

**Opinion No. 78-22**

December 8, 1978

**OPINION OF:** Toney Anaya, Attorney General

**BY:** Scott Rutledge, Assistant Attorney General

**TO:** Alvino E. Castillo, C.P.A., State Auditor, Box 2383 Santa Fe, New Mexico 87503

MUNICIPAL TAX RECORDS; STATE AUDITOR

Section 14-37-8, N.M.S.A. 1953 does not deny the State Auditor access to municipal tax records when examination of such records is required by generally accepted auditing standards.

**QUESTIONS**

May an employee of the State Auditor, engaged in auditing the financial affairs of Los Alamos County, examine the tax returns and receipts received by the County pursuant to its occupation tax, Sections 14-37-1 through 14-37-13 and 15-36A-1, N.M.S.A. 1953?

**CONCLUSIONS**

Yes.

**ANALYSIS**

Section 14-37-8 N.M.S.A. 1953 would seem to indicate that neither the State Auditor nor his personnel may examine such records:

"A. \* \* \*

B. It is unlawful for any municipal official, employee, or agent to reveal to any individual other than another municipal official, employee, or agent engaged in municipal tax administration, or an employee of the revenue division of the taxation and revenue department, any information about a taxpayer acquired as a result of his affiliation or employment with the municipality. No municipal official charged with keeping of such information shall be required to produce the information in any action or proceeding in court except on behalf of:

1. the municipality in any action or proceeding under the provisions of Sections. 14-37-1 through 14-37-13, N.M.S.A. 1953 in which it is a party; or
2. any party to an action or proceeding under the provisions of Sections 14-37-1 through 14-37-13, N.M.S.A. 1953 when the information is directly involved in the action or

proceeding. In either event the court may require the production of and may admit in evidence only so much of the information as is pertinent to the action or proceeding.

C. Nothing contained in this section shall be construed to prohibit:

1. delivery to a person or his authorized representative of a copy of any return or report filed in connection with his tax;
2. the publication of statistics prepared so as to prevent the identification of a particular taxpayer's report or return and its contents;
3. inspection by the attorney general or other legal representative of the state, county or municipality of the report or return of any person by or against whom action or proceeding is contemplated or has been instituted as authorized in Sections 14-37-1 through 14-37-13, N.M.S.A. 1953;
4. the furnishing of the name, address, and type of business of a taxpayer to other municipal employees engaged in administration and enforcement of municipal ordinances; or
5. inspection by the attorney general or an authorized representative of his consumer protection division, of the report or return, or other information on file, of any person, firm, partnership or corporation, by or against whom action, proceeding or investigation is contemplated or has been instituted as authorized in Sections 49-15-1 through 49-15-14, as amended, N.M.S.A. 1953.

D. Any person violating the provisions of this section shall be punished by a fine not exceeding one thousand dollars (\$1,000) or by imprisonment not exceeding one year, or both. If the offender is a municipal officer or employee, he shall be dismissed from office and prohibited from holding any public office in this state for a period of five years."

### **OPINION**

On the other hand, certain sections of the Audit Act, Sections 4-31-1 through 4-31-14, N.M.S.A. 1953, seem to require that the State Auditor be able to examine these documents and any other documents bearing upon the financial affairs of a municipality. In particular Section 4-31-3, **supra**, states:

"A. The financial affairs of every agency shall be thoroughly examined and audited each year by the state auditor, personnel of his office designated by him, or by independent contract auditors approved by him. The audits shall be conducted in accordance with generally accepted auditing standards.

B. In addition to the annual audit, the state auditor may cause the financial affairs and transactions of an agency to be audited in whole or in part."

If in fact the observance of generally accepted auditing standards requires that the auditor of a municipality have available to him the returns prepared and receipts given in connection with a municipal tax levied on business receipts, then a strict interpretation of Section 14-37-8, **supra**, would prevent the State Auditor from fulfilling the duty given him in Section 4-31-3, **supra**. Such a result would be absurd.

Statutes are not to be construed in a manner which will achieve an absurd or unreasonable result. **State v. Nance**, 77 N.M. 39, 419 P.2d 242 (1966), cert. den. 386 U.S. 1039, 87 S. Ct. 1495, 18 L. Ed. 2d 605; **State v. Tapia**, 89 N.M. 221, 549 P.2d 636 (Ct.App. 1976); **State v. Myers**, 88 N.M. 16, 536 P.2d 280 (Ct. App. 1975). Common sense must prevail. **State v. Olive**, 85 N.M. 664, 515 P.2d 668 (Ct. App. 1973), cert. den. 85 N.M. 639, 515 P.2d 643. A court will not be bound by the literal interpretation of the words of a statute if such a strict construction would defeat the intended purpose of the legislature. **State v. Nance, supra**.

We think that the legislature manifests a clear intent in Section 4-31-3, **supra**, that the State Auditor have available to him all documents necessary to perform a thorough audit of every governmental entity, in accordance with generally accepted auditing standards. We think that the policy is expressed strongly enough so that Section 4-31-3 must prevail over Section 14-37-8, **supra**, to the extent of any repugnancy between the two provisions. Therefore, we conclude that the State Auditor is authorized to examine tax documents generated pursuant to Sections 14-37-1 through 14-37-13, **supra**, insofar as such examination is required by generally accepted auditing standards.

#### **ATTORNEY GENERAL**

Toney Anaya, Attorney General