

CHAPTER 8 Elected Officials

ARTICLE 1 Compensation

8-1-1. Compensation of elective state officers.

A. Annual compensation of elective state officers shall be paid as follows:

governor	\$110,000
secretary of state	85,000
state auditor	85,000
state treasurer	85,000
attorney general	95,000
commissioner of public lands	90,000
public regulation commissioner	90,000.

B. Any person succeeding to the office of governor as provided in Article 5, Section 7 of the constitution of New Mexico shall receive the salary of the office. Every person serving as acting governor during the incapacity or absence of the governor from the state, other than the secretary of state, shall receive two hundred fifty dollars (\$250) as compensation for each day's service as acting governor.

C. All compensation under this section shall be paid from the general fund, except that the amount paid to the commissioner of public lands shall be paid from the state lands maintenance fund.

History: 1953 Comp., § 4-5-1, enacted by Laws 1971, ch. 260, § 1; 1975, ch. 305, § 1; 1977, ch. 346, § 2; 1980, ch. 133, § 1; 1981, ch. 286, § 1; 1986, ch. 49, § 1; 1989, ch. 237, § 1; 1998, ch. 108, § 21; 1999, ch. 255, § 1; 2002, ch. 95, § 1.

ANNOTATIONS

Compiler's notes. — Laws 1971, ch. 260, § 1 enacted a new 4-5-1, 1953 Comp., which replaced former 4-5-1, 1953 Comp., (1941 Comp., §§ 3-1501, 10-422, Laws 1945, ch. 62, § 1; 1951, ch. 109, § 1; 1953, ch. 180, § 1), fixing salaries of elective state officers, which was repealed by Laws 1957, ch. 238, § 3.

Cross references. — For compensation of lieutenant governor, see 8-3-3 NMSA 1978.

For mileage of legislators, see N.M. Const., art. IV, § 10.

The 2002 amendment, effective May 15, 2002, increased the salary amounts in Subsection A.

The 1999 amendment, effective June 18, 1999, substituted "two hundred fifty dollars (\$250)" for "one hundred fifty dollars (\$150)" in Subsection B.

The 1998 amendment, effective January 1, 1999, substituted "public regulation" for "state corporation" near the end of Subsection A; substituted "72,500" for "65,000" at the end of Subsection A; and substituted "lands" for "land office" near the end of Subsection C.

Right and duty to pay salary. — This section clearly creates a right in the officer to require monthly payment of his statutory compensation, and a duty upon the disbursing officer to honor such demand. 1957-58 Op. Att'y Gen. No. 57-262.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 7 Am. Jur. 2d Attorney General § 4; 38 Am. Jur. 2d Governor § 3; 63A Am. Jur. 2d Public Officers and Employees §§ 431 to 486.

Validity of contract by officer with public for rendition of new or special services to be paid for in addition to regular compensation, 159 A.L.R. 606.

De facto officer or employee, payment of salary to, as defense to action or proceeding by de jure officer or employee for salary, 64 A.L.R.2d 1375.

81A C.J.S. States §§ 104 to 119.

ARTICLE 2

Governor-Elect

8-2-1. Policy of legislature.

It is the policy of the legislature that the transition from the administration of one governor to the administration of another governor be orderly and without friction and confusion. The legislature finds that the lag between the election and the inauguration of a new governor is approximately two months and consequently there is a premium on the necessity of a well-planned period of transition. The legislature further finds that for an orderly and efficient transfer of executive authority, the resources required by a governor-elect include, as a minimum, temporary office space in close proximity to the governor's office and the department of finance and administration, the equipment and supplies for such an office and the use of a limited full-time staff and clerical employees.

History: 1953 Comp., § 4-28-1, enacted by Laws 1967, ch. 116, § 1.

8-2-2. Governor-elect; office space and equipment.

Whenever the governor-elect is a different individual than the incumbent governor, the legislative council shall upon his certification of election provide suitable office space in the legislative building and furniture and equipment for the temporary use of the governor-elect and his staff until the inauguration.

History: 1953 Comp., § 4-28-2, enacted by Laws 1967, ch. 116, § 2.

8-2-3. Access to budget information.

The secretary of finance and administration shall fully cooperate with the governor-elect and his staff and shall permit the governor-elect to have full access to all reports, hearings, information and data pertaining to the proposed executive budget.

History: 1953 Comp., § 4-28-3, enacted by Laws 1967, ch. 116, § 3; 1977, ch. 247, § 30.

ARTICLE 3

Lieutenant Governor

8-3-1. Lieutenant governor; powers and duties.

The lieutenant governor in addition to his other duties provided by law shall have the following powers and duties:

A. the lieutenant governor shall:

(1) facilitate and promote the cooperation and understanding between the people of this state and the agencies of state government, by assisting them in their dealings with such agencies, and by assisting the agencies to explain their functions, duties and administrative procedures insofar as they affect the people of this state;

(2) refer any complaints or special problems of the citizens of this state to the proper agency;

(3) keep records of his activities and make an annual report to the governor;
and

(4) perform any other duties that may from time to time be assigned him by the governor.

History: 1953 Comp., § 4-1-3, enacted by Laws 1971, ch. 138, § 1.

ANNOTATIONS

Compiler's notes. — This section, as enacted, did not contain a Subsection "B."

Cross references. — For duties of lieutenant governor, see N.M. Const., art. V, § 7.

For service of lieutenant governor on cabinet, see 9-1-3 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 81A C.J.S. States § 131.

8-3-2. Attorney general; cooperation of agencies.

A. The attorney general shall provide, upon request, legal opinion and advice to the lieutenant governor.

B. All state agencies shall cooperate with the lieutenant governor in the performance of his duties.

History: 1953 Comp., § 4-1-4, enacted by Laws 1971, ch. 138, § 2.

8-3-3. Compensation.

For the performance of the duties established in Section 8-3-1 NMSA 1978, the lieutenant governor shall receive an annual compensation of eighty-five thousand dollars (\$85,000).

History: 1953 Comp., § 4-1-5, enacted by Laws 1971, ch. 138, § 3; 1977, ch. 346, § 1; 1980, ch. 133, § 2; 1981, ch. 286, § 2; 1986, ch. 49, § 2; 1989, ch. 237, § 2; 2002, ch. 95, § 2.

ANNOTATIONS

Cross references. — For compensation of other elective state officers, see 8-1-1 NMSA 1978.

For the compensation of the lieutenant governor while presiding officer of the senate, see N.M. Const., art. V, § 12.

The 2002 amendment, effective May 15, 2002, substituted "eighty-five thousand dollars (\$85,000)" for "sixty-five thousand dollars (\$65,000)".

ARTICLE 4

Secretary of State

8-4-1. Repealed.

ANNOTATIONS

Repeals. — Laws 1978, ch. 132, § 6, repealed 4-2-1, 1953 Comp. (8-4-1 NMSA 1978), relating to payment of bond premium for secretary of state, effective March 6, 1978.

8-4-2. [Chief clerk as assistant; appointment; oath; bond.]

The secretary of state is hereby authorized to appoint his chief clerk to be assistant secretary. Such assistant secretary shall, before entering upon the discharge of his duties give bond to the state in the sum of five thousand dollars (\$5,000), which bond shall be approved by the secretary of state and filed in his office, and shall take and subscribe an oath of office as required by law.

History: Laws 1903, ch. 75, § 1; Code 1915, § 5316; C.S. 1929, § 134-202; 1941 Comp., § 3-102; 1953 Comp., § 4-2-2.

ANNOTATIONS

Cross references. — For constitutional oath of office, see N.M. Const., art. XX, § 1.

Number of assistants. — This section does not allow the secretary of state to have more than two assistants who are not classified under the Personnel Act. 1966 Op. Att'y Gen. No. 66-109.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Statutory conditions prescribed for public officers' bond as part of bond which does not in terms include them, or which expressly excludes them, 109 A.L.R. 501.

Liability of sureties on bond of public officer as affected by fact that it was not signed by him, 110 A.L.R. 959.

Public officer's bond as subject to forfeiture for malfeasance in office, 4 A.L.R.2d 1348.

81A C.J.S. States § 127.

8-4-3. [Assistant secretary; powers.]

The assistant secretary shall have power, in the absence of the secretary, to file all instruments required by the laws of New Mexico to be filed in the office of the secretary of state, and to certify to copies thereof, under his hand and the great seal of the state, with the same force and effect as if the same had been filed or certified by the secretary of state.

History: Laws 1903, ch. 75, § 2; Code 1915, § 5317; C.S. 1929, § 134-203; 1941 Comp., § 3-103; 1953 Comp., § 4-2-3.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 81A C.J.S. States § 132.

8-4-4. Fees of secretary of state.

The secretary of state shall collect the following fees to be deposited with the state treasurer for credit to the general fund:

- A. photocopies of records, per page twenty-five cents (\$.25);
 - B. each certification three dollars (\$3.00);
 - C. filing each official oath three dollars (\$3.00);
 - D. search of records where another fee is not prescribed, per hour of search ten dollars (\$10.00);
 - E. duplicate commission of office or certificate three dollars (\$3.00);
 - F. service of process where another fee is not prescribed twenty-five dollars (\$25.00);
 - G. computer printout of Uniform Commercial Code records, per page one dollar (\$1.00);
- and
- H. computer generated records other than voter registration records, per record ten cents (\$.10).

History: 1953 Comp., § 4-2-4, enacted by Laws 1969, ch. 272, § 1; 1982, ch. 17, § 1; 1993, ch. 13, § 1.

ANNOTATIONS

Repeals and reenactments. — Laws 1969, ch. 272, § 1, repealed former 4-2-4, 1953 Comp., relating to the secretary taking possession of legislative property after adjournment, and enacted a new 4-2-4, 1953 Comp.

The 1993 amendment, effective June 18, 1993, rewrote this section to the extent that a detailed comparison would be impracticable.

Fees for recording collection agency bonds and continuation certificates. — See 1943-44 Op. Att'y Gen. No. 44-4511 (rendered under former law).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 81A C.J.S. States § 104.

