

Opinion No. 43-4356

August 5, 1943

BY: EDWARD P. CHASE, Attorney General

TO: Mr. C. R. Sebastian, State Comptroller, Santa Fe, New Mexico

We have your letter of July 27, 1943, wherein you request an official opinion concerning power of the State Comptroller and/or The Board of Finance or other proper State Official to cancel a bond thereby releasing the Surety from any possible liability for future acts, which the Surety would have otherwise been liable for, if the bond had not been cancelled.

I call your attention to Section 7-116 of the New Mexico 1941 Compilation and also a foot note following Section 7-102 of the New Mexico 1941 Compilation, which supplements Section 7-116 in so far as the powers of the Board of Finance are concerned. Under Section 7-116 it is clear that a release cannot be given to a Surety concerning any past liability for acts done while the bond was in effect. However, there is no provision in our law prohibiting the cancelling of bonds, which however would not effect any past liability and therefore would not be in conflict with Section 7-116.

I, also, call your attention to the general rule as stated in 11 Corpus Juris Secundum, Bonds, Section 59, which states the general rule to be as follows:

"Unless irrevocable, a bond may be cancelled or rescinded by the parties."

In view of the foregoing and in view of the fact that our statutes do not in any way prohibit the cancellation of bonds, it is my opinion that a bond may be cancelled by the proper person or board and that the Surety would thereby be released of all future liability on the bond arising out of matters occurring after the cancellation. However, the liability of the Surety would in no way be effected by such cancellation in so far as matters arising before the cancellation and possibly not discovered until later. Under our statutes a Surety cannot be relieved of liability on a bond for a period in which the bond is in effect until after an audit is made.

Hoping that the above fully answers your questions, I remain

By HARRY L. BIGBEE

Asst. Atty. Gen.