

Opinion No. 90-23

December 10, 1990

OPINION OF: HAL STRATTON, Attorney General

BY: Andrea R. Buzzard, Assistant Attorney General

TO: Honorable Stephen D. Stoddard, State Senator, 326 Kimberly Lane, Los Alamos, New Mexico 87544

QUESTIONS

1. Is the Public School Insurance Authority ("PSIA") a state agency for purposes of the State Budget Act?
2. Is the PSIA a state agency for purposes of complying with the reporting requirements under NMSA 1978, § 6-1-13(B) (Repl. Pamp. 1987)?
3. What does "budget review" mean as used in NMSA 1978, § 22-2-6.6 (B) (Repl. Pamp. 1989)?

CONCLUSIONS

1. Yes.
2. Yes.
3. As used in § 22-2-6.6(B), "budget review" means approval of the PSIA's proposed budget.

ANALYSIS

The legislature first created the Public School Group Insurance Authority by 1985 N.M. Laws, ch. 237. The legislature "administratively attached" that entity to the office of education; required that "[a]ll appropriations of funds shall be subject to budget review through the office of education, the budget division of the department of finance and administration and the legislative finance committee;" created a "school group insurance fund" consisting of health insurance premiums paid by school districts; and directed the state treasurer to administer and to invest that insurance fund. *Id.* § 1. In 1986, the legislature repealed 1985 N.M. Laws, ch. 237 and enacted the Public School Insurance Authority Act ("Act"). 1986 N.M. Laws, ch. 94. That Act shortened the entity's name to Public School Insurance Authority ("PSIA") and expanded and modified the earlier law. That Act is codified at NMSA 1978, §§ 22-2-6.1 to 6.10 (Repl. Pamp. 1989 & Supp. 1990). The PSIA's purpose is to provide health and risk-related insurance coverages for

school districts, educational entities, and public school employees. §§ 22-2-6.2 and 22-2-6.4.

The legislature has regularly appropriated funds to the PSIA. See 1988 N.M. Laws, ch. 13 at 121; 1989 N.M. Laws, ch. 107 at 595-96; 1990 N.M. Laws, ch. 131 at 1036-37. The 1989 and 1990 general appropriations acts appropriated monies specifically for the PSIA's three divisions: operations, benefits and risk; appropriated monies in the operations division for personal services, contractual services, travel, supplies, etc.; and authorized a specific number of FTE's. In both acts, the legislature specifically stated that salary increases made by the state employee compensation packages would apply to employees of the PSIA.

The PSIA's employees are entitled to public retirement benefits under either the Public Employees Retirement Act (applicable to state and local government employees) or under the Educational Retirement Act (applicable to employees of school districts and state educational entities). § 22-2-6.5(C). The PSIA's governing board members are entitled to per diem and mileage under the Per Diem and Mileage Act (applicable to officers and employees of state and local government). § 22-2-6.5(D). The "public school insurance fund" may be invested in the same kind of securities permitted for investment by the educational retirement fund, and the public school insurance fund is appropriated to the PSIA to carry out the provisions of the Act. § 22-2-6.6(A). "All appropriations of funds shall be subject to budget review through the department of education, the state budget division of the department of finance and administration and the legislative finance committee." § 22-2-6.6(B). All receipts and disbursements by the PSIA are subject to audit by the state auditor. § 22-2-6.8(A). The PSIA is not required to submit vouchers, purchase orders or contracts to the department of finance and administration ("DFA"). *Id.* The PSIA must adhere to the Procurement Code (applicable to state agencies and local public bodies) when procuring insurance. § 22-2-6.7(G). The PSIA may employ the services of the state fiscal agent or select its own fiscal agent. § 22-2-6.7(A). The legislature has authorized the PSIA to promulgate rules and regulations. § 22-2-6.7(E). The legislature uses the terms "vouchers" and "warrants" in describing the PSIA's system of vendor payments. § 22-2-6.8.

That the legislature regards the PSIA as a state agency is evidenced by the legislature's subjugation of the PSIA to the same laws that apply to all state agencies. For example, the general appropriations act authorizes named "state agencies" to spend money within authorized limits and defines "state agency" as "any office, department, institution, board, bureau, commission, court, district attorney, council or committee of state government." See 1990 N.M. Laws, ch. 131, § 2(G) and § 3(C). The general appropriations act provides that state agencies may not spend money in excess of amounts appropriated and that "[e]xpenditures shall be made only in accordance with budgets approved by the department of finance and administration in accordance with the provisions of Section 6-3-7 NMSA 1978." *Id.* § 2(E). Further, "[t]he state budget division of the department of finance and administration shall monitor revenue received by state agencies from sources other than the general fund and shall order reductions in

the operating budget of any state agency whose revenue from such sources is not meeting budgeted projections." Id. § 3(I).

