

**Opinion No. 87-44**

September 30, 1987

**OPINION OF:** HAL STRATTON, Attorney General

**BY:** Frank Murray, Assistant Attorney General

**TO:** John Gasparich, Director, State Budget Division, Department of Finance & Adm.

**QUESTIONS**

1. Is the beef council a state agency as defined by Sections 6-3-1 and 6-3-9 N.M.S.A. 1978 of the Budget Act?
2. Is the beef council required to submit an annual operating budget and budget request to the State Budget Division of the Department of Finance and Administration pursuant to sections 6-3-7 and 6-3-19 N.M.S.A. 1978?
3. Are funds received by the beef council subject to legislative appropriation?

**CONCLUSIONS**

1. Yes.
2. Yes.
3. The legislature has provided the procedure for receipt and disbursement of funds.

**ANALYSIS**

In answer to your first question, the Beef council is an entity of the State of New Mexico, created by Section 77-2A-1 through Section 77-2A-9 NMSA 1978. Section 77-2A-3 NMSA 1978 states:

There is created the "New Mexico beef council," consisting of nine members appointed by the director with the approval of the governor for terms of three years or less so that the terms of three members expire on June 30 of each year. Vacancies shall be filled by the director for the unexpired term. The director shall serve as an ex officio member of the council.

The case of *Harrington v. Attebery*, 21 N.M. 50, 153 P. 1041 (1915), contains a lengthy discussion on what constitutes a state agency. The analysis in *Harrington* makes it clear that an entity, to be a public agency, must be under the state's control. The Beef Council is created by state statute and is appointed by the Director, a state official. The Beef Council's purposes, duties, and responsibilities, and the controls on the Council's

activities, are set forth in state statutes. Sections 77-2A-1 to 77-2A-9 NMSA 1978. The New Mexico Livestock Board, another state agency, Section 77-2A-7.1 NMSA 1978, collects an assessment, which funds the Council.

Section 6-3-1 NMSA 1978 of the Budget Act defines "state agency" to include "any department, institution, board, bureau, commission, district or committee of government of the state of New Mexico and means every office or officer of any of the above." See also 6-3-9 NMSA 1978 (same). It is our opinion that the Beef Council is a commission or committee of government and falls within this definition of "state agency." It thus is subject to the Budget Act's requirements.

In answer to your second question, Section 6-3-7 NMSA 1978 states:

[E]ach state agency shall annually on or before May 1st submit to the State Budget Division a budget for the ensuing fiscal year, in such form as may be prescribed by the division and containing such information concerning the anticipated receipts, expenditures and balances on hand as may be prescribed by law or by the State Budget Division. Such budget shall be subject to the approval of the State Budget Division and no expenditures shall be made by any state agency for the fiscal year covered by said budget until the budget shall have been approved by the State Budget Division, provided that any action by the division shall be subject to review and modification by the governor.

Section 6-3-19 NMSA 1978 requires that each state agency complete mandated budget forms. Moreover, the legislature has established a review process for the Beef Council's budget. Section 77-2A-6(2) NMSA 1978 states that the Council shall:

(2) submit to the director for approval a detailed annual budget for the council on a fiscal year basis and provide a copy of such budget upon request to any person who has paid as assessment or made a contribution under the New Mexico Beef Council Act [77-2A-1 to 77-2A-7, 77-2A-8, 77-2A-9 NMSA 1978]....

The "director" refers to the director of the New Mexico Department of Agriculture. Section 77-2A-2 NMSA 1978. The Department of Agriculture submits its budget as part of New Mexico State University's budget, which the Commission on Higher Education reviews. The Commission then submits the budget to the state budget division of the Department of Finance and Administration pursuant to Section 21-1-26 and Sections 6-3-1 NMSA 1978.

The Beef Council, even though it requires budget approval by the "director," is not part of the Department of Agriculture, or any university, but remains a separate entity. And even though the Council's budget is submitted to the director for approval, it is not submitted as part of the university budget, and the council does not receive university funds. After approval by the director, the Council should submit its budget to the state budget division as the law requires all state agencies to do. Sections 6-3-1 to 6-3-22 NMSA 1978.

In answer to your third question, it is important to note that Council funds are not paid from the state treasury. See AG opinion No. 62-88 (1961-62). Council funds are derived from special assessments on the sale of cattle, Section 77-2A-7.1 NMSA 1978, and from national beef industry research funds, Section 77-2A-7 NMSA 1978. Article IV, Section 30 of the New Mexico Constitution provides:

Except interest or other payments on the public debt, money shall be paid out of the treasury only upon appropriations made by the legislature. No money shall be paid therefrom except upon warrant drawn by the proper officer. Every law making an appropriation shall distinctly specify the sum appropriated and the object to which it is to be applied.

The legislature has established the Council's method of disbursement. Section 77-2A-8(A) NMSA 1978 provides: "All funds received by the council shall be received and disbursed directly by the council..." The Council issues its own warrants. Section 77-2A-8 NMSA 1978. Beef Council funds are not deposited in the state treasury. The Beef Council Act in effect can be viewed as a continuing legislative appropriation. See, e.g., *Dorman v. Sargent*, 20 N.M. 413, 150 P. 1021 (1915); *Chavez v. Sargent*, 18 N.M. 627, 139 P. 144 (1914).

The legislature has approved a special source for the Council's funds, separate and apart from the state's general funds. The Council nevertheless must submit its budget to the Budget Division for approval. This provision insures that the legislature is apprised accurately of Council expenditures even though separate action on the Council budget is not required at each session.

## **ATTORNEY GENERAL**

HAL STRATTON Attorney General