8-4-5. Bureau of elections created; organization; duties.

There is created within the office of the secretary of state a "bureau of elections." The bureau of elections shall be headed by a director who shall be appointed by the secretary of state and who shall be knowledgeable in the election laws of the state. The bureau of elections shall perform those duties pertaining to the state administration of elections as are assigned by the secretary of state and which are pursuant to the election laws of the state. Such duties shall include the conduct of schools, instruction and training pertaining to election administration and the preparation of instruction materials and manuals to promote uniformity of the administration of election laws in the state. There is created in the bureau of elections the position of state voting machine supervisor. The state voting machine supervisor shall be knowledgeable in the mechanical operation, repair and maintenance of voting machines used in this state. The state voting machine supervisor shall provide assistance to counties in the repair, maintenance, care and proper use of voting machines owned by the counties.

History: 1953 Comp., § 4-2-7, enacted by Laws 1969, ch. 191, § 1.

ANNOTATIONS

County voting machine technicians are trained by state voting machine supervisor. 1973 Op. Att'y Gen. No. 73-13.

8-4-6. Distribution of session laws.

A. The secretary of state shall transmit copies of the session laws without charge as follows:

- (1) one copy to each New Mexico supreme court justice;
- (2) one copy to each New Mexico court of appeals judge;
- (3) one copy to each New Mexico district court judge;
- (4) five copies to the New Mexico attorney general;
- (5) two copies to each New Mexico district attorney;
- (6) one copy to the board of county commissioners of each county;
- (7) copies to other state officers and agencies, or additional copies to legislators upon request by the clerks of each house by January 30 and to those listed above if the copies or additional copies are needed for governmental purposes and are not to replace lost volumes; and

(8) copies to the New Mexico supreme court law library as may be required for exchange of similar materials with officers and agencies of the federal government, other states, districts, territories or possessions of the United States.

B. Copies of session laws supplied to officers and agencies of this state remain the property of the state and shall be delivered to their successors.

C. Whenever it is necessary to replace a volume of the session laws, because of the loss of the original volume, the secretary of state shall charge the officer or agency the same price that would be charged if it were sold to a private individual, and the money from the sale shall be deposited in the fund it would be deposited in if it resulted from a sale to a private individual.

History: 1953 Comp., § 10-1-13, enacted by Laws 1973, ch. 248, § 1; 1978, ch. 130, § 2; 1978 Comp., § 34-4-1; recompiled as 1978 Comp., § 8-4-6; Laws 2003, ch. 6, § 1.

ANNOTATIONS

Repeals and reenactments. — Laws 1973, ch. 248, § 1, repealed former 10-1-13, 1953 Comp., relating to distribution of supreme court reports, statutes and session laws, and enacted a new 10-1-13, 1953 Comp.

The 2003 amendment, effective June 20, 2003, in Paragraph A(7) inserted "legislators upon request by the clerks of each house by January 30 and to" following "additional copies to"; in Paragraph A(8) inserted "New Mexico" preceding "supreme"; in Subsection C, substituted "that would be charged" for "they would charge".

Am. Jur. 2d, A.L.R. and C.J.S. references. — 73 Am. Jur. 2d Statutes §§ 84 to 87.

77 C.J.S. Reports § 1 et seq.; 82 C.J.S. Statutes § 63.

ARTICLE 5 Attorney General

8-5-1. [Creation of department of justice.]

That the department of justice be, and same is hereby created, with the attorney general as head thereof, which shall be located at the seat of government.

History: Laws 1933, ch. 21, § 1; 1941 Comp., § 3-301; 1953 Comp., § 4-3-1.

8-5-2. Duties of attorney general.

Except as otherwise provided by law, the attorney general shall:

A. prosecute and defend all causes in the supreme court and court of appeals in which the state is a party or interested;

B. prosecute and defend in any other court or tribunal all actions and proceedings, civil or criminal, in which the state may be a party or interested when, in his judgment, the interest of the state requires such action or when requested to do so by the governor;

C. prosecute and defend all actions and proceedings brought by or against any state officer or head of a state department, board or commission, or any employee of the state in his official capacity;

D. give his opinion in writing upon any question of law submitted to him by the legislature or any branch thereof, any state official, elective or appointive, or any district attorney on any subject pending before them or under their control with which they have to deal officially or with reference to their duty in office;

E. prepare drafts for contracts, bonds and other instruments of writing which may be required for the use of the state whenever requested to do so by any state officer;

F. promptly account to the state treasurer for all state funds received by him;

G. report to the governor and legislature the condition of his office, the text of all opinions rendered and a summary of business transacted of public interest, which report shall be submitted each year;

H. keep a register of all opinions rendered and all actions prosecuted and defended by him, and of all proceedings in relation thereto;

I. attend and assist in the trial of any indictment or information in any county on direction of the governor;

J. appear before local, state and federal courts and regulatory officers, agencies and bodies, to represent and to be heard on behalf of the state when, in his judgment, the public interest of the state requires such action or when requested to do so by the governor; and

K. perform all other duties required by law.

History: Laws 1933, ch. 21, § 2; 1941 Comp., § 3-302; 1953 Comp., § 4-3-2; Laws 1966, ch. 28, § 15; 1975, ch. 327, § 1.

ANNOTATIONS

Cross references. — For the duty of the attorney general to give advice to the lieutenant governor, see 8-3-2 NMSA 1978.

For publication and sale of the opinions and reports of the attorney general, see 8-5-6, 8-5-7 NMSA 1978.

For publication and sale of an index to the opinions, see 8-5-14 NMSA 1978.

For the duty to represent any officer, deputy, assistant, agent or employee of the state or a state institution, see 8-5-15 NMSA 1978.

For term of office of the attorney general, see N.M. Const., art. V, § 1.

For the attorney general as member of the executive department, see N.M. Const., art. V, § 1.

For the attorney general residing and keeping books, papers, public records and seal of office at the seat of government, see N.M. Const., art. V, § 1.

For the qualifications for the office of attorney general, see N.M. Const., art. V, § 3.

For the attorney general's salary, see N.M. Const., art. V, § 12, and 8-1-1 NMSA 1978.

For attorney general as counsel for multistate tax commission member, see 7-5-5 NMSA 1978.

For attorney general as legal adviser to taxation and revenue department, see 9-11-11 NMSA 1978.

For representation of the state or any county by the attorney general, see 36-1-19 NMSA 1978.

I. GENERAL CONSIDERATION.

Historical. — In the Act of 1859, the duties of the attorney general were coextensive with the territory; but by the Act of 1862, his duties were expressly limited to the supreme court and district courts of the first and second districts. In the Act of January 28, 1863, § 25, the territorial limits within which the attorney general was to exercise his duties was again reduced and restricted to the first judicial district. Territory ex rel. Wade v. Ashenfelter, 4 N.M. (Gild.) 93, 12 P. 879 (1887), appeal dismissed, 154 U.S. 493, 14 S. Ct. 1141, 38 L. Ed. 1079 (1893).

Attorney general has no common-law powers or duties. State ex rel. Norvell v. Credit Bureau of Albuquerque, Inc., 85 N.M. 521, 514 P.2d 40 (1973).

The office of attorney general in New Mexico was created by statute, and its powers and duties defined and limited by statute from its inception. No common-law powers were confirmed in the office of attorney general by the constitution of New Mexico. *State v. Davidson*, 33 N.M. 664, 275 P. 373 (1929).

Waiving sovereign immunity. — The attorney general's authority is broad enough to include making litigation decisions such as waiving an immunity defense. *Abreau v. N.M. Children, Youth and Families Dep't*, 646 F.Supp. 2d 1259 (D.N.M. 2009).

Section 8-5-2 NMSA 1978, which specifies the powers of the attorney general, does not expressly confer on the attorney general the authority to waive Eleventh Amendment immunity. *Guttman v. Khalsa*, 320 F.Supp. 2d 1164 (D.N.M. 2009).

Attorney general's prosecution of state officer he formerly represented. — The appointment of the New Mexico attorney general, and a deputy attorney general, to act as special assistant United States attorneys for prosecution of criminal charges against the state investment officer and an assistant state treasurer alleging a conspiracy to extort a political contribution involved no inherent or actual conflict of interest under the rules of professional responsibility or this section. An inherent conflict of interest does not arise merely because a state attorney general prosecutes a state officer whom he formerly represented. *United States v. Troutman*, 814 F.2d 1428 (10th Cir. 1987).

II. SUPREME COURT AND COURT OF APPEALS.

Attorney general must represent state in any appeal. *State ex rel. Maloney v. Sierra*, 82 N.M. 125, 477 P.2d 301 (1970).

Appeal of criminal cases. — District attorney has authority to take an appeal, but it is the prerogative and duty of the attorney general to brief the case and to present it in the supreme court, and a district attorney may appear on appeal in a criminal case only by permission of the attorney general and in association with him. *State v. Aragon*, 55 N.M. 421, 234 P.2d 356 (1950).

Filing of brief by special assistant attorney general. — Where brief erroneously filed by district attorney was ordered stricken and attorney general and regular assistants disqualified, the special assistant attorney general was allowed 20 days in which to file a brief on the merits. *State v. Aragon*, 55 N.M. 421, 234 P.2d 356 (1950).

III. OTHER COURTS.

Duty to prosecute. — Attorney general is charged by statute with the duty of prosecuting in court any action when in his judgment the interest of the state requires such action. *State ex rel. Maloney v. Sierra*, 82 N.M. 125, 477 P.2d 301 (1970).

Protecting state's interests. — Inherent in the attorney general's duty to "prosecute" is the power to initiate civil lawsuits when, in his judgment, the interest of the state is in

need of protection. *State ex rel. Bingaman v. Valley Sav. & Loan Ass'n*, 97 N.M. 8, 636 P.2d 279 (1981).

Discretion to determine public interest. — The language of this section grants the attorney general discretion in determining when the public interest requires him to bring a civil action on behalf of the state. *State ex rel. Bingaman v. Valley Sav. & Loan Ass'n*, 97 N.M. 8, 636 P.2d 279 (1981).

