

## **Opinion No. 61-07**

January 12, 1961

**BY:** OPINION OF EARL E. HARTLEY, Attorney General Norman S. Thayer, Assistant Attorney General

**TO:** Mr. Joseph F. Halpin, State Records Administrator, State Records Center, 404 Montezuma Street, Santa Fe, New Mexico

### **QUESTION**

#### **FACTS**

The State Records Center has in its possession a collection of documents that includes official correspondence of a former Governor of the Territory of New Mexico, Chief Justice of the Supreme Court of the Territory of New Mexico, Representative to the Territorial Legislature, and Territorial delegate to national and international conferences on irrigation and mining. The collection includes, in addition to official correspondence, other official documents such as pardons, appointments, and court dockets. Lastly, the collection includes some purely personal documents and correspondence of the same person, and some of the official documents and correspondence contain portions that are purely personal.

#### **QUESTION**

Is the State Records Center the proper facility for the custody of this entire collection?

#### **CONCLUSION**

Yes.

### **OPINION**

#### **ANALYSIS**

Section 71-6-5, N.M.S.A., 1953 Compilation authorizes the State Records Commission to receive as donations and loans from private and governmental sources documentary materials that are deemed to be of value to the State and the general public for historical reference and research purposes. It will be noted that this authority is not limited to public records as such.

Section 71-6-8, N.M.S.A., 1953 Compilation provides that the State Records Center shall be the facility for storage and disposition of all inactive and infrequently used records of present and former state agencies which may be in the custody of any state agency or instrumentality, and which are not required by law can be kept elsewhere.

Under this section, it is clear that the official documents and correspondence of a former territorial governor, chief justice, representative, and delegate should be in the custody of the State Records Commission in the State Records Center.

It is not unusual for official documents to contain personal matters. Opinions of the territorial Attorneys General are a good example. But insertion of private matters does not transform public records into private documents. Therefore, it is our opinion that those portions of the collection that contain both official and personal matters are still public records and should be in the custody of the State Records Commission at the State Records Center.

As to those portions of the collection that are purely personal in nature, Section 71-6-5, supra, expressly provides that the State Records Commission may receive private documents if they are deemed to be of value to the State and general public for historical reference and research purposes. The same section leads us to believe that the legislature intended the State Records Center to be the repository for private documents that are primarily valuable for historical reference and research purposes. This is not to say that such private documents are public records. Clearly, they could not be replevied from the hands of a private owner, nor are they the type of records that the State Records Commission could compel another state agency to surrender. But, if such documents are donated or loaned to the State Records Commission from any source, it is our opinion that the commission is authorized to take custody of them and retain them in the State Records Center in perpetuity, in the case of donations, or for the period specified in the loan agreement, in the case of loans.