The PSIA is a "state agency," subject to those provisions of the general appropriations act. Like other "state agencies," the legislature requires the PSIA to adhere to the Procurement Code; authorizes its employees to receive state employee salary increases and state retirement benefits; and subjects the PSIA to budget review by the DFA.

The state budget laws, NMSA 1978, §§ 6-3-1 to -22 (Repl. Pamp. 1987), require state agencies to submit proposed budgets to the budget division of DFA for approval and prohibit expenditures by a state agency before DFA's approval. § 6-3-7. "State agency" means "any department, institution, board, bureau, commission, district, or committee of government of the State of New Mexico..." §§ 6-3-1; 6-3-9. "All state agencies are subject to the provisions of this act [provisions of the budget laws]." § 6-3-17. Except for including the courts and district attorneys, the term "state agency" is defined virtually the same in both the general appropriations acts and the budget laws. The legislature, having included the PSIA within the term "state agency" in the general appropriations acts which specifically reference DFA's budget approval authority, did not, we believe, intend to exclude the PSIA from the state budget laws. Such a construction would produce an incongruous result, not in harmony with the legislature's express treatment of the PSIA as a state agency. The PSIA is a "state agency" within the meaning of §§ 6-3-1 and 6-3-9.

Section 6-1-13 (Repl. Pamp. 1987) provides:

A. A state agency may not open a new deposit account or deposit money in an existing deposit account unless it has submitted a request to the state treasurer in writing on forms prescribed by the state treasurer and received written authorization from the state treasurer for each such account. This section shall not constitute authority for agencies to open demand deposit accounts and shall not apply to deposits made pursuant to Section 6-10-35 NMSA 1978. On the effective date of this act, agency deposit accounts previously authorized shall be governed by the terms of this section.

B. The state treasurer shall establish for each account those conditions and reports appropriate to that account including, without limitation, the period for which the account may be authorized. The provisions of this section shall not apply to investments made by the state treasurer or the state investment council. The state treasurer shall submit to the state board of finance on a quarterly basis a list of all accounts established pursuant to this section.

C. As used in this section, "state agency" means the state of New Mexico or any of its branches, agencies, departments, boards, instrumentalities, or institutions other than state educational institutions designated by Article 12, Section 11 of the constitution of New Mexico.

The PSIA is a "state agency" under § 6-1-13(C) for the same reasons that it is a "state agency" under the state budget laws. Except for deposits that the PSIA may make to the state's fiscal agent pursuant to NMSA 1978, § 6-10-35 (Repl. Pamp. 1988),¹ § 61-1-13(B)'s reporting requirements to the state treasurer apply to the PSIA.²

In concluding that the PSIA is a "state agency" under the state budget laws and under § 6-1-13(C), we have considered the PSIA's reasoning in arguing that it is not a "state agency." The PSIA contends that it is not a state agency under the state budget laws, arguing that (1) it is exempted from submitting vouchers to DFA; (2) the public school insurance fund has been appropriated to the PSIA for its operations and that fund does not revert to the general fund; (3) the "budget review" required by § 22-2-6.6(B) is limited to review and public comment; (4) the PSIA is akin to the Mortgage Finance Authority and to regional housing authorities; and (5) sufficient budget scrutiny has already occurred, because the legislature appropriates money in bulk for public school support and the public schools prepare a budget, approved at the local level, that includes premium payments to the PSIA. The PSIA's first contention does not distinguish the PSIA from the many other state agencies that DFA exempts under NMSA 1978, § 6-5-9 (Repl. Pamp. 1987) from the requirement that vouchers be submitted to DFA or that are exempt statutorily from that requirement. Those other exempted state agencies are: The State Fair, the Livestock Board, the Employment Security Department, the Department of Labor, the Human Services Department's various assistance programs, the Highway Department, the Gallup Indian Intertribal Ceremonial Council, New Mexico School for the Deaf, New Mexico School for the Visually Handicapped, and the constitutional universities and colleges. Although exempted from the DFA voucher requirement, those agencies nonetheless must submit a budget to DFA for approval.