Prosecution of actions. — This section and 8-5-3 NMSA 1978 permit the attorney general to bring an action on behalf of the state if no other provision has been made for it to be brought, or to step into litigation brought by another where the interests of the state are not being adequately represented or protected. *State v. Koehler*, 96 N.M. 293, 629 P.2d 1222 (1981).

No right to displace generally. — Nothing in this section suggests a right in the attorney general to displace the district attorney in a case where the rights of the state are being actively advocated. *State ex rel. Attorney Gen. v. Reese*, 78 N.M. 241, 430 P.2d 399 (1967).

Relation between attorney general and district attorneys. — There is nothing in the laws making the attorney general the superior of the district attorneys. The most that can be said concerning the powers of the attorney general in this section is that it gives concurrent right with the district attorney to bring an action, and there is nothing in this section which remotely suggests a right to supplant or take over from a district attorney who is performing his legal duties. *State ex rel. Attorney Gen. v. Reese*, 78 N.M. 241, 430 P.2d 399 (1967).

Real party in interest. — The attorney general's duty of prosecuting any action when, in his judgment, the interest of the state is present, makes him a real party in interest. *State ex rel. Bingaman v. Valley Sav. & Loan Ass'n*, 97 N.M. 8, 636 P.2d 279 (1981).

Right to maintain suit in water-law cases. — The attorney general may maintain suit on behalf of state to enjoin use of unappropriated water for irrigation contrary to law. *State ex rel. Bliss v. Dority*, 55 N.M. 12, 225 P.2d 1007 (1950), appeal dismissed, 341 U.S. 924, 71 S. Ct. 798, 95 L. Ed. 1356 (1951).

IV. STATE OFFICERS AND EMPLOYEES.

Governor as defendant to constitutional challenge. — The governor, as represented by the attorney general, because of his ability to influence the prosecution of violators, is the proper defendant in an action alleging that the statute prohibiting dissemination of "harmful" material to a minor over a computer network is facially invalid on First Amendment grounds. *American Civil Liberties Union v. Johnson*, 4 F. Supp. 2d 1024 (D.N.M. 1998), *aff'd*, 194 F.3d 1149 (10th Cir. 1999).

Attorney general is legal representative of state agencies, departments, etc. —

While a district attorney is to advise state officers within his district when requested, this means "advise these officers on matters relating to the judicial district in which he is located." This position is made firm when we remember that the attorney general is the legal representative of all state agencies, departments, etc. 1961-62 Op. Att'y Gen. No. 61-61.

Magistrates. — As a magistrate is a state officer, he is entitled to be represented by the attorney general's office when he is sued as a result of action taken by him in his official capacity. 1971 Op. Att'y Gen. No. 71-83.

Representation of state corporation commission (now public regulation commission) and customers. — The attorney general's representation both of the state corporation commission (now public regulation commission) and of unrepresented customers of a utility is proper. His representation of other parties before the commission is not a conflict of interest and not a violation of his constitutional duty to represent the commission. *Mountain States Tel. & Tel. Co. v. Corporation Comm'n*, 99 N.M. 1, 653 P.2d 501 (1982).

Disqualification of attorney general. — The attorney general is the state's highest ranking law enforcement officer, elected by the people of New Mexico. For a court to forbid the attorney general from engaging in a prosecution within the jurisdiction of the office is a serious encroachment on the executive branch. The disqualification of the attorney general is an action that should be undertaken with the greatest circumspection. *State v. Armijo*, 118 N.M. 802, 887 P.2d 1269 (Ct. App. 1994); cert. denied, 119 N.M. 20, 888 P.2d 466 (1994).

The approval as to form of a contract that was the subject of a criminal prosecution by the attorney general for financial impropriety was not grounds for disqualifying the attorney general. *State v. Armijo*, 118 N.M. 802, 887 P.2d 1269 (Ct. App. 1994); cert. denied, 119 N.M. 20, 888 P.2d 466 (1994).

Appellate review of prosecutor's dismissal. — On appeal from an order dismissing an indictment, the appellate courts may review a second portion of the order that disqualifies the prosecutor on grounds related to those supporting the dismissal of the indictment. *State v. Armijo*, 118 N.M. 802, 887 P.2d 1269 (Ct. App. 1994).

V. DISTRICT ATTORNEYS.

Weight given by supreme court. — The supreme court is not bound by attorney general opinions, and gives them such weight only as it deems they merit and no more. If the court thinks the opinions are right, it follows and approves, and if convinced they are wrong the court rejects them. *City of Santa Rosa v. Jaramillo*, 85 N.M. 747, 517 P.2d 69 (1973); *First Thrift & Loan Ass'n v. State ex rel. Robinson*, 62 N.M. 61, 304 P.2d 582 (1956); *Perea v. Board of Torrance County Comm'rs*, 77 N.M. 543, 425 P.2d 308 (1967).

Opinions of the attorney general are entitled to great weight, however, to the extent they conflict with the conclusions announced by the supreme court, they must be overruled. *Hanagan v. Board of County Comm'rs*, 64 N.M. 103, 325 P.2d 282 (1958).

Conflict over interpretation subject to declaratory judgment. — Where there was an administrative stalemate, detrimental to public interest, in which attorney general claimed that entire chapter on liquor sales was unconstitutional, contrary to assertion of director of department of alcoholic beverage control, and attorney general construed a separate chapter on liquor sales to allow sale of alcoholic beverages by the drink on Sundays, but director denied such an interpretation, there existed an actual controversy between interested parties rendering suit proper for declaratory judgment relief even though a licensed dispenser of alcoholic beverages was not a party. *State ex rel. Maloney v. Sierra*, 82 N.M. 125, 477 P.2d 301 (1970).

Formal and informal. — The attorney general is authorized to render formal and official opinions only to those officials stated in this section. However, an informal and unofficial expression of view may be given to nonenumerated officials. 1970 Op. Att'y Gen. No. 70-59.

Opinion on qualification of legislator unauthorized. — This section and N.M. Const., art. III, § 1 (separation of powers provision) bar the attorney general from giving an opinion of the issue of whether or not a public school teacher is prohibited from becoming a state legislator. Only the legislature itself can decide the qualifications of its members. 1975 Op. Att'y Gen. No. 75-21.

Law reviews. — For article, "Resolving Land-use Disputes by Intimidation: SLAPPSuits in New Mexico," see 32 N.M.L. Rev. 217 (2002).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 7 Am. Jur. 2d Attorney General §§ 9 to 13.

Right of attorney general to intervene in divorce suit, 22 A.L.R. 1112.

Dismissal of criminal proceedings on motion to attorney general, 66 A.L.R. 1378.

Power of attorney general to compromise, settle or dismiss suit or proceeding, 81 A.L.R. 124.

Quo warranto, concurrent or conflicting powers of prosecuting attorney and attorney general as to bringing action of, 131 A.L.R. 1212.

Right of attorney general to represent or serve administrative officer or body to exclusion of attorney employed by such officer or body, 137 A.L.R. 818.

Will contest: right of attorney general to intervene in will contest case involving charitable trust, 74 A.L.R.2d 1066.

Duty of trustees of charitable trust to furnish information and records to attorney general relating to trust administration, 86 A.L.R.2d 1375.

Consumer protection: right of public official to seek restitution of fruits of consumer fraud, without specific statutory authorization, 55 A.L.R.3d 198.

7A C.J.S. Attorney General § 7.

8-5-2.1. Attorney general; legal service fees for state agencies.

The attorney general may charge state agencies, as defined herein, for the provision of legal services in noncriminal cases requested by the agencies according to a fee schedule approved by the department of finance and administration. For the purpose of this section "state agency" means any department, institution, board, bureau, commission, district or committee of government of the state of New Mexico and every office or officer thereof.

History: Laws 1980, ch. 2, § 1.

ANNOTATIONS

Cross references. — For representation of state officer by attorney general, see 8-5-15 NMSA 1978.

8-5-3. [Action in civil and criminal cases.]

That upon the failure or refusal of any district attorney to act in any criminal or civil case or matter in which the county, state or any department thereof is a party or has an interest, the attorney general be, and he is hereby, authorized to act on behalf of said county, state or any department thereof, if after a thorough investigation, such action is ascertained to be advisable by the attorney general. Provided, that the attorney general shall, upon direction of the governor, investigate any matter or matters in any county of the state in which the county, state or any department may be interested. After such investigation, the attorney general be, and he is hereby authorized to take such action as, in his opinion, conditions warrant. The cost of such investigation shall be paid out of the general fund of the county wherein such investigation shall have been made, and the costs of any prosecution arising out of such investigation shall be paid as are the costs in cases prosecuted by district attorneys.

History: Laws 1933, ch. 21, § 3; 1941 Comp., § 3-303; 1953 Comp., § 4-3-3.

ANNOTATIONS

Governor as defendant to constitutional challenge. — The governor, as represented by the attorney general, because of his ability to influence the prosecution of violators, is the proper defendant in an action alleging that the statute prohibiting dissemination of

"harmful" material to a minor over a computer network is facially invalid on First Amendment grounds. *American Civil Liberties Union v. Johnson*, 4 F. Supp. 2d 1024 (D.N.M. 1998), *aff'd*, 194 F.3d 1149 (10th Cir. 1999).

No right to displace generally. — There is nothing in the laws making the attorney general the superior of the district attorneys. Otherwise, the provision granting the attorney general a right to displace a district attorney only "upon the failure or refusal of any district attorney to act" would be clearly surplusage and unnecessary. *State ex rel. Attorney Gen. v. Reese*, 78 N.M. 241, 430 P.2d 399 (1967).

Powers when district attorney delegates prosecution. — This section and 8-5-2 NMSA 1978 permit the attorney general to bring an action on behalf of the state if no other provision has been made for it to be brought, or to step into litigation brought by another where the interests of the state are not being adequately represented or protected. Where a district attorney delegates a prosecution to the attorney general, the attorney general may proceed under the authority of this section. *State v. Koehler*, 96 N.M. 293, 629 P.2d 1222 (1981).

