

Opinion No. 58-20

January 24, 1958

BY: OPINION OF FRED M. STANDLEY, Attorney General Alfred P. Whittaker,
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TO: Edward M. Hartman, Director, Department of Finance and Administration, P. O.
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QUESTION

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1. In regard to audits and actions stemming from audits completed prior to July 1, 1957, or in process at that date, does the Director of Finance and Administration have any statutory authority or responsibility to initiate or continue civil recovery or criminal actions?
2. Should the previous question be answered negatively, where does such authority or responsibility rest?

CONCLUSIONS

1. No.
2. Upon the State Auditor.

OPINION

ANALYSIS

Prior to July 1, 1957, the post auditing function was the responsibility of the State Comptroller in accordance with § 11-1-10, N.M.S.A., 1953, particularly. Chapter 251 of the Laws of 1957, in § 9 thereof, abolished the office of State Comptroller. The same section directed that all records of the office should be transferred to the Department of Finance and Administration, but all records of the State Comptroller relating to audits were to be transferred to the State Auditor.

Chapter 248 of the Laws of 1957 prescribes the powers and duties of the State Auditor effective July 1, 1957. Section 17 of that Act specifically provides that audits completed by the office of the State Comptroller prior to July 1, 1957 shall be considered as audits performed under Chapter 248 and that audits contracted or completed prior to July 1, 1957 by a qualified private firm shall be considered as performed under Chapter 248. Section 11 authorizes the State Auditor to bring suit to enforce repayment of a shortage

and § 14 provides for proceedings by the State Auditor against sureties on official bonds.

A reading of Chapter 248 suffices to impress the reader with the broad general powers conferred upon the State Auditor by this legislation, and the clear indication of the legislative intent that the State Auditor, effective July 1, 1957, exercise all post audit functions. The Supreme Court said in *Torres v. Grant*, No. 6267, filed July 12, 1957:

"The same legislature which deprived respondent of most of his prior statutory duties, including the duty to issue warrants, enacted Chapter 248, which conferred on the office of Auditor various additional duties, particularly post audit duties."

It is also clear from Chapters 251 and 252 of the 1957 Session Laws that the broad powers conferred upon the new State Department of Finance and Administration do not include any powers which would conflict with the post audit functions of the State Auditor.

Accordingly, it would be anomalous to conclude that the Director of Finance and Administration retains by implication somehow a residue of responsibility to initiate or prosecute civil or criminal actions arising out of audits completed or in process on July 1, 1957.

It follows also that responsibility in this regard is squarely placed upon the State Auditor by Chapter 248 of the Laws of 1957.