

Opinion No. 67-112

October 10, 1967

BY: OPINION OF BOSTON E. WITT, Attorney General

TO: Joseph F. Halpin Records Administrator State Records Center and Archives 404 Montezuma Santa Fe, New Mexico

QUESTION

FACTS

The Records Center has been receiving a number of documents for filing from the State Police Department which the Administrator of the Records Center feels are not "Rules of General Application" within the meaning of Section 71-7-2, N.M.S.A., 1953 Compilation and, therefore, are being improperly submitted to the Records Center for filing. For the purposes of procuring from this office a definition of "Rules of General Application" which would preclude certain commonly received types of documents from the State Police, the Administrator has attached to his request for an opinion typical documents marked as Exhibits "A through F" inclusive. These documents will be considered individually hereafter in the analysis on which this opinion is based.

QUESTION

Are the documents marked Exhibits A through F, attached hereto, issued by the State Police, "Rules of General Application" or other documents entitled to be filed in the State Records Center under the provisions of the State Rules Act?

OPINION

{*163} ANALYSIS

Exhibit A is a letter from the Chief of the State Police to a subordinate advising him of the decision of the Police Board to retire the subordinate for disability reasons. Obviously, this is a decision having no application to or affecting any other agency of government and, on the contrary, deals with the specific factual situation and individual. It should, therefore, not be treated as a rule of general application under Section 2D of the act; however, it is a notice within Section 5 of the act inasmuch as it is an appealable administrative decision.

Exhibits B and C are written communications from the Chief of the State Police to subordinate officers advising them of promotions and of the scope of their new duties. In no sense are either of these documents rules, whether general application or internal application, nor are they "publications", pamphlets, reports, notices, proclamations or

similar instruments. Neither of these documents are recordable under Section 2D or Section 5 of the act.

Exhibit D, entitled "Procedures for handling emergencies within the State," is from the Chief of the State Police and undertakes to instruct the various suboffices of the State Police that in the event they ascertain that there are local emergencies which the county authorities cannot adequately cope with, they are to immediately advise, by methods prescribed in the memorandum, the State Police headquarters in Santa Fe. Included in the memorandum are the words "In order that the Governor and this office may have knowledge of disaster or emergency . . .". Elsewhere in the memorandum appears the sentence "Headquarters will then distribute the information to appropriate and interested agencies." While this memorandum does govern the internal conduct of the State Police, it necessarily also makes the headquarters of the State Police an information center to which other agencies and branches of government may have access for the purpose of taking prompt remedial action to counteract the effect of such emergencies. While the State Police have pre-existing authority to supplement city and county efforts to counteract an emergency condition, it is obvious that the executive branch of the state government has much broader powers to cope with such emergencies such as the declaration of marshall law or a formal request to the federal government for aid of various kinds. This memorandum, therefore, affects other agencies and comes within the definition of "Rules of General Application". It should be filed with the Records Center.

Exhibit E is an excerpt from the minutes of the Police Board providing for a retirement at age 61 or after 30 years service, whichever occurs first. This is an internal regulation under Section 4 of the act and the original and four copies should be filed with the Records Center. We would advise that it is our understanding that the 30-year provision is presently being litigated.

Exhibit F is a letter to an officer advising him that he has been placed in command of a newly formed subdistrict of the State Police. The letter is not a public proclamation of the formation of a new district. It is simply {*164} an order transferring an officer to a new post of duty having no direct effect on anyone except the officer involved. It therefore is not a regulation, notice or publication and should not be filed in the Records Center.

Individual communications advising officers of their promotion or transfer and the scope of their duties are not regulations, notices, publications or proclamations which are to be recorded in the Records Center. A notice to an individual officer that he has been retired for disability from the Police Board is however, an official notice reflecting semi-judicial action taken by the Police Board and should be recorded in the Records Center. Communication prescribing a method of communicating information relative to a general disaster to the state headquarters is a rule of general application which should be recorded.

By: Robert L. Woodward

Assistant Attorney General