

Opinion No. 57-184

July 26, 1957

BY: OPINION OF FRED M. STANDLEY, Attorney General Robert F. Pyatt, Assistant Attorney General

TO: The Honorable Joseph B. Grant, State Treasurer, Santa Fe, New Mexico

QUESTIONS

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Are Chapter 3 and 72, Laws of 1957, impliedly repealed by Chapter 252, Laws of 1957?

CONCLUSION

Yes, to the extent of the repugnancy between the former two and the latter.

OPINION

ANALYSIS

Laws of 1957, Chapter 3, among other things prescribes certain duties for the Legislative Finance Committee. In Section 7 thereof, an appropriation was made for the purpose of paying the per diem and travel expenses of the Legislative Finance Committee, and the last sentence of said Section reads as follows:

"Payment from funds appropriated for the use of the committee shall be made only upon vouchers submitted to the state auditor signed by the chairman of the committee or his authorized representative, and by warrants issued by the state auditor."

It will thus be seen that vouchers were to be submitted to the State Auditor and that warrants were to be issued by the same state officer. Chapter 3, Laws of 1957, by virtue of an emergency clause in Section 8 thereof, became effective January 29, 1957.

Chapter 72, Laws of 1957, relating to the Legislative Council, at Section 2 thereof provided that from funds appropriated for the Council's use, payments should be made only upon vouchers submitted to the State Auditor, and warrants issued by the State Auditor. Thus, insofar as payments were concerned, much the same procedure was established by Chapter 72 as was established by Chapter 3. Chapter 72 did not contain an emergency clause, and, further, it did not provide that it was to go into effect upon a certain named date, consequently it became effective on June 7, 1957. Opinion of the Attorney General No. 57-50, dated March 14, 1957.

Chapter 252, Laws of 1957, among other things, created the New Department of Finance and Administration. In Section 5 thereof it is provided as follows:

"All warrants upon the state treasury shall be issued by the director. All the powers and duties of the state auditor relating to the issuance of warrants or the transfer of funds are imposed upon the director."

Thus it becomes necessary to reconcile Chapters 3 and 72 of Laws of 1957, providing for the warrants therein mentioned to be issued by the State Auditor, and Chapter 252, which directs that all warrants upon the State Treasury shall be issued by the Director of the Department of Finance and Administration.

The principle that repeals by implication are not favored needs no citation of authority. This principle is specially applicable as between two statutes passed at the same session of the Legislature, however if the enactments are irreconcilable, the one which is the latter expression of the Legislative intent ordinarily prevails over and impliedly repeals the other enactment. 82 C.J.S. Statutes, Section 297. On the other hand, another rule of statutory construction is that in the event of a conflict between two or more enactments of the same Legislature, the special and not the general enactment will govern. Opinion of the Attorney General No. 57-149 (Substitute). Following the latter rule of construction, it might possibly be argued that since Chapter 3 only relates to the Legislative Finance Committee (and the Legislative Fiscal Analyst), and since Chapter 72 only relates to the Legislative Council, that such latter two chapters are two specific statutes standing as implied exceptions to Chapter 252. We do not think that such is the case, for reasons hereafter given.

It was pointed out in Opinion of the Attorney General No. 5441, dated October 4, 1951, that the statute which is last in order of time or in local position prevails over that which is first. Since Chapter 252 went into effect on July 1, 1957, it would be last in order of time as to Chapter 3 and Chapter 72. Furthermore, Chapter 252 is also last in local position, it bearing the higher number of the three statutes involved.

In **Board of County Commissioners of Socorro County vs. Leavitt**, 4 N.M. (Gild.) 37, 12 P. 759, the Court was confronted, interestingly enough, with three chapters of the laws of 1884, which in some respects contained repugnancies to one another. The Court held that Chapter 39 must prevail, it being the last in point of time and in local position. Such reasoning is clearly applicable to the three chapters of Laws of 1957, and, in accordance with the Leavitt case, we hold that Chapter 252, Laws of 1957, impliedly repeals the conflicting provisions of Chapters 3 and 72 of Laws of 1957.

However, we do not wish to place this opinion on such possibly narrow grounds. The foregoing rules of construction are but part of a larger and more basic inquiry, to-wit, to ascertain the intention of the Legislature, the fundamental rule of construction of statutes. Turning to the provisions of Chapter 252, it is to be born in mind that Section 5 thereof requires that **all** warrants upon the State Treasury are to be issued by the Director of the Department of Finance and Administration. Presumably, this means all

warrants applicable to state agencies. A state agency is defined in Section 1 of Chapter 252, to include all departments, institutions, boards, commissions, districts or committees of the government of New Mexico. It would seem to be all inclusive in its terms. You will further observe that Section 6 of Chapter 252 provides that all payments and disbursements of public funds of New Mexico be upon warrants drawn by the Director. In Section 7 it is provided that no warrant upon the State Treasury shall be issued except upon determination of the Division of Financial Control that the amount of the expenditure does not exceed appropriations, does not exceed the periodic allotment, and is for a purpose included within such appropriation or otherwise authorized by law. Warrants are thus subject to the determination of the Division of Financial Control, which is one of those departmental divisions under the ultimate control of the Director. Notice should also be made of the fact that Section 8 of Chapter 252 provides that the said Division of Financial Control shall settle all claims against the State, and shall keep an account between the State and your office. Section 8 also provides that every warrant shall contain the particular fund appropriated by law out of which the same is to be paid. Bearing in mind that the ultimate rule of statutory construction is to ascertain the intention of the Legislature, it is our opinion that the Legislature, by Chapter 252, intended to vest in the Director of the Department of Finance and Administration sole authority to draw warrants against the Treasurer of the State of New Mexico.

While this precise problem was not passed upon in **Torres vs. Grant**, 62 N.M. , wherein the opinion was filed July 12, 1957, it is to be born in mind that that case pointed out how the Legislature by Chapter 252 deprived the State Auditor of his duty to issue warrants.

Reading Chapters 3, 72 and 252, Laws of 1957, together, in the light of the foregoing rules of statutory construction, and in the light of our Supreme Court's recent decision in *Torres vs. Grant*, supra, we hold that warrants drawn for the purpose of paying per diem and traveling expenses of the Legislative Finance Committee, and warrants drawn to effect payment of the Legislative Council and Legislative Council's services, should only be by the Director of the Department of Public Finance and Administration, and not by the State Auditor of New Mexico.