

## **Opinion No. 80-19**

May 12, 1980

**OPINION OF:** Jeff Bingaman, Attorney General

**BY:** Albert L. Pitts, Assistant Attorney General

**TO:** William S. Huey, Secretary, Natural Resources Department

### **AUDITS**

The soil and water conservation districts and the state auditor are responsible for ensuring required district audits are performed. The districts are legally responsible for paying for such audits.

### **FACTS**

There are forty-seven (47) soil and water conservation districts in New Mexico. None of these districts have had their financial records audited since fiscal year 1976-1977, and in one instance a district has not had its records audited since its creation in 1970. Prior to fiscal year 1977-1978, the Soil and Water Conservation Division of the Natural Resources Department (the division) had arranged and paid the costs for auditing some district financial records. The division has set aside \$8,000 to pay for the district audits, but it is anticipated that this amount will not cover the total cost of the required audits.

### **QUESTIONS**

1. Does the Soil and Water Conservation Commission or division have a legal duty to pay for unperformed annual audits of soil and water conservation districts?
2. Which state agency has responsibility for ensuring that the soil and water conservation districts are audited?
3. If soil and water conservation district records are incomplete, which state agency is responsible for seeing to it that the records are auditable?

### **CONCLUSIONS**

1. No.
2. District supervisors of each soil and water conservation district and the state auditor.
3. District supervisors of each soil and water conservation district.

### **ANALYSIS**

1. Section 12-6-3 NMSA 1978 charges the state auditor or his designee with the duty to thoroughly examine and audit the financial affairs of every agency each year. Soil and water conservation districts are created and are controlled by the Soil and Water Conservation District Act, Sections 73-20-25 through 73-20-49 NMSA 1978. Accordingly, the districts are agencies which are subject to the requirements of the Audit Act, Sections 12-6-1 through 12-6-14 NMSA 1978.

## OPINION

The governing body of each soil and water conservation district is composed of at least five (5) district supervisors. Section 73-20-41(C), mandates in part:

". . . The supervisors shall:

{\*149} (2) provide for, and submit to an annual audit of district accounts or receipts and disbursements; in the event district receipts total less than five hundred dollars (\$500) annually, supervisors shall provide for, and submit to an audit every five years or for the lesser period during which annual district receipts were less than five hundred dollars (\$500)."

Thus, both the state auditor and the soil and water conservation district supervisors have an express statutory duty to have district financial affairs audited. The apparent conflict between the annual auditing requirement in the Audit Act and the five year audit exception in the Soil and Water Conservation District Act is easily resolved by applying the well settled rule of statutory construction that where there is no clear intention to the contrary, specific statutes prevail over general statutes, regardless of when enacted. **Morton v. Mancari**, 417 U.S. 535 (1974); **Jicarilla Apache Tribe v. United States**, 601 F.2d 1116 (10th Cir. 1979); **State ex rel. Bird v. Apodaca**, 91 N.M. 279, 573 P.2d 213 (1977); and, **New Mexico Bureau of Revenue v. Western Electric Company**, 89 N.M. 468, 553 P.2d 1275 (1976). Consequently, the auditing requirements of the Soil and Water Conservation District Act, Section 73-20-41(c)(2), apply since it is the more specific statute.

The duties of the Soil and Water Conservation Commission and the division are set forth in Sections 73-2-31 and 73-20-32, **supra**. Generally, these duties are to assist, cooperate with the educate the districts on good conservation practices. The only statutory reference we found that may cover the use of division funds for district audits is set forth in Section 73-20-31(E)(6), **supra**:

E". The division shall as directed by the commission:

(6) encourage and, within budget limitations, render aid and assistance to district activities and facilitate and encourage the formation of new districts in areas where district organization is desirable."

Clearly, if the Commission directs the division to assist the districts in paying for their audits, then the division must within its budgetary limits render financial aid to the districts. In the absence of a Commission directive, the division may not provide financial assistance to the districts for the audits.

2. Sections 12-6-3 and 73-20-41(C)(2) mandate that the state auditor and the soil and water conservation district supervisors have district financial affairs audited. The primary responsibility for having the audits performed should be borne by the district supervisors, but the ultimate responsibility lies with the state auditor, who is responsible for ensuring that every agency's financial records are examined and audited.

3. If the districts have incomplete financial records, then the district supervisors must to the best of their ability construct or reconstruct those records. Section 73-20-41, by necessity, requires that the supervisors or their designees keep full and accurate records of the financial affairs of their district. A corporate surety bond must be obtained to cover any person entrusted with the care or disposition of district funds or property. In addition, under generally accepted auditing standards adopted by the state auditor, every agency is responsible for keeping its own records. Accordingly, each soil and water conservation district is responsible for constructing or reconstructing its financial records.

## **ATTORNEY GENERAL**

Jeff Bingaman, Attorney General