The PSIA's second contention does not distinguish it from other state agencies, such as licensing boards that operate using licensing fees and whose funds do not revert to the general fund. See, e.g., NMSA 1978, §§ 61-2-7, 61-3-27, 61-4-7, 61-5-13, 61-6-31, 61-7A-12, 61-8-7, and 61-11-19 (Repl. Pamp. 1989). The PSIA's third contention, that "budget review" is limited only to "public comment" by the DFA, the legislative finance committee and the department of education, is contrary to certain rules of statutory construction: (1) statutes should be read together to produce a harmonious result; (2) statutes should not be construed to produce an unreasonable or absurd result; and (3) statutes should not be construed to require a useless act. See, e.g., *Mathieson v. Hubler*, 92 N.M. 381, 588 P.2d 1056 (App.), cert. denied, 92 N.M. 353, 588 P.2d 554 (1978) (court must reconcile different provisions of statute so as to make them consistent and harmonious); *City of Las Cruces v. Garcia*, 102 N.M. 25, 690 P.2d 1019 (1984) (interpretation of a statute must be consistent with the legislature's intent and must be accomplished by adopting a construction which will not render statute's application absurd, unreasonable or unjust); *State v. Doe*, 95 N.M. 88, 619 P.2d 192 (Ct. App. 1980) (statutes will not be construed to require a useless act). The appropriations acts and the budget laws clearly contemplate that the PSIA's proposed budget will not only be reviewed but also approved by DFA. To relegate a statutorily required "review" process to one permitting only "public comment" serves no meaningful

purpose. DFA's budgetary duties and statutory powers contemplate budget approval, not merely "comment" to the media or to others. § 22-2-6.6(B) may not be construed to require the doing of a useless act. Section 22-2-6.6(B) and the state budget laws require that DFA approve PSIA's proposed budget.

PSIA's fourth contention is not supported by a comparison of the statutes that apply to the Mortgage Finance Authority to those that apply to the PSIA. The Mortgage Finance Authority Act provides, at NMSA 1978, § 58-18-20(E) (Repl. Pamp. 1986): "Money of the authority...is not public money or state funds within the meaning of any law of the state relating to investment, deposit, security or expenditure of public money." The Mortgage Finance Authority is created as "a public body politic and corporate, separate and apart from the state" and "no use of the terms 'state agency' or 'instrumentality' in any other law of the state shall be deemed to refer to the authority unless the authority is specifically referred to therein." NMSA 1978, § 58-18-4(A) and (F) (Repl. Pamp. 1986). The statutes that govern the PSIA are distinctly different from those that apply to the Mortgage Finance Authority. The seven regional housing authorities created by NMSA 1978, §§ 11-3-1 to -6 (Repl. Pamp. 1983) are also dissimilar from the PSIA. Neither the regional housing authorities nor the Mortgage Finance Authority are appropriated money by the legislature in the general appropriations acts. The PSIA's fifth contention does not address the fact that neither the appropriation for public school support nor a local school board's budget review constitutes review and approval of the PSIA's budget for its expenditures. DFA's budget process provides that review and approval.

Accordingly, we conclude (1) that the PSIA is a state agency for purposes of the state budget laws; (2) that the PSIA is a state agency for purposes of complying with the reporting requirements under § 61-1-13(B); and (3) that "budget review" as used in § 22-2-6.6(B) means approval of the PSIA's proposed budget.

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GENERAL FOOTNOTES

[n1](#) The PSIA may choose to employ the services of the state fiscal agent or may select its own fiscal agent. § 22-2-6.7(A). That ability to select its own fiscal agent does not irreconcilably conflict with and thus impliedly repeal § 6-1-13(B)'s reporting requirements that apply to the PSIA. See, e.g., *Clothier v. Lopez*, 103 N.M. 593, 711 P.2d 870 (1985) (repeal by implication is disfavored and two acts which are seemingly contradictory should be construed, when possible, so as to give effect to both); *State ex rel. Bird v. Apodaca*, 91 N.M. 279, 573 P.2d 213 (1977) (repeals by implication are not favored and when two statutes can be reconciled to preserve the objects of each, the court must so construe them).

[n2](#) NMSA 1978, § 6-10-26 (Repl. Pamp. 1988) requires the state treasurer and the secretary of DFA to report to the state board of finance the amount of money on deposit in state depositories and other information.