemeanor.

In 1957, the legislature abolished the office of State Comptroller and established the Department of Finance and Administration to regulate the disbursement of all public monies, including that of the counties. Laws 1957, Chapter 251. In defining the powers

and duties of the financial control division of the new department, the Legislature provided, in part, that:

"All vouchers used by state agencies or local public bodies, including public schools, shall be in the form and contain the information designated by the director of the department of finance and administration. . . .

All such vouchers, before payment is made thereon, must have the approval in writing of the governing authority of the public agency or body to which the claim pertains thereon, and it must be duly signed and sworn to by the applicant. . . Laws 1957, Chapter 252, Section 10."

Thus, before a local public body could issue a warrant, the voucher {**101*} had to be approved in writing by the governing authority and duly signed and sworn to by the payee. The new law, which was codified as Section 11-2-70 NMSA 1953, elaborated upon the procedure by which counties paid their bills but did not specifically affect the practice mandated by Section 4-45-1 NMSA 1978.

In 1963, the legislature repealed this provision and enacted a new Section 11-2-70 NMSA 1978, Laws 1963, Ch. 47, Section 1. The new law provided:

"Every claim for payment of public money shall be made upon a public voucher. All public vouchers shall be in the form and contain the information required by the director of the department of finance and administration. All purchase vouchers for goods and services, other than personal, shall be accompanied by supporting invoices. The payee shall certify either on the voucher or on the supporting invoice the claim as true and correct. Vouchers for the reimbursement of public officers and employees must have receipts attached for all money claimed, except that reimbursement vouchers for claims of mileage and per diem at standard rates need not be accompanied by receipts. All vouchers must be certified as true and correct by the officer or employee designated to approve payments of claims against state agencies and local public bodies, including public schools. The director of the department of finance and administration may require that payroll, reimbursement, refund or other vouchers be sworn to by the certifying officer or payee."

The original requirement that vouchers be duly signed and sworn by the payee was replaced by a requirement that the payee certify the claim was true and correct.

In 1967, Section 11-2-70 NMSA 1978 was again amended, this time deleting the language: "The payee shall certify on the voucher or on the supporting invoices the claim as true and correct." And, since 1967, this Section has been amended only to change the word "director" to "secretary" in accordance with the reorganization of state government. Under the new compilation, it appears at Section 6-5-8 NMSA 1978.

In short, in Section 6-5-8 NMSA 1978 and its predecessor statutes, the legislature has determined the procedure for the payment of all public funds. Having at one time

required that a warrant be paid only upon a voucher signed and sworn by the payee, it has now left that matter to the secretary of the Department of Finance and Administration who "may require that payroll, reimbursement, refund and other vouchers be sworn to the certifying officer or payee."

However, in evolving this procedure, the legislature has neither repealed nor amended Section 4-45-1 NMSA 1978. Notwithstanding the obvious legislative attempt to modernize and simplify the warrant process as it applies to all public entities, the 1884 law would still require county officials to take a signed sworn statement from the payee before a warrant may be issued.

It has long been the rule that repeals by implication are not favored. **Wilburn v. Territory of New Mexico**, 10 N.M. 402, 62 P. 968 (1900). Nevertheless, the Supreme Court has consistently found that the enactment of a new and comprehensive law governing the whole of a subject area may manifest an intent to repeal a prior inconsistent or repugnant enactment. **Dairyland Insurance Co. v. Rose**, 92 N.M. 527, {*102} 591 P.2d 281 (1979). As the Supreme Court has explained, a later act "covering the entire subject, embracing all the law pertinent thereto and furnishing a new and comprehensive system of procedure, makes it clear that the Legislature intended to supercede prior acts relating to the same subject." **Stokes v. New Mexico State Board of Education**, 55 N.M. 213, 217, 230 P.2d 243 (1951).

Section 6-5-8 NMSA 1978 defines a procedure for the payment of warrants by all public bodies, including counties. It no longer specifically requires the payee to swear his voucher or certify his claim but leaves the matter to the discretion of the secretary of the Department of Finance and Administration. It must be assumed that the legislature was aware of Section 4-45-1 NMSA 1978 when it successively eliminated that condition from Section 6-5-8 NMSA 1978. **State ex rel. Bird v. Apodaca**, 91 N.M. 279, 573 P.2d 213 (1978). To leave Section 4-45-1 NMSA 1978 in full force and effect creates an anomaly which may be resolved by concluding that Section 4-45-1 NMSA 1978 has, in practice, been superceded by Section 6-5-8 NMSA 1978.

Accordingly, it is our opinion that the affidavit required by Section 4-45-1 NMSA 1978 need no longer be taken and that so long as county warrants are issued in accordance with Section 6-5-8 NMSA 1978, county officers are in compliance with the law.

ATTORNEY GENERAL

Jeff Bingaman, Attorney General

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