

## Opinion No. 90-10

April 30, 1990

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

**BY:** Carol A. Baca, Assistant Attorney General

**TO:** The Honorable Raymond G. Sanchez, Speaker of the New Mexico House of Representatives, State Capitol Building, Santa Fe, New Mexico 87503

### QUESTIONS

What is the permissible length of time under NMSA 1978, Section 13-1-150 (Repl. Pamp. 1988), for professional services contracts with financial advisors and bond attorneys who are engaged to assist with the issuance and sale of general obligation bonds?

### CONCLUSIONS

A professional services contract with bond counsel or financial advisors may not exceed a term of four years, including all extensions and renewals.

### ANALYSIS

The Procurement Code's Section 13-1-150 provides the maximum terms of contracts for procurement of items of tangible personal property, construction, services and professional services.<sup>1</sup> This section states the following with regard to professional services:

**A contract for professional services may not exceed a term of four years** including all extensions and renewals **except that a multi-term contract for the services of trustees**, escrow agents, registrars, paying agents, letter of credit issuers and other forms of credit enhancement ; **and other similar services excluding bond attorneys**, underwriters **and financial advisors** with regard to the issuance, sale and delivery of public securities **may be for the life of the securities or as long as the securities remain outstanding.**

(emphasis added.)

The main problem we perceive in interpreting Section 13-1-150 is that the placement of the semicolon between the words "enhancement" and "other similar services" appears to be an error in punctuation. If the entire sentence is read as actually punctuated, the words before the semicolon do not constitute a main clause that can stand alone as a grammatically complete sentence. We assume, therefore, that the semicolon should be disregarded or read as a comma in order to make the sentence comprehensible.

An act ordinarily should be read as punctuated. If, however, an act as originally punctuated contains a manifest grammatical error or defeats or distorts legislative intent, erroneous punctuation may be disregarded or transposed or the act may be repunctuated as required. 2A N. Singer, Sutherland's Statutes and Statutory Construction § 47.15 (4th ed. 1984). See also *State v. Aspinall*, 6 Conn. App. 546, 506 A.2d 1063 (1986) (misplaced comma cannot be used to distort the meaning of the statute); *New Mexico Glycerin Co. v. Gallegos*, 48 N.M. 65, 145 P.2d 995 (1944) (patent typographical error will be corrected); *City of Roswell v. Hall*, 45 N.M. 116, 112 P.2d 505, (1941) (obvious clerical error will be disregarded in reading a statute).

When read without the semicolon, Section 13-1-150 clearly provides:

(1) a professional services contract may not exceed four years, including all renewals and extensions;

(2) Notwithstanding the four-year limitation, contracts with trustees, escrow agents, registrars, paying agents, issuers of letters of credit and other forms of credit enhancement, and other similar providers of services used in connection with the issuance, sale and delivery of public securities, may be for the period of time during which the securities are outstanding; and

(3) bond attorneys, underwriters and financial advisors are not included in the above exception to the four-year limitation.

We conclude, in summary, that any contract with bond counsel or financial advisors may not exceed four years, including all renewals and extensions. If the services of bond counsel and financial advisors are required for a period longer than four years because, as the opinion request posits, a given bond issue has not been sold within that period of time, competitive sealed proposals must be solicited for the services provided after the expiration of the four-year term. See, e.g., NMSA 1978, Sections 13-1-111, 13-1-112 (Supp. 1989).

## **ATTORNEY GENERAL**

HAL STRATTON Attorney General

## **GENERAL FOOTNOTES**

[n1](#) The Procurement Code defines "professional services" as the "services of architects, archaeologists, engineers, land surveyors, landscape architects, medical arts practitioners, scientists, management and system analysts, certified public accountants, registered public accountants, lawyers, psychologists, planners, researchers and persons or businesses providing similar services." NMSA 1978, Section 13-1-76 (Repl. Pamp. 1988).