Am. Jur. 2d, A.L.R. and C.J.S. references. — Right of attorney general to intervene in divorce suit, 22 A.L.R. 1112.

7A C.J.S. Attorney General §§ 11, 12, 13.

8-5-4. [Employment of legal assistance for departments.]

No compensation shall be allowed to any person for services as an attorney or counselor to any department of the state government, or the head thereof, or to any state board or commission, except in cases specially authorized by law, but special legal assistance, may be employed by the attorney general, under his direction and control, at a reasonable compensation, in any pending action or proceeding to protect the interest of the state, with the consent and approval of the governor upon showing made by the attorney general that his department cannot for reasons stated perform such services. The costs of such special legal assistance shall be paid by the department out of which such suit or proceeding originated.

History: Laws 1933, ch. 21, § 4; 1941 Comp., § 3-304; 1953 Comp., § 4-3-4.

ANNOTATIONS

Cross references. — For attorney general as counsel for taxation and revenue department, see 9-11-11 NMSA 1978.

Employment of counsel by state transportation highway commission. — Under 67-3-12 and 67-3-14 NMSA 1978, the state highway commission [state transportation commission] has power to employ special counsel to advise and assist it in the performance of its duties. *State v. Davidson*, 33 N.M. 664, 275 P. 373 (1929).

Meaning of "to any department of the state government". — Although legislature may have meant by the phrase "to any department of the state government" to mean "to any executive department of the state government," it did not do so in 8-5-4 NMSA 1978, and a strict construction would have to include the legislature. 1951-52 Op. Att'y Gen. No. 53-30.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 7A C.J.S. Attorney General § 4.

8-5-5. Assistant attorneys general; other employees; appointment.

A. The attorney general may appoint a deputy attorney general and as many other assistant attorneys general together with stenographic, clerical and other necessary employees on a full- or part-time basis, at salaries to be fixed by him within budget allowances and appropriation limits, as the business of the department shall require and who shall hold office at the pleasure of the attorney general. The deputy attorney general and the assistant attorneys general shall, subject to the direction of the attorney general, have the same power and authority as the attorney general.

B. Within legislative appropriations, the attorney general may appoint full-time salaried members of his staff as peace officers for the full-time investigation of violations of, and, and the full-time enforcement of, the criminal laws of the state. These employees shall comply with the certification provisions of Section 29-7-8 NMSA 1978 [repealed].

History: Laws 1933, ch. 21, § 5; 1941 Comp., § 3-305; 1953 Comp., § 4-3-5; Laws 1955, ch. 119, § 1; 1965, ch. 214, § 1; 1979, ch. 356, § 1; 1988, ch. 92, § 1.

ANNOTATIONS

Bracketed material. — The bracketed material at the end of Subsection B was inserted by the compiler and it is not a part of the law. Section 29-7-8 NMSA 1978, was repealed in 1993.

Cross references. — For special assistant attorney general representing oil conservation commission, see 70-2-35 NMSA 1978.

Duty to appoint assistant attorneys general as special prosecutors. — If a district attorney does not perform properly and adequately his legal duties of investigation and prosecution of civil and criminal cases, and particularly where the district attorney and the attorney general recused their respective offices from participation because of a possible conflict, then the attorney general not only has the power, but it is his duty, where conditions warrant, to perform these functions and to appoint assistant attorneys general as special prosecutors for the appropriate purposes. *State v. Naranjo*, 94 N.M. 407, 611 P.2d 1101 (1980).

Formal swearing-in ceremony not required. — Assistant attorneys general appointed pursuant to this section are not required to undergo the same formal swearing-in ceremony as the attorney general or other public official. *State v. Koehler*, 96 N.M. 293, 629 P.2d 1222 (1981).

Assistant attorney general's salary set by attorney general. — As assistant attorney general is a state officer not subject to the salary classification of the Personnel Act. Further, the legislature has delegated to the attorney general of the state of New Mexico the exclusive right to set the salaries of his assistants. Such power is subject only to the budget allowances and appropriation limits. Thus, it is apparent if the attorney general has the funds available for the payment of his assistants, he may pay them individually such salaries as in his opinion shall be warranted. 1957-58. Op. Att'y Gen. No. 58-29.

This section clearly indicates that the attorney general of New Mexico shall fix the salaries of his assistants subject only to budget allowances and appropriation limits. 1957-58 Op. Att'y Gen. No. 58-29.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 7A C.J.S. Attorney General § 4.

8-5-6. Opinions and report; sale.

The New Mexico compilation commission shall receive all opinions of the attorney general and shall publish and sell bound annual volumes to officers and agencies of the state and other individuals and entities at a price fixed by the compilation commission. The price fixed by the compilation commission shall not be less than the replacement cost of the volume of opinions plus a markup of not less than twenty-five percent nor more than fifty percent of the replacement cost. Copies of individual opinions may be sold by the compilation commission. All revenue collected from the sale of attorney general opinions shall be credited to the New Mexico compilation fund.

History: 1978 Comp., § 8-5-6, enacted by Laws 1979, ch. 106, § 1; 1982, ch. 7, § 1.

ANNOTATIONS

Repeals and reenactments. — Laws 1979, ch. 106, § 1, repealed former 8-5-6 NMSA 1978, relating to sale of opinions and reports of the attorney general by the compilation commission, and enacted a new 8-5-6 NMSA 1978.

Cross references. — For general powers and duties of compilation commission, see 12-1-3 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 7A C.J.S. Attorney General § 9.

8-5-7. Proceeds of sale; credit to New Mexico compilation fund.

The New Mexico compilation commission shall remit the proceeds of sale of publications of the office of the attorney general to the state treasurer, who shall credit the same to the New Mexico compilation fund, no part of which shall revert at the end of any fiscal year.

History: 1953 Comp., § 4-3-8, enacted by Laws 1959, ch. 20, § 2; 1979, ch. 106, § 2.

8-5-8 to 8-5-13. Repealed.

ANNOTATIONS

Repeals. — Laws 1979, ch. 106, § 6, repealed 8-5-8 to 8-5-13 NMSA 1978, as enacted by Laws 1959, ch. 20, § 3, and Laws 1959, ch. 21, §§ 1, 3-6, relating to sale of opinions and reports of the attorney general, indexing of the opinions and disposition of proceeds.

8-5-14. Cumulative supplemental index; publication; distribution.

The New Mexico compilation commission shall prepare and publish a cumulative supplemental index for the opinions rendered by the office of the attorney general which shall be sold in the same manner as the opinions.

History: 1953 Comp., § 4-3-15, enacted by Laws 1959, ch. 21, § 7; 1979, ch. 106, § 3.

8-5-15. [Representation of officer, deputy, assistant, agent or employee of state or state institution.]

The attorney general of New Mexico is directed to act, if requested, as attorney for any officer, deputy, assistant, agent or employee of the state or of a state institution in the event such person is named as a party in any civil action in connection with an act growing out of the performance of his duty; provided, however, this section shall not apply to any suits or proceedings on behalf of the state against such person.

History: 1953 Comp., § 4-3-16, enacted by Laws 1959, ch. 45, § 1.

ANNOTATIONS

Attorney general not allowed to supplant district attorney. — Where, in a suit by a district attorney, in the name of the state, seeking the recovery of funds paid a state officer, the attorney general seeks to represent the state in lieu of the district attorney and his pleading closely parallels the answer filed by the defendant state officer and the effect of the pleading would be to leave the case uncontested on the side of the state, the proper situation for the application of this section is presented, and the attorney general will not be allowed to supplant the district attorney. *State ex rel. Attorney Gen. v. Reese*, 78 N.M. 241, 430 P.2d 399 (1967).

Attorney general to use all means available to defend state employee. — If a defendant, a state employee, has requested representation by the attorney general under this section, the attorney general is under a duty to defend him and is at liberty to use all means available to him in that defense. This representation can be in addition to any representation by the attorneys for an insurance company covering traffic accidents wherein a state employee is involved. 1961-62 Op. Att'y Gen. No. 62-42.

But not county official such as sheriff. — A sheriff is a county official, as distinguished from a state official or employee, and therefore the attorney general's office is not under an obligation to represent a sheriff in a civil action arising from his official conduct in office. 1959-60 Op. Att'y Gen. No. 59-98.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 7A C.J.S. Attorney General § 15.

8-5-16. Repealed.

ANNOTATIONS

Repeals. — Laws 2003, ch. 280, § 8 repealed 8-5-16 NMSA 1978, as enacted by Laws 2003, ch. 280, § 8, relating to office of guardianship services, effective July 1, 2003. For provisions of former section, see the 2002 NMSA 1978 on New Mexico One Source of Law. For present comparable provisions, see 28-16B-1 NMSA 1978 et seq.

8-5-17. Attorney general; consumer representation before commission.

A. The attorney general shall represent residential and small business consumers in matters before the public regulation commission as the attorney general deems appropriate.

B. The attorney general:

(1) shall research, study and analyze residential and small business consumer interests;

(2) shall prepare and present briefs, arguments, proposed rates or orders and intervene or appear on behalf of residential and small business consumers before the public regulation commission as a party in interest;

(3) may accept grants and donations in the name of the state to carry out the provisions of this section;

(4) may cooperate with tribal and pueblo governments in New Mexico to ensure that the interests of Indian residential and small business consumers are being represented appropriately before the public regulation commission; and

(5) shall report by December 1 of each year to the legislature and the governor on the activities of his office on behalf of residential and small business consumers.

History: Laws 1998, ch. 108, § 22.

8-5-18. Guadalupe Hidalgo treaty division.

A. The "Guadalupe Hidalgo treaty division" is created within the office of the attorney general. The division shall review, oversee and address concerns relating to the provisions of the Treaty of Guadalupe Hidalgo that have not been implemented or observed in the spirit of Article 2, Section 5 of the constitution of New Mexico and Section 47-1-25 NMSA 1978.

B. The division shall consist of such personnel and have such duties as the attorney general shall designate.

C. The attorney general shall report the findings and recommendations of the division to the legislature annually.

History: Laws 2003, ch. 101, § 1; 2006, ch. 49, § 1.

