

## Opinion No. 69-107

September 12, 1969

**BY:** OPINION OF JAMES A. MALONEY, Attorney General Oliver H. Miles, Assistant Attorney General

**TO:** Mr. Harold G. Thompson, State Auditor, Room 115, Capitol Building, Santa Fe. N.M. 87501

### QUESTIONS

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1. Does Section 6-5-27, N.M.S.A., 1953 Compilation requiring that emergency purchases shall be reported to the Legislative Audit Commission, require that such purchases now be reported to the State Auditor pursuant to the Supreme Court's mandate in *Thompson v. Legislative Audit Commission*, 79 N.M. 693, 448 P.2d 799 (1968)?
2. If the answer to the first question is "yes", what authority does the State Auditor's office have to refuse, approve, or disapprove such reports?

#### CONCLUSIONS

1. Yes, see analysis.
2. See analysis.

### OPINION

#### {\*173} ANALYSIS

Section 6-5-27, N.M.S.A., 1953 Comp. (1969 P.S.) relating to emergency purchases, provides in pertinent part:

"B. In the event of an emergency, as defined herein, the central purchasing office or a user may purchase by order without bids. Emergency purchases shall be reported to the legislative audit commission and these reports shall be public records. The reports shall contain a full description of the emergency necessitating the purchase, the item purchased, the price, and the name and address of the supplier."

The New Mexico Supreme Court, in **Thompson v. Legislative Audit Commission**, **supra**, held the creation of the Legislative Audit Commission to be an unconstitutional usurpation of the duties of the State Auditor. Although the State Auditor has no specific constitutional or statutory duties, the Court said that it would seem fundamental that the

office was created for the purpose "of having a completely independent representative of the people, accountable to no one else, with the power, duty and authority to examine and pass upon the activities of state officers and agencies who, by law, receive and expend public moneys." It therefore appears to us that the clear implication from the Court's language is that the State Auditor has the duty to examine the transactions of state officers and agencies and to report any occurrences which do not conform with the law.

Pursuant to the **Thompson** case, **supra**, the legislature repealed the Legislative Audit Commission Act, and therefore the Commission no longer exists. The dilemma then is whether the emergency purchases shall go unreported, or shall be reported to the State Auditor.

It is our opinion that the intention of the emergency purchases statute is to keep a public record of such purchase and to provide some means of control over them. This method of control should be that of having the purchase orders filed with the Auditor's office and any discrepancies noted and reported by him or his staff. The remedy for any misuse of the emergency purchases provision would appear to be in the form of reporting the same in the audit report rather than in approving or disapproving the purchase itself.