

Opinion No. 60-106

June 13, 1960

BY: OPINION of HILTON A. DICKSON, JR., Attorney General

TO: Honorable Robert D. Castner State Auditor Santa Fe, New Mexico

QUESTION

QUESTIONS

1. Do all accountants registered under the Public Accountancy Act (§§ 67-23-1 et seq., N.M.S.A., 1953 Comp.), be they "Certified" or "Registered," have the right, subject to your approval, to audit under contract the financial affairs of State agencies and local public bodies pursuant to §§ 4-4-2.1 et seq., N.M.S.A., 1953 Comp. (PS)?

2. If the answer to Question 1 is "Yes," is a "Registered Public Accountant" eligible to perform such an audit contract for an agency which receives Federal funds to finance a part of its program, when the contract between the agency and the Federal Government requires that audits of the Federal funds be performed by a Certified Public Accountant?

CONCLUSION

1. Yes.

2. No, see analysis.

OPINION

{*477} ANALYSIS

Under §§ 4-4-2.2 and 2.3, N.M.S.A., 1953 Comp. (PS), you are charged with the responsibility of auditing, through your office or through independent auditors approved by you, the financial affairs of every State agency and every local public body as defined by § 4-4-2.1. If the audit is to be performed by an "independent auditor," § 4.4-2.7 becomes pertinent to your question. This section reads, in part, as follows:

"4-4-2.7. Approval of contracts for auditing by state auditor. -- The state auditor shall have the power to approve or disapprove any and all contracts for auditing entered into between any officer of any state agency or local public body and any private accountant or auditor or firm of accountants or auditors . . ."

Your question is whether the terms "accountant" and "firm of accountants" in the above-cited section refers to "Registered Public Accountants" as well as "Certified Public Accountants." A possible question whether the term "auditor" would include persons

outside the above two categories is moot at this time since you state that your policy is to approve only contracts involving persons or firms included in such categories.

First, it is our opinion that you cannot approve a contract between a State agency or a local public body and an accountant or accounting firm unless such accountant or firm is licensed or certified to practice public accountancy in New Mexico pursuant to §§ 67-23-1 {*478} et seq., N.M.S.A., 1953 Comp. While the sections of the statutes granting you authority to approve audit contracts do not specify this requirement, it would be folly to say that the legislature intended that audits of public funds be performed by accountants or accounting firms not allowed to practice their profession in New Mexico.

In answer to your specific Question No. 1, our opinion is that anyone qualified to practice public accountancy in New Mexico may, subject to your approval, contract with a State agency or local public body for the audit of financial affairs of the agency or body.

Under § 67-23-8, no person or firm not licensed or certified may practice public accountancy in New Mexico. Under § 67-23-11, not only may certified public accountants so register, but also all persons engaged at the time of the enactment of the Public Accountancy Act (the Act became effective 90 days after the adjournment of the 1947 legislature in which it was enacted) in the practice of public accountancy as their principal occupation within the State either as individuals or as member or a copartnership engaged in the practice of public accountancy, and accountants employed by certified public accountants or registered public accountants engaged in the practice of public accountancy with at least three years' experience as senior auditors or accountants in such capacity. Those in the last two categories are by § 67-23-12 called "Registered Public Accountants." Thus, such persons are entitled to practice public accountancy in New Mexico and are, in our opinion, entitled to audit the financial affairs of State agencies and local public bodies, provided the audit contract is approved by you. We reach this conclusion in view of the fact that you may approve contracts involving "accountants" and "accounting firms." The legislature did not impose any additional qualifications.

The answer to your second question is that the Federal Government has the power to say who is to audit the expenditures of Federal funds. Therefore, it can impose any requirement it wishes in this regard over and above the requirements of State law. Therefore, as a practical matter, if the Federal Government requires an audit by a Certified Public Accountant in connection with the use of Federal funds by a State agency and the agency's audit contract must have your approval since it involves the financial affairs of such agency, a Registered Public Accountant will not be eligible to perform such an audit.

By: Phillip R. Ashby

Assistant Attorney General