ANNOTATIONS

Cross references. — For the Treaty of Guadalupe Hidalgo, see the treaty of peace between the United States and Mexico published in Volume 1 of the NMSA 1978 and on New Mexico One Source of Law.

The 2006 amendment, effective May 17, 2005, changed the requirement in Subsection C that the division report to the second session of the forth-sixth legislature to a requirement that the division report annually to the legislature.

ARTICLE 6

State Auditor, Treasurer and Secretary of Finance and Administration

8-6-1. [Treasurer and auditor; offices; bonds.]

The state treasurer and the state auditor shall keep their offices at the seat of government of the state. They shall, before entering upon the discharge of their duties, respectively, execute, and deliver to the secretary of state a bond to the state in the sum of three hundred thousand dollars [(\$300,000)] for the treasurer, and twenty-five thousand dollars [(\$25,000)] for the auditor, with good and sufficient sureties to be approved by the governor and conditioned for the faithful discharge of the duties

required or which may be required of them by law. The approval of the governor and the date thereof shall be endorsed on the bond.

History: Laws 1851-1852, p. 169; C.L. 1865, ch. 102, § 10; C.L. 1884, § 1771; Laws 1891, ch. 27, § 1; C.L. 1897, § 2608; Laws 1905, ch. 69, § 1; Code 1915, § 5327; C.S. 1929, § 134-406; 1941 Comp., § 3-201; 1953 Comp., § 4-4-1.

ANNOTATIONS

Cross references. — For terms of office, see N.M. Const., art. V, § 1.

For members of the executive department generally, see N.M. Const., art. V, § 1.

For the qualifications for office, see N.M. Const., art. V, § 3.

For salaries of state officers, see N.M. Const., art. V, § 12 and 8-1-1 NMSA 1978.

For the amount of bond of state treasurer, see 6-10-38 NMSA 1978.

For payment of accounts audited by board of trustees of supreme court law library, see 18-1-6 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 72 Am. Jur. 2d States, Territories, and Dependencies §§ 64, 65, 77.

Statutory conditions prescribed for public officer's bond which does not in terms include them, or which expressly excludes them, 109 A.L.R. 501.

Liability of sureties on bond of public officer as affected by fact that it was not signed by him, 110 A.L.R. 959.

Public officer's bond as subject to forfeiture for malfeasance in office, 4 A.L.R.2d 1348.

81A C.J.S. States § 127.

8-6-2. Seal of state treasurer.

There is adopted an official seal of the treasurer of the state of New Mexico.

The seal shall be in substantially the following form:

DOUBLE CLICK TO VIEW THE NEW MEXICO TREASURY SEAL

The seal above has not been amended or altered in any way.

The seal shall contain the words "Treasurer of the State of New Mexico" running clockwise around the upper portion of the outer edge, and the date "1912" on the lower part of the outer edge, running from left to right; and there shall be in the center a Mexican eagle grasping a serpent in its beak, the cactus in its talons, shielded by the American eagle with outspread wings, and grasping arrows in its talons; and a key under the eagles. When the state treasurer shall hereafter be required to seal any documents or instruments, he shall use the official seal as adopted by this section.

History: 1953 Comp., § 4-4-2, enacted by Laws 1967, ch. 103, § 1.

ANNOTATIONS

Compiler's notes. — Laws 1967, ch. 103, § 1, enacted a new 4-4-2, 1953 Comp., which replaced former 4-4-2, 1953 Comp., (Laws 1851-1852, p. 169; C.L. 1865, ch. 102, § 11; C.L. 1884, § 1761; C.L. 1897, § 2591; Code 1915, § 5333; C.S. 1929, § 134-601; 1941 Comp., § 3-202), prescribing duties of auditor, which was repealed by Laws 1957, ch. 252, § 16.

Cross references. — For the keeping of the seal at the seat of government, see N.M. Const., art. V, § 1.

8-6-3. Duties of treasurer; receipts.

The state treasurer shall receive and keep all money of the state except when otherwise specially provided; disburse the public money upon warrants drawn according to law and not otherwise; keep a just, true and comprehensive account of all money received and disbursed; render the state treasurer's accounts to the financial control division of the department of finance and administration annually, or more often if required; and report to the legislature, at the commencement of each regular session, a detailed statement of the condition of the treasury. The state treasury shall grant duplicate receipts for all money paid into the treasury, and the person receiving the duplicate receipts shall record the entry in the centralized accounting system administered by the department of finance and administration.

History: Laws 1851-1852, p. 170; C.L. 1865, ch. 102, § 14; C.L. 1884, § 1769; C.L. 1897, § 2602; Code 1915, § 5322; C.S. 1929, § 134-401; 1941 Comp., § 3-204; 1953 Comp., § 4-4-4; Laws 1957, ch. 252, § 12; 2011, ch. 88, § 3.

ANNOTATIONS

Cross references. — For the keeping of public records, books and papers at seat of government, see N.M. Const., art. V, § 1.

For the investment of special road fund balances, see 6-10-12, 6-10-13 NMSA 1978.

For the appointment of a deputy treasurer, see 6-10-38 NMSA 1978.

For the penalty for receiving consideration for placing deposit, see 6-10-40 NMSA 1978.

For signing checks for state funds, see 6-10-58 NMSA 1978.

For the application of federal forest reserve funds, see 6-11-2 NMSA 1978.

For the penalty for misapplication of federal forest reserve funds, see 6-11-4 NMSA 1978.

For authorization to borrow to pay interest on bonds, see 6-12-1, 6-12-2 NMSA 1978.

For the authority to purchase bonds authorized by fifteenth legislature, see 6-12-3 NMSA 1978.

For refunding bonds generally, see 6-12-6 NMSA 1978 et seq.

The 2011 amendment, effective July 1, 2011, required persons who receive duplicate receipts for funds paid into the state treasury to record the entry in the centralized accounting system administered by the department of finance and administration.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 72 Am. Jur. 2d States, Territories, and Dependencies §§ 64, 77.

81A C.J.S. States § 135.

8-6-3.1. State cash manager; powers and duties.

A. The "office of the state cash manager" is established under the office of the state treasurer. The state treasurer shall appoint the state cash manager, who shall manage efficiently all state cash balances in the custody of the state not otherwise invested or deposited, and in consultation with the state board of finance perform the duties necessary to carry out that management responsibility.

B. The duties of the state cash manager include:

(1) issuance of cash management regulations, procedures and enforcement policy to assure implementation of and compliance with the federal Cash Management Improvement Act of 1990 and other provisions of law;

(2) obtaining from each state agency periodic reports of all money from any source in the agency's custody, including detailed information on receipts, disbursements and balances on hand or on deposit in a financial institution;

(3) periodic review of all deposits made and balances on hand to assure that all money received by each state agency is deposited in a timely manner in the state fiscal agent bank and, if applicable, to the state agency's account in the state treasury;

(4) projection of the state's short-term and long-term cash needs to determine the amount available for short-term and long-term investment;

(5) determination and periodic update of the warrant clearance pattern to project the time lag between warrant issuance date and warrant clearance date to facilitate cash management activities; and

(6) preparation of a monthly written report showing state fund balances in each financial institution and sending the report to the state board of finance, the legislative finance committee, the state investment council, the educational retirement board and the retirement board of the public employees retirement association.

C. In addition to the specific duties in Subsection B of this section, the state cash manager shall ensure that non-income producing state cash balances are kept to a minimum in accordance with established guidelines. The state cash manager shall report any actual or anticipated deviations from such established guidelines to the state board of finance, the investing board or council, and the legislative finance committee.

D. The state cash manager shall have access to all accounts, files and other records of funds in the custody of the state. Upon approval of the state board of finance, the state cash manager may conduct any periodic investigation he deems necessary to enable him to perform his duties pursuant to this section.

E. As used in this section, "state agency" means the state of New Mexico or any of its branches, agencies, departments, boards, instrumentalities or institutions, other than state educational institutions designated by Article 12, Section 11 of the constitution of New Mexico, and includes the New Mexico mortgage finance authority and the New Mexico finance authority.

History: Laws 1993, ch. 105, § 1.

ANNOTATIONS

Compiler's notes. — The federal Cash Management Improvement Act of 1990 is Public Law 101-453, 104 Stat. 1058, and amended several sections in Title 31 of the United States Code.

8-6-4. Disbursement of funds; warrant from secretary; interest.

It shall be unlawful for the state treasurer to disburse or pay out any funds in his hands, the proceeds of any regular or special tax or any moneys that may come to his hands as treasurer of the state of New Mexico, except on warrant of the secretary of finance and administration; provided, that in the case of the payments of maturing interest coupons on the bonded debt of the state and in the case of the payment of retiring bonds of this state - either at the maturing of the optional period of the maturity thereof, wherein the law authorizing the issue of such bonds and coupons specifically

designates a place of payment other than the office of the state treasurer - the said treasurer may remit such moneys as are necessary, to the places of payment so designated, to take up and pay such state obligations; and immediately upon receipt of such coupons and bonds so paid, he shall present same to the secretary properly cancelled and itemized, and when so presented to the secretary it shall be the duty of that official to issue his warrant chargeable against the proper funds, for the payment so made; provided further, that this article shall not affect or apply to cash appropriations made by the United States government to state institutions, over which the state has no jurisdiction as to expenditure and wherein such appropriations are remitted to the state treasurer, and by him immediately transferred to the treasurers of such institutions.

History: Laws 1909, ch. 40, § 1; Code 1915, § 5329; C.S. 1929, § 134-408; 1941 Comp., § 3-210; 1953 Comp., § 4-4-9; Laws 1957, ch. 252, § 13; 1977, ch. 247, § 14.

ANNOTATIONS

Cross references. — For payments and disbursement of public funds, see 6-10-46 NMSA 1978.

Generally. — Comp. Laws 1897, § 2597 was a general limitation upon the authority of the auditor, under which he could audit only such accounts as had been expressly allowed by acts passed, and he was required to report claims not so allowed to the next legislative assembly for its action thereon. *Garcia v. Territory ex. rel. Bursum*, 10 N.M. 43, 61 P. 207 (1900).

