

**Opinion No. 87-42**

August 19, 1987

**OPINION OF:** HAL STRATTON, Attorney General

**BY:** Scott Spencer, Assistant Attorney General

**TO:** Mr. Alan D. Morgan, Superintendent of Public Instruction, State Department of Education, Education Bldg. - Room 109, Santa Fe, New Mexico 87501-2786

**QUESTIONS**

May the State Board of Education, pursuant to the terms of Section 22-2-7 NMSA, 1978 require that the State Superintendent of Public Instruction and designated employees of the State Department of Education obtain bonds in excess of those obtained pursuant to the Surety Bond Act?

**CONCLUSIONS**

No.

**ANALYSIS**

Section 22-2-7 NMSA 1978 provides:

The state board may require that the state superintendent and designated employees of the department of education obtain an official bond prior to assuming the duties of office. The bonds obtained shall be payable to the state and conditioned upon the faithful performance of their duties during their term of office. The bonds shall be executed by a corporate surety company authorized to do business in this state. The amount of the bonds shall be fixed by the state board. The state board may elect to obtain a schedule or blanket corporation surety bond covering members of the state board, the state superintendent and employees to the department of education for any period not exceeding four years. The cost of a bond obtained pursuant to this section shall be paid from the administrative funds of the department of education. Any bond obtained shall be approved by the state board and filed with the secretary of state.

Section 10-2-15 of the Surety Bond Act, Sections 10-2-13 to 10-2-16 NMSA 1978, provides in relevant part:

A. The department shall provide surety bond coverage for all employees. Whenever any employee is required by another law to post bond or surety as a prerequisite to entering employment or assuming office, the requirement is met when coverage is provided for the office or position under the provisions of the Surety Bond Act [10-2-13 to 10-2-16 NMSA 1978]. Notwithstanding any other provision of law, no state agency or employee

shall purchase any employee surety bond other than pursuant to the provisions of the Surety Bond Act.

Section 10-2-14 NMSA 1978 provides: "employee' means any officer or employee of the state, including elected or appointed officials and persons acting on behalf or in service of a state agency in any official capacity whether with or without compensation, but the term does not include an independent contractor...." Thus, the Superintendent of Public Instruction and employees of the State Department of Education are employees for purposes of the Surety Bond Act.

Statutes that relate to the same subject matter should be read consistently with one another. *City Commission v. State ex rel. Nichols*, 75 N.M. 438, 444, 405 P.2d 924, 928 (1965); *Walton v. City of Portales* 42 N.M. 433, 434, 81 P.2d 58, 60, (1938). Thus, a harmonious reading of the foregoing provisions is that, while the State Board of Education is empowered to obtain and fix the amount of surety coverage for the Superintendent of Public Instruction and designated employees of the State Department of Education, such power must be exercised in accordance with and as limited by the power of the General Services Department to obtain surety coverage for all state employees. Moreover, Section 10-2-15 was enacted by laws of 1978, Chapter 132, Section 3, and Section 22-2-7 was enacted by Laws of 1967, Chapter 16, Section 10. Thus, should Sections 10-2-15 and 22-2-7 be read as irreconcilable, Section 10-2-15 would control. Principles of statutory construction provide that, where two statutory provisions relating to the same subject matter are irreconcilable, the later enacted provision repeals the earlier enacted provision to the extent of the incompatibility. *State v. Fidelity and Deposit Co.*, 36 N.M. 166, 167, 9 P.2d 700, 701 (1932); *Territory v. Digneo*, 15 N.M. 157, 159, 103 P. 975, 976 (1909). Further, Section 10-2-15 NMSA 1978, by its language, "Notwithstanding any other provision of law," evidences legislative intent that the Surety Bond Act controls surety bond coverage of all state officers and employees.

We conclude, therefore, that the Surety Bond Act controls any bond coverage for the Superintendent of Public Instruction and designated employees of the State Department of Education.

## **ATTORNEY GENERAL**

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