

Opinion No. 69-03

January 22, 1969

BY: OPINION OF JAMES A. MALONEY, Attorney General Justin Reid, Assistant Attorney General

TO: Joseph F. Halpin, Records Administrator, State Record's Center & Archives, 404 Montezuma, Santa Fe, New Mexico

QUESTIONS

FACTS

As a member of the Commission on Public Records, this office participated in a meeting of that Commission held on December 6, 1968, where Executive Order No. 9, dated September 27, 1958, was presented and discussed.

In pertinent part, the Order provides:

"NOW, THEREFORE, I David F. Cargo, to meet the needs and requirements of both the State Commission of Public Records and the Inter-Agency Services, do hereby establish in the State Commission of Public Records the division of Inter-Agency Services.

The division herein establish will be responsible for all the printing and duplicating services in the executive branch of the government."

At the direction of the Commission, you ask the opinion of this office on these.

QUESTIONS

1. Can the Governor by executive order establish a new division within the Commission of Public Records and also assign new functions and responsibilities.
2. Does the Commission of Public Records have the authority to refuse an assignment of additional responsibilities given to them by an executive order?

CONCLUSIONS

1. No.
2. Yes.

OPINION

{*6} ANALYSIS

The Commission on Public Records was established in 1959 by enactment of the 24th Legislature entitled the "Public Records Act" and compiled as §§ 71-6-1, et seq., N.M.S.A., 1953 Compilation. The powers and duties of the Commission are enumerated in § 71-6-4.

Subsequent enactments in 1961, 1963, 1965, 1967 and 1968 added, modified and repealed various provisions of the Act, as well as providing additional duties for the Commission under the "State Rules Act", § 71-7-1, et seq., N.M.S.A., 1953 Compilation (P.S.).

Since you and the Commission are familiar with the statutes, we will not take space here to quote them.

After careful review of this enabling legislation, we believe it can be fairly said that nowhere is it provided that the Commission shall have authority or responsibility to undertake or administer printing or duplicating services for the state government.

The office of Governor carries with it broad powers to administer the affairs of government through executive orders and otherwise. In all likelihood, this includes the power to establish a service agency to meet governmental printing, duplicating and other needs. However, in our opinion, the state's chief executive has no constitutional or statutory power to establish such an agency as a new {*7} division of a commission whose existence and scope of functioning is based on a legislative enactment which cannot fairly be construed to include authority to undertake such services. **State ex rel. Gomez, v. Campbell, et al.**, 75 N.M. 86 at 96, 400 P.2d 956 (1965); **Vermejo Club v. French**, 43 N.M. 45 at 49, 85 P.2d 90 (1938); **Maxwell Land Grant Co. v. Jones**, 28 N.M. 427 at 429, 213 P. 1034 (1923); Opinions of the Attorney General Nos. 57-110 and 57-94 (1957 Vol., pp. 163 and 140) and Nos. 5588 and 5437 (1951-52 Vol., pp. 294 and 143).

As to your second question, the Commission on Public Records has all necessary and implied authority to carry out the responsibilities delegated to it by law. **Morrow, et al. v. Clayton, et ano.**, (CA-10, 1963), 326 F.2d 36 at 44. In addition, it has a duty not to exceed this authority, no matter how well intentioned its acts may be. **Continental Oil Company, et al. v. Oil Conservation Commission et al.**, 70 N.M. 310 at 326, 373 P.2d 809 (1962).

Since the acceptance of new functions and responsibilities relating to governmental printing and duplicating would exceed the Commission's authority as established by the Legislature, it is the opinion of this office that the Commission has a duty to decline the assignment contemplated by Executive Order No. 9 unless and until such time as legislative authorization is provided.

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{*134} **ANALYSIS**

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The office of Governor carries with it broad powers to administer the affairs of government through executive orders and otherwise. In all likelihood, this includes the power to establish a service agency to meet governmental printing, duplicating and other needs. However, in our opinion, the state's chief executive has no constitutional or statutory power to establish such an agency as a new division of a commission whose existence and scope of functioning is based on a legislative enactment which cannot fairly be construed to include authority to undertake such services. **State ex rel. Gomez, v. Campbell, et al.**, 75 N.M. 86 at 96, 400 P.2d 956 (1965); **Vermejo Club v. French**, 43 N.M. 45 at 49, 85 P.2d 90 (1938); **Maxwell Land Grant Co. v. Jones**, 28 N.M. 427 at 429, 213 P. 1034 (1923); Opinions of the Attorney General Nos. 57-110 and 57-94 (1957 Vol., pp. 163 and 140) and Nos. 5588 and 5437 (1951-52 Vol., pp. 294 and 143).

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State of New Mexico Office of the Governor Santa Fe 87501

March 19, 1969

EXECUTIVE ORDER 2

WHEREAS, the Attorney General has by Opinion No. 69-3 negated the effect of Executive Order 9 relating to the operation of Inter-Agency Services and,

WHEREAS, the continued operation of Inter-Agency Services is essential to efficient governmental operation,

NOW THEREFORE, I David F. Cargo, to meet the needs and requirements of efficiency in government do hereby establish the offices of the division of Inter-Agency Services in the offices of the State Purchasing Agent.

The division herein established will be responsible for all the printing and duplicating services in the executive branch of the government.

In this regard, and to accomplish the purpose of Inter-Agency Services, the State Purchasing Agent shall have custody and control of all printing and duplicating equipment which is the property of or leased by the executive branch of the state and shall make rules governing the maintenance and use of all printing and duplicating equipment under his control.

To accomplish the services recommended by the Printing Industry of New Mexico and provide the state with better printing and duplicating services, all requests for printing and duplicating will be reviewed and approved by the division herein created.

The State Purchasing Agent shall not accept any purchase requisition for printing or duplicating equipment or services that does not bear his approval.

This order shall become effective immediately.

David F. Cargo, Governor"

By: Justin Reid

Assistant Attorney General