

Opinion No. 78-07

May 9, 1978

OPINION OF: Toney Anaya, Attorney General

BY: Deborah A. Moll, Assistant Attorney General

TO: Mr. Joseph F. Halpin, Director, State Records Center and Archives, 404 Montezuma Santa Fe, New Mexico 87501

RECORDS CENTER; REORGANIZATION RULES & REGULATIONS

Pursuant to the Executive Reorganization Laws 1977 and the State Rules Act, State Records Center does not have responsibility of determining whether rules and regulations submitted for filing have been adopted in accordance with proper requirements.

QUESTIONS

Before filing any rule promulgated under the new Reorganization Laws, does the State Records Center have the responsibility of determining whether the department promulgating the rule has complied with the hearing and notice requirements as stated in Chapters 245 to 247 and 249 to 258, New Mexico Executive Reorganization Laws Effective March 31, 1978?

CONCLUSIONS

No. See Analysis.

ANALYSIS

Chapter 245, Section 6E; Chapter 246, Section 5E; Chapter 247, Section 5E; Chapter 249, Section 7E; Chapter 250, Section 6E; Chapter 252, Section 7E; Chapter 253, Section 7E; Chapter 254, Section 6E; Chapter 255, Section 6E; Chapter 257, Section 6E of the New Mexico Executive Reorganization Laws, 1977 require that rules and regulations affecting persons or agencies outside the promulgating departments be adopted, amended or repealed only after due notice and hearing. The above-cited sections provide:

"E. The secretary may make and adopt such reasonable and procedural rules and regulations as may be necessary to carry out the duties of the department and its divisions. No rule or regulation promulgated by the director of any division in carrying out the functions and duties of the division shall be effective until approved by the secretary unless otherwise provided by statute. Unless otherwise provided by statute, no regulation affecting any person or agency outside the department shall be adopted,

amended or repealed without a public hearing on the proposed action before the secretary or a hearing officer designated by him. The public hearing shall be held in Santa Fe unless otherwise permitted by statute. Notice of the subject matter of the regulation, the action proposed to be taken, the time and place of the hearing, the manner in which interested persons may present their views and the method by which copies of the proposed regulation, proposed amendment or repeal of an existing regulation may be obtained shall be published once at least thirty days prior to the hearing date in a newspaper of general circulation and mailed at least thirty days prior to the hearing date to all persons who have made a written request for advance notice of hearing. All rules and regulations shall be filed in accordance with the State Rules Act."

OPINION

The notice and hearing requirements as set out in the Reorganization Laws provide that the rules promulgated pursuant to those sections be filed in accordance with the State Rules Act. The State Rules Act, Section 71-7-1, **et seq.**, N.M.S.A. 1953 Comp., specifies which rules and regulations are to be filed with the State Record Center, that the rules and regulations are to be filed in accordance with the style and format set by the State Records Center and provides for public distribution of the rules and regulations once filed. The State Rules Act, **supra**, makes no provision for a preliminary investigation by the Records Center with respect to the compliance of the submitting agency to any notice and hearing requirements.

As an administrative body, the Records Center can only act within the scope of the authority delegated by statute. **Public Service Co. of New Mexico v. New Mexico Environmental Improvement Board**, 89 N.M. 223, 549 P.2d 638 (1976). Any independent investigation into validity of the rules and regulations submitted for filing does not come within the authority granted to the Records Center by the State Rules Act. Therefore, the Records Center has no power to make such a determination as to whether, in fact, the promulgating agency has complied with the notice and hearing requirements.

Nevertheless, pursuant to its authority under Section 71-7-3, **supra**, to adopt a rule governing the style and format of the rules and regulations to be filed, the Record Center may require a certificate of compliance as a matter of style or format. While the Record Center has no authority to look behind a certificate of compliance or to make any determination of actual compliance, failure to incorporate such a certificate of compliance on rules and regulations submitted for filing would constitute a failure to comply with the style and format if required by the Record Center.

We would note that in Opinion of the Attorney General No. 71-92, dated July 22, 1971, this office ruled that with respect to a similar notice and hearing requirement, see Laws 1971, Chapter 54, Section 3, that the State Records Center would use a certificate of compliance and "[u]ntil such certificate is completed by the board in question, the Records Center will not accept a regulation for filing." However, the Records Center is

not obliged to require a certificate of compliance as part of its regulation governing style and format as the responsibility for compliance with statutory notice and hearing provisions is not within the authority of the Records Center.

ATTORNEY GENERAL

Toney Anaya, Attorney General