Construction. — When Laws 1957, chs. 248 and 252, were construed by the rule of "pari materia" the supreme court found the duties of the auditor substantially the same as previously performed by him, except preaudit duties and the duty of issuing warrants, which duties had been transferred to the director of the department of finance and administration (now secretary of finance and administration) by the 1957 act. *Torres v. Grant*, 63 N.M. 106, 314 P.2d 712 (1957).

Constitutionality. — Laws 1957, ch. 252, providing warrants on state funds may be drawn only by director of department of finance and administration (now secretary of finance and administration), was not unconstitutional on theory that it removed from the state auditor, a constitutional officer, substantially all the powers and duties of that office. *Torres v. Grant*, 63 N.M. 106, 314 P.2d 712 (1957).

Effect of approval of warrant. — The warrant of the superintendent of insurance on the insurance fund, approved by the auditor (now secretary of finance and administration), was not the warrant of the auditor (now secretary). *State ex rel. Chavez v. Sargent*, 18 N.M. 627, 139 P. 144 (1914).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 81A C.J.S. States § 226.

8-6-5. Repealed.

ANNOTATIONS

Repeals. — Laws 1983, ch. 265, § 62, repealed 8-6-5 NMSA 1978, as enacted by Laws 1921, ch. 124, § 1, relating to registration of bonds and debentures by treasurer, effective April 7, 1983.

8-6-6. [Malfeasance and neglect of duty by auditor or treasurer.]

If the auditor or treasurer shall willfully neglect or refuse to perform any duty enjoined by law, or shall be guilty of any oppression or extortion in the performance of any legal duty, or shall receive any fee or reward for the performance of any legal duty not allowed by law, or by color of his office shall knowingly do any act not authorized by law, or in any other manner than is required by law, he shall, upon conviction upon indictment, be adjudged guilty of a misdemeanor in office and be fined any sum not exceeding one thousand dollars [(\$1,000)]. The state or any person injured, in the name of the state, may sue, either before or after an indictment found, upon the bonds of the auditor and treasurer, for any damages suffered by reason of any of the acts of the auditor or treasurer in this section mentioned.

History: Laws 1851, p. 170; C.L. 1865, ch. 102, § 15; C.L. 1884, § 1772; C.L. 1897, § 2609; Code 1915, § 5341; C.S. 1929, § 134-609; 1941 Comp., § 3-222; 1953 Comp., § 4-4-21.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — Public officer's bond as subject to forfeiture for malfeasance in office, 4 A.L.R.2d 1348.

81A C.J.S. States §§ 127 to 129.

8-6-7. Wrongful drawing or payment of warrant by secretary or treasurer; penalty.

A. If the secretary of finance and administration draws any warrant on the state treasurer when he knows or, with the use of available accounting information, should reasonably know there is an insufficient unexpended and unencumbered balance available for the purpose for which the warrant is drawn, he is in violation of this section unless the warrant will be redeemed using receivables accrued for that fiscal year pursuant to policies of the department of finance and administration.

B. If the state treasurer pays any warrant when he knows or, with the use of available accounting information, should reasonably know there are insufficient funds available in the treasury for the purpose to pay the warrant, he is in violation of this section unless the warrant will be redeemed using receivables accrued for that fiscal year pursuant to policies of the department of finance and administration.

C. A violation of this section is punishable by a fine of not more than one thousand dollars (\$1,000) or by imprisonment for not more than one year or both.

History: 1978 Comp., § 8-6-7, enacted by Laws 1987, ch. 183, § 1; 1993, ch. 105, § 4; 2003, ch. 273, § 16.

ANNOTATIONS

Repeals and reenactments. — Laws 1987, ch. 183, § 1 repeals former 8-6-7 NMSA 1978, as amended by Laws 1977, ch. 247, § 15, and enacts the above section, effective June 19, 1987. For provisions of the former section, see the 1983 replacement pamphlet.

The 2003 amendment, effective July 1, 2003, in Subsection A, substituted "is" for "shall be" following "is drawn, he", inserted "unless the warrant will be redeemed using receivables accrued for that fiscal year pursuant to policies of the department of finance and administration" at the end; in Subsection B, substituted "is" for "shall be" following "the warrant, he", substituted "will be redeemed using receivables accrued for that fiscal year pursuant to policies of the department of finance and administration" for "includes federal funds that will be receipted based upon established warrant-clearing patterns" at the end; in Subsection C, substituted "is" for "shall be" following "of this section", and substituted "or both" for "by both such fine and imprisonment in the discretion of the judge" at the end.

The 1993 amendment, effective June 18, 1993, added the language beginning "unless" at the end of Subsection B.

Generally. — If the auditor of the territory (now secretary of finance and administration) drew any warrant on the treasurer of the territory when there was no money in the treasury in the particular fund for which such warrant was drawn, he was liable to fine of not less than \$1,000 and imprisonment for not less than one year and summary removal from office by the governor. *Garcia v. Territory ex rel. Bursum*, 10 N.M. 43, 61 P. 207 (1900).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 81A C.J.S. States § 129.

ARTICLE 7

Public Regulation Commission Apportionments

8-7-1. Short title.

This act may be cited as the "Public Regulation Commission Apportionment Act".

History: Laws 1997, ch. 262, § 1.

ANNOTATIONS

Compiler's notes. — The Public Regulation Commission Apportionment Act was enacted by Laws 1997, ch. 262, §§ 1 to 10 and codified as 8-7-1 to 8-7-10 NMSA 1978. Laws 2001 (1st S.S.), ch. 3, § 12 added 8-7-11 NMSA 1978 but that section was not included as part of the Public Regulation Commission Apportionment Act.

8-7-2. Membership.

The public regulation commission is composed of five members to be elected from districts established by law.

History: Laws 1997, ch. 262, § 2.

ANNOTATIONS

Equal protection challenge. — In the absence of any evidence regarding the relative population density of each of the five PRC districts or the maximum deviation among the districts, the court would not review the merits of a claim that Sections 8-7-6 to 8-7-10 NMSA 1978 violate the one person, one vote principle of the equal protection clause, because the PRC districts are not equally apportioned on the basis of population. *Albuquerque Bernalillo County Water Util. Auth. v. N.M. Pub. Regulation Comm'n*, 2010-NMSC-013, 148 N.M. 21, 229 P.3d 494.

8-7-3. Residence.

At the time of filing a declaration of candidacy for the office of public regulation commission member, a candidate shall reside in the district for which he files. If any elected member of the public regulation commission permanently removes his residence from or maintains no residence in the district from which he was elected, he shall be deemed to have resigned and his successor shall be selected as provided in the Public Regulation Commission Apportionment Act [8-7-1 NMSA 1978].

History: Laws 1997, ch. 262, § 3.

8-7-4. Election; vacancy.

A. Members of the public regulation commission shall be elected for staggered four-year terms provided that commission members elected at the 1998 general election shall classify themselves by lot so that two commission members shall initially serve terms of two years and three commission members shall serve terms of four years. Thereafter, all commission members shall serve four-year terms. After serving two terms, a commission member shall be ineligible to hold office as a commission member until one full term has intervened.

B. The governor shall by appointment fill vacancies on the public regulation commission. An appointment to fill a vacancy on the public regulation commission shall be for a term ending on December 31 after the next general election, at which election a person shall be elected to fill any remainder of the unexpired term.

C. An appointment to fill a vacancy on the public regulation commission made before the general election of 2002 shall be made from the district as it was described in Laws 1997, Chapter 262, Sections 6 through 10. After the general election of 2002, a vacancy shall be filled by appointment from the district set out in Sections 8-7-6 through 8-7-10 NMSA 1978.

History: Laws 1997, ch. 262, § 4; 2001 (1st S.S.), ch. 3, § 1.

ANNOTATIONS

The 2001 (1st S.S.) amendment, effective October 4, 2001, in Subsection A, deleted a proviso at the end of the first sentence, relating to commission members elected at the 1998 general election, deleted the former second and third sentences, relating to four-year terms and number of terms a member can serve, and added the present last sentence; in Subsection B, substituted "An appointment" for "All appointments", "a vacancy" for "vacancies" and "December 31 after" for "January 1 subsequent to" in the second sentence; and added Subsection C.

Subsection A is constitutional and a safe guide to the legislative intent behind N.M. Const., Art. XI, § 1. *Block v. Vigil-Giron*, 2004-NMSC-003, 135 N.M. 24, 84 P.3d 72.

Consecutive terms. — A public regulation commission commissioner elected to serve consecutive two-year and four-year terms may not run again for another four-year term until one full term has intervened. 2003 Op. Att'y Gen. No. 03-05.

8-7-5. Precincts.

A. Designations and boundaries used in the Public Regulation Commission Apportionment Act are those precinct designations and boundaries established pursuant to the Precinct Boundary Adjustment Act [1-3-10 to 1-3-14 NMSA 1978] and revised and approved by the secretary of state as of August 31, 2001.

B. A board of county commissioners shall not create any precinct that lies in more than one public regulation commission district and shall not divide any precinct so that the divided parts of the precinct are situated in two or more public regulation commission districts. Votes cast in a statewide election from precincts created or divided in violation of this subsection are invalid and shall not be counted or canvassed.

History: Laws 1997, ch. 262, § 5; 2001 (1st S.S.), ch. 3, § 2.

ANNOTATIONS

The 2001 (1st S.S.) amendment, effective October 4, 2001, substituted "August 31, 2001" for "November 5, 1996" at the end of Subsection A; in Subsection B, substituted "and shall not" for "nor shall any board of county commissioners" in the first sentence and substituted "a" for "any general, primary or other" in the second sentence preceding "statewide election".

8-7-6. Public regulation commission district one.

Public regulation commission district one is composed of Bernalillo county precincts 4, 5, 7 through 18, 20 through 28, 30, 39, 107, 120, 121, 125, 131, 150 through 154, 161 through 166, 180 through 187, 191 through 197, 211, 212, 215, 216, 241 through 246, 251 through 258, 271 through 275, 278, 281 through 287, 289 through 302, 304 through 308, 311 through 318, 321 through 323, 326 through 333, 341 through 347, 351 through 358, 371 through 375, 381 through 387, 400 through 447, 449 through 454, 461 through 466, 471 through 478, 480 through 500, 502 through 550, 560 through 566, 568, 569, 601 and 602.

History: 1978 Comp., § 8-7-6, enacted by Laws 2001 (1st S.S.), ch. 3, § 3.

ANNOTATIONS

Repeals and reenactments. — Laws 2001 (1st S.S.), ch. 3, § 4 repealed 8-7-6 NMSA 1978 as enacted by Laws 1997, ch. 262, § 6, and enacteds the above section.

8-7-7. Public regulation commission district two.

Public regulation commission district two is composed of Bernalillo county precincts 303, 551 through 559, 571 and 573; Chaves county; Curry county; De Baca county precincts 1 and 2; Dona Ana county precincts 5, 6, 59, 65, 66, 75 through 77 and 104; Eddy county; Guadalupe county precinct 4; Lea county; Lincoln county precincts 1, 3 and 12; Otero county precincts 1 through 13, 19, 20, 22, 23, 26 through 28, 30 through 33, 35 and 37 through 39; Quay county; Roosevelt county; Santa Fe county precincts 15, 18, 19, 73, 84 and 85; and Torrance county precincts 1 through 9 and 11 through 13.

History: 1978 Comp., § 8-7-7, enacted by Laws 2001 (1st S.S.), ch. 3, § 4.

ANNOTATIONS

Repeals and reenactments. — Laws 2001 (1st S.S.), ch. 3, § 4 repealed 8-7-7 NMSA 1978 as enacted by Laws 1997, ch. 262, § 7, and enacted the above section.

8-7-8. Public regulation commission district three.

Public regulation commission district three is composed of Bernalillo county precincts 1 through 3, 6, 29, 80 through 87, 89, 111 through 114 and 567; Colfax

county; De Baca county precincts 3 and 4; Guadalupe county precincts 1 through 3 and 5; Harding county; Los Alamos county; Mora county; Rio Arriba county precincts 1 through 20, 22, 23 and 31 through 41; San Miguel county; Sandoval county precincts 1 through 6, 11 through 13, 28 through 51, 53 through 56, 58 through 64 and 67; Santa Fe county precincts 1 through 11, 13, 16, 17, 20 through 61, 66, 67, 74 through 79, 83 and 86; Taos county; and Union county.

History: 1978 Comp., § 8-7-8, enacted by Laws 2001 (1st S.S.), ch. 3, § 5.

ANNOTATIONS

Repeals and reenactments. — Laws 2001 (1st S.S.), ch. 3, § 5 repealed 8-7-8 NMSA 1978 as enacted by Laws 1997, ch. 262, § 8, and enacted the above section.

Bracketed material. — The bracketed word "county" near the middle of the section was inserted by the compiler and is not a part of the law.

8-7-9. Public regulation commission district four.

Public regulation commission district four is composed of Bernalillo county precincts 31 through 38, 40 through 55, 61 through 67, 71 through 77, 88, 90 through 99, 101 through 106, 122 through 124, 132, 133, 135, 214, 217, 221 and 223 through 226; Cibola county; McKinley county; Rio Arriba county precincts 24 through 27, 29 and 30; San Juan county; Sandoval county precincts 7 through 10 and 14 through 27; Santa Fe county precincts 12, 14, 62 through 65, 68 through 72 and 80 through 82; Socorro county precinct 15; and Valencia county precinct 13.

History: 1978 Comp., § 8-7-9, enacted by Laws 2001 (1st S.S.), ch. 3, § 6.

ANNOTATIONS

Repeals and reenactments. — Laws 2001 (1st S.S.), ch. 3, § 6 repealed 8-7-9 NMSA 1978 as enacted by Laws 1997, ch. 262, § 9, and enacted the above section.

8-7-10. Public regulation commission district five.

Public regulation commission district five is composed of Catron county; Dona Ana county precincts 1 through 4, 7 through 58, 60 through 64, 67 through 74 and 78 through 103; Grant county; Hidalgo county; Lincoln county precincts 2, 4 through 11 and 13; Luna county; Otero county precincts 14 through 18, 21, 24, 25, 29, 34, 36 and 40; Sierra county; Socorro county precincts 1 through 14, 16 and 17; Torrance county precinct 10; and Valencia county precincts 1 through 12 and 14 through 38.

History: 1978 Comp., § 8-7-10, enacted by Laws 2001 (1st S.S.), ch. 3, § 7.

ANNOTATIONS

Repeals and reenactments. — Laws 2001 (1st S.S.), ch. 3, § 7 repealed 8-7-10 NMSA 1978 as enacted by Laws 1997, ch. 262, § 10, and enacted the above section.

8-7-11. Election of public regulation commissioners.

Commissioners for public regulation commission districts two, four and five shall be elected from the districts described in Sections 8-7-7, 8-7-9 and 8-7-10 NMSA 1978 at the 2002 and subsequent general elections. Commissioners for public regulation commission districts one and three shall be elected from the districts described in Sections 8-7-6 and 8-7-8 NMSA 1978 at the 2004 and subsequent general elections.

History: 1978 Comp., § 8-7-11, enacted by Laws 2001 (1st S.S.), ch. 3, § 8.

ARTICLE 8 Public Regulation Commission

8-8-1. Short title.

Chapter 8, Article 8 NMSA 1978 may be cited as the "Public Regulation Commission Act".

History: Laws 1998, ch. 108, § 1; 2007, ch. 161, § 1.

ANNOTATIONS

The 2007 amendment, effective June 15, 2007, changed the statutory reference to the act.

8-8-2. Definitions.

As used in the Public Regulation Commission Act:

- A. "commission" means the public regulation commission;
- B. "commissioner" means a person elected or appointed to the public regulation commission; and
- C. "person" means an individual, corporation, firm, partnership, association, joint venture or similar legal entity.

History: Laws 1998, ch. 108, § 2.

8-8-3. Public regulation commission.

A. The "public regulation commission", created in Article 11, Section 1 of the constitution of New Mexico, is composed of five commissioners elected from districts as provided in that article and the Public Regulation Commission Apportionment Act [8-7-1 NMSA 1978].

B. The commission shall annually elect one of its members chairman, who shall preside at hearings. In the absence of the chairman, the commission may appoint any other member to preside.

History: Laws 1998, ch. 108, § 3.

8-8-4. Commission; general powers and duties.

A. The commission shall administer and enforce the laws with which it is charged and has every power conferred by law.

B. The commission may:

(1) subject to legislative appropriation, appoint and employ such professional, technical and clerical assistance as it deems necessary to assist it in performing its powers and duties;

(2) delegate authority to subordinates as it deems necessary and appropriate, clearly delineating such delegated authority and any limitations;

(3) retain competent attorneys to handle the legal matters of the commission and give advice and counsel in regard to any matter connected with the duties of the commission and, in the discretion of the commission, to represent the commission in any legal proceeding;

(4) organize into organizational units as necessary to enable it to function most efficiently, subject to provisions of law requiring or establishing specific organizational units;

(5) take administrative action by issuing orders not inconsistent with law to assure implementation of and compliance with the provisions of law for which the commission is responsible and to enforce those orders by appropriate administrative action and court proceedings;

(6) conduct research and studies to improve the commission's operations or the provision of services to the citizens of New Mexico;

(7) conduct investigations as necessary to carry out the commission's responsibilities;

(8) apply for and accept grants and donations in the name of the state to carry out its powers and duties;

(9) enter into contracts to carry out its powers and duties;

(10) adopt such reasonable administrative, regulatory and procedural rules as may be necessary or appropriate to carry out its powers and duties;

(11) cooperate with tribal and pueblo governments on topics over which the commission and the other governments have jurisdiction and conduct joint investigations, hold joint hearings and issue joint or concurrent orders as appropriate; and

(12) apply to the district court for injunctions to prevent violations of any laws that it administers or rules or orders adopted pursuant to those laws.

C. The commission shall:

(1) prepare an annual budget for submission to the legislature;

(2) provide for surety bond coverage for all employees of the commission as provided in the Surety Bond Act [10-2-13 to 10-2-16 NMSA 1978] and pay the costs of such bonds;

(3) adopt rules to streamline the resolution of cases before it when appropriate by:

(a) the use of hearing examiners;

(b) the taking of evidence with the least delay practicable;

(c) limiting repetitious testimony; and

(d) adopting procedures for resolving cases in ways other than by trial-type hearings when appropriate, including consent calendars, conferences, settlements, mediation, arbitration and other alternative dispute resolution methods and the use of staff decisions; and

(4) provide a toll-free telephone number and publish it and the commission's general telephone number in local telephone directories.

D. A majority of the commission constitutes a quorum for the transaction of business; provided, however, that a majority vote of the commission is needed for a final decision of the commission.

History: Laws 1998, ch. 108, § 4.

ANNOTATIONS

Hearings. — Where the PRC does not delegate its authority to a hearing examiner, but rather, conducts an evidentiary hearing before a full complement of commissioners, unexplained absences by commissioners should be the exception rather than the rule. The commissioners of the PRC have a constitutional and statutory obligation to participate actively and fully in the proceedings before them. *Albuquerque Bernalillo County Water Util. Auth. v. N.M. Pub. Regulation Comm'n*, 2010-NMSC-013, 148 N.M. 21, 229 P.3d 494.

Scope of commission's enforcement authority. — Although the PRC may seek injunctions and impose an administrative fine on a telecommunications provider for any act or omission that the provider knew or should have known was a violation of any applicable law or rule or order of the PRC, the PRC's regulatory authority is not limited to those remedies since the legislature gave it discretion to enforce its orders by appropriate administrative action and court proceedings, which includes discretion to issue an order requiring a telecommunications provider to provide consumer credit or refunds in order to prevent violations of the New Mexico Telecommunications Act. *Qwest Corp. v. N.M. Public Regulation Comm'n*, 2006-NMSC-042, 140 N.M. 440, 143 P.3d 478.

8-8-4.1. Propane service; commission duties.

A. The commission shall adopt rules to protect consumers' rights with respect to propane service.

B. The commission shall report by December 2009 to the appropriate interim legislative committee appointed by the New Mexico legislative council on the progress of the rulemaking pursuant to this section.

History: Laws 2009, ch. 216, § 1.

ANNOTATIONS

Effective dates. — Laws 2009, ch. 216 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 19, 2009, 90 days after the adjournment of the legislature.

8-8-5. Chief of staff; division directors; other staff.

A. The commission shall appoint a "chief of staff" who is responsible for the day-to-day operations of the commission staff under the general direction of the commission. The chief of staff shall serve at the pleasure of the commission.

B. With the consent of the commission, the chief of staff shall appoint division directors. Appointments shall be made without reference to party affiliation and solely on the ground of fitness to perform the duties of their offices.

C. Each director, with the consent of the chief of staff, shall employ such professional, technical and support staff as necessary to carry out the duties of his division. Employees shall be hired solely on the ground of their fitness to perform the job for which they are hired. Except as provided in Subsection D of this section, division staff are subject to the provisions of the Personnel Act [10-9-1 NMSA 1978].

D. With the consent of the chief of staff, the superintendent of insurance may designate the following insurance division positions as exempt from the provisions of the Personnel Act [10-9-1 NMSA 1978]: deputy superintendents, chief actuaries and bureau chiefs.

History: Laws 1998, ch. 108, § 5; 2000, ch. 57, § 1.

ANNOTATIONS

The 2000 amendment, effective May 17, 2000 inserted "Except as provided in Subsection D of this section" in the last sentence of Subsection C and added Subsection D.

8-8-6. Commission; divisions.

The commission shall include the following organizational units:

- A. the administrative services division;
- B. the consumer relations division;
- C. the insurance division;
- D. the legal division;
- E. the transportation division;
- F. the utility division; and
- G. the fire marshal division.

History: Laws 1998, ch. 108, § 6; 2007, ch. 161, § 2.

ANNOTATIONS

The 2007 amendment, effective June 15, 2007, added the fire marshal division to the organizational units.

8-8-7. Administrative services division; chief clerk.

A. The director of the administrative services division of the commission shall record the judgments, rules, orders and other proceedings of the commission and make a complete index to the judgments, rules, orders and other proceedings; issue and attest all processes issuing from the commission and affix the seal of the commission to them; and preserve the seal and other property belonging to the commission.

B. The administrative services division includes the "corporations bureau" and shall perform the following functions:

- (1) case docketing;
- (2) budget and accounting;
- (3) personnel services;
- (4) procurement; and
- (5) information systems services.

C. The corporations bureau shall perform the functions of the corporations department of the former state corporation commission.

History: Laws 1998, ch. 108, § 7; 2001, ch. 245, § 1.

ANNOTATIONS

The 2001 amendment, effective July 1, 2001, substituted "The director of the administrative services division of the commission" for "The chief of staff shall appoint a 'chief clerk' who" in Subsection A; in Subsection B, deleted "The chief clerk shall direct" from the beginning of the subsection; substituted "includes" for "including"; and inserted "shall perform".

8-8-8. Consumer relations division.

A. The consumer relations division shall:

- (1) receive and investigate nondocketed consumer complaints and assist consumers in resolving, in a fair and timely manner, complaints against a person under the authority of the commission, including mediation and other methods of alternative dispute resolution; provided, however, that assistance pursuant to this paragraph does not include legal representation of a private complainant in an adjudicatory proceeding;

(2) work with the consumer protection division of the attorney general's office, the governor's constituent services office and other state agencies as needed to ensure fair and timely resolution of complaints;

(3) advise the commission on how to maximize public input into commission proceedings, including ways to eliminate language, disability and other barriers;

(4) identify, research and advise the commission on consumer issues;

(5) assist the commission in the development and implementation of consumer policies and programs; and

(6) perform such other duties as prescribed by the commission.

B. All complaints received by the division with regard to quality or quantity of service provided by a regulated entity or its competitors shall be recorded by the division for the purpose of determining general concerns of consumers. A report of consumer complaints and their status shall be included in the commission's annual report.

History: Laws 1998, ch. 108, § 8.

8-8-9. Insurance division.

A. The director of the insurance division is the "superintendent of insurance" and shall have all the powers and duties prescribed to the director in the New Mexico Insurance Code [59A-1-1 NMSA 1978].

B. The insurance division shall consist of such bureaus as the superintendent of insurance determines for the orderly conduct of business.

History: Laws 1998, ch. 108, § 9; 2007, ch. 161, § 3.

ANNOTATIONS

Cross reference. For state fire marshal see 59A-5-1 NMSA 1978.

The 2007 amendment, effective June 15, 2007, eliminated the fire marshal bureau as part of the insurance division and the specific authority of the superintendent of insurance to organize the firefighter's training academy as part of the fire marshal bureau or as a separate bureau.

8-8-9.1. Firefighter training academy; use fee fund created.

The "training academy use fee fund" is created in the state treasury. All fees received by the state fire marshal for use of the firefighter training academy and its services shall be deposited into the fund; provided that no fee shall be charged the state

of New Mexico or any of its agencies, instrumentalities or political subdivisions; and provided further that each contract for services in which a fee is collected shall be entered into pursuant to a business plan that has been approved by the department of finance and administration and reviewed by the legislative finance committee. Balances in the fund shall be available for appropriation to the state fire marshal for paying the operating and capital expenses of the firefighter training academy. Earnings of the fund shall be credited to the fund, and the unexpended or unencumbered balance in the fund shall not revert to any other fund.

History: Laws 2001, ch. 80, § 1.

8-8-9.2. Recompiled.

ANNOTATIONS

Recompilations. — Laws 2007, ch. 282, § 14 recompiled former 8-8-9.2 NMSA 1978, as enacted by Laws 2003, ch. 235, § 3, relating to duties of the superintendent of insurance, as 59A-2-9.3 NMSA 1978, effective June 15, 2007.

8-8-9.3. Fire marshal division.

The fire marshal division includes the following:

- A. the firefighter training academy bureau;
- B. the fire service support bureau;
- C. the fire investigations bureau; and
- D. the fire code enforcement bureau.

History: Laws 2007, ch. 161, § 4.

ANNOTATIONS

Effective dates. — Laws 2007, ch. 161, contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 15, 2007, 90 days after the adjournment of the legislature.

8-8-10. Legal division.

A. The commission shall set minimum requirements for the director of the legal division, including membership in the New Mexico bar and administrative and supervisory experience.

B. The legal division shall:

(1) provide legal counsel for the commission in matters not involving advice on contested proceedings before the commission; and

(2) provide legal counsel to all divisions, including the legal component of the staff that represents the public interest in matters before the commission.

History: Laws 1998, ch. 108, § 10.

8-8-11. Transportation division.

The transportation division shall serve as staff to the commission for the following functions, as provided by law:

- A. motor carrier regulation and enforcement;
- B. railroad safety enforcement;
- C. pipeline safety; and
- D. ambulance standards.

History: Laws 1998, ch. 108, § 11.

8-8-12. Utility division.

A. The utility division shall serve as staff to the commission in the regulation of electric, natural gas, renewable energy sources, telecommunications and water and wastewater systems as provided by law.

B. The commission shall set minimum educational and experience requirements for the director of the utility division.

C. The utility division shall represent the public interest in utility matters before the commission and may present testimony and evidence and cross-examine witnesses. In order to represent the public interest, the utility division shall present to the commission its beliefs on how the commission should fulfill its responsibility to balance the public interest, consumer interest and investor interest.

D. The utility division shall perform the functions of the telecommunications department of the former state corporation commission and staff functions, not including advisory functions, of the former New Mexico public utility commission.

E. Utility division staff shall not have ex parte communications with commissioners or a hearing examiner assigned to a utility case, except as expressly permitted pursuant to Section 8-8-17 NMSA 1978.

History: Laws 1998, ch. 108, § 12; 2003, ch. 346, § 1.

ANNOTATIONS

The 2003 amendment, effective June 20, 2003, added the second sentence in Subsection C; and added the exception to Subsection E.

8-8-12.1. Telecommunications bureau.

A. The "telecommunications bureau" is created in the utility division of the public regulation commission.

B. The telecommunications bureau shall:

- (1) review disputes between telecommunications providers;
- (2) investigate each complaint on an expedited basis;
- (3) address other telecommunications-related duties as required by the New Mexico Telecommunications Act [Chapter 63, Article 9A NMSA 1978] and the commission; and
- (4) recommend actions to the commission.

C. Each complaint shall be resolved by the commission within sixty days unless extended for good cause by an order of the commission or hearing examiner that states with specificity the reason for and length of the extension.

History: Laws 2000, ch. 100, § 1 and Laws 2000, ch. 102, § 1.

ANNOTATIONS

Duplicate laws. — Laws 2000, ch. 100, § 1 and Laws 2000, ch. 102, § 1 enacted identical new sections of law, effective March 7, 2000. This section was set out as enacted by Laws 2000, ch. 102, § 1. See 12-1-8 NMSA 1978.

8-8-13. Advisory staff.

A. The chief of staff may hire, with the consent of the commission, advisory staff with expertise in regulatory law, engineering, economics and other professional or technical disciplines to advise the commission on any matter before the commission. The chief of staff may hire on a temporary, term or contract basis such other experts or staff as the commission requires for a particular case.

B. Advisory staff shall:

- (1) analyze case records;
- (2) analyze recommended decisions;
- (3) advise the commission on policy issues;
- (4) assist the commission in the development of rules;
- (5) assist the commission in writing final orders; and
- (6) perform such other duties as required by the chief of staff.

History: Laws 1998, ch. 108, § 13.

ANNOTATIONS

Expert's status. — Although an expert's relationship with the PRC and the expert's advice fell within the definition of advisory staff in Section 8-8-13(A) NMSA 1978 so