

Opinion No. 57-118

May 31, 1957

BY: OPINION OF FRED M. STANDLEY, Attorney General

TO: To. Mr. Edward M. Hartman, State Comptroller, Santa Fe, New Mexico

QUESTIONS

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1. "As State Comptroller, what is my legal relationship with the Legislative Finance Committee?"
2. "Does the Legislative Finance Committee have authority to examine records and interrogate witnesses as to specific transactions affecting operating policies and costs of various governmental units?"

CONCLUSIONS

1. See opinion.
2. Yes.

OPINION

ANALYSIS

Question 1. We are of the opinion that your relationship with the Legislative Finance Committee is governed by the second paragraph of § 6, Chapter 3, Laws of 1957, which reads as follows:

"Each agency or institution of the state and its political subdivisions shall, upon request, furnish and make available to the legislative fiscal analyst and the legislative finance committee such documents, materials or information as may be requested by the members of the committee or the legislature fiscal analyst, which are not made confidential by law."

Clearly, the Legislature intended that all governmental units of the State of New Mexico were to cooperate with this Committee in order that the Committee might properly carry out its intended functions. This is obvious from the fact that if such cooperation is not forthcoming, the Committee was given the power to enforce such cooperation by the use of the subpoena. See § 4 of this law.

We, therefore, conclude that you would be required to furnish the Committee such information, material and documents as may be requested from you by them.

Question 2. One of the assigned duties of the Committee is found in § 3 B of Chapter 3, Laws of 1957, reading as follows:

"Examine the laws governing the finances and operations of departments, agencies and institutions of New Mexico and all of its political subdivisions, the effect of such laws on the proper functioning of such governmental units, the policies and costs of governmental units as related to the law, recommend changes in the laws if they are deemed desirable, and draft and present to the legislature any legislation necessary."

So far as this opinion is concerned, this provision authorizes an examination of the effect of the laws governing the finances and operation upon the proper functioning of governmental units and the policies and costs of governmental units as related to such laws. This is to be done for the purpose of determining the need for any new laws concerning the finances and operation of the governmental units and for the repeal of old laws.

Whenever the effect of any law is to be determined, there is the necessity for securing information from the parties most concerned with the functioning of such law. Chapter 3, Laws of 1957, provides two methods for securing such information. Section 4 provides for hearings and § 6 provides for voluntary cooperation on the part of governmental units. Both methods may be used, and the choice of method of performing its functions would be with the Committee.

Whenever investigation is made to determine the effect of the laws upon the functioning of the governmental units, specific transactions would have to be considered. In a word, the Committee will have to determine how the laws, as applied to specific cases, affect the proper functioning of the governmental unit. This means that the Committee may also inquire into the failure to follow the laws in the operation of the governmental unit for this inquiry may be germane to the subject of needed changes in the laws.

Note further, the statute authorizes inquiry into the policies and costs of the governmental unit as these are related to the operation and financial laws governing such unit. This would authorize examination of books, records and operating policies. Certainly, to determine cost, specific inquiry would have to be made into the items of costs as well as operating policies behind the expending of public money. Inquiry would be pertinent as to the effectiveness of operating policies established by the governmental unit and the relationship of such policies on the costs of the governmental units. These are but examples of the scope of inquiry authorized by law and is not meant in any way as a category or limitation upon the Committee's power of inquiry.

The scope of inquiry of the Committee is only limited to the extent that only facts relevant to the subject of the investigation can be considered. See 81 C.J.S., States, § 43, page 963. This does not mean that the Committee must deal only in generalities.

Facts are established by inquiry into the specific. This means investigation can be into specific records, specific transactions and witnesses can be questioned concerning these so long as the questions are related to the "effect of such laws on the proper functioning of such governmental units" and "the policies and costs of governmental units as related to the laws."

The fact that this inquiry may also have other far reaching consequences is no justification for a limitation upon the scope of inquiry. 82 C.J.S., States, § 43, Page 962.

We, therefore, conclude that the Legislative Finance Committee has authority to examine records and interrogate witnesses as to specific transactions affecting the operating policies and costs of various governmental units.