

Opinion No. 52-5617

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TO: M. W. Hamilton, Chief Counsel Bureau of Revenue Santa Fe, New Mexico

{*328} Recently you requested an opinion from this office as to the provisions of law governing the matter of destruction of old reports and returns of the Bureau of Revenue. The problem is to determine what law governs this procedure, i. e., whether 76-1437 NMSA or 13-409 NMSA applies.

Section 76-1437 was enacted in 1935 as § 322 of Ch. 73 of the Laws of 1935. Chapter 73, by its title, indicated that the purpose of the act was to provide for the raising of revenue for emergency school purposes and for the administration of the act. To comply with the obligations imposed by the act, every one {*329} subject to its provisions, must file appropriate returns showing the tax due by virtue of the act. Sec. 76-1437 makes the information contained in the reports confidential, immune to subpoena in the usual sense, and for the sole use of the Bureau of Revenue. The wisdom of this act is evident. The reports indicate the gross receipts of people subject to the act. Such information should be closely guarded.

The Legislature foresaw that the preservation of the reports and returns would create a "housing problem" and this section of the statute provides, in part:

"Reports and returns shall be preserved for three years and thereafter until the Tax Commission (Bureau of Revenue) orders them destroyed."

While this seems to indicate clearly that the Legislature intended to provide the means for disposing of records and returns which had served their purpose, the question arises whether this law has been superseded by § 13-401, et seq., NMSA (Ch. 185, Laws 1947). This act provides for the micro-filming of public records, the preservation of the microfilm records, and the subsequent destruction of the original records. Among other things, this law provides that public officers may cause records kept by them to be micro-filmed. The law makes such photographs of such records, or the microfilms, an original record for the purpose of introducing such in evidence.

It provides that the original records, which have been so microfilmed, may be destroyed with the approval of the State Comptroller, but requires that two reproductions be made, one to be kept at the place at which the original record was maintained, the other to be forwarded to the archives of the Secretary of State.

There is a further restriction imposed which demands that no original record may be destroyed, after copies have been made, until such record has been a public record for five years, or until the record has been audited by the office of the State Comptroller.

It is quite evident from this statute that the Legislature intended it to apply to public records, intended to provide for a means of more compact storage and preservation of such records, and to insure their permanent availability through the office of the Secretary of State.

In my opinion this provision of the New Mexico statutes has no application to the preservation, maintenance or destruction of reports and returns made to the Bureau of Revenue in connection with the school tax. These reports and returns, by their very nature, are made confidential and are not available for public inspection. To read any other implication into the 1947 Act, with respect to reports and returns made to the Bureau of Revenue would require one to hold that the 1947 Act repealed the 1935 provision governing the confidential nature of school tax returns. There is nothing in the 1947 law dealing with public records demanding such interpretation.

It is therefore my opinion that the Bureau of Revenue may destroy all reports and returns, after three years, upon order of the Bureau of Revenue, as provided in 76-1347 NMSA.

I trust this fully answers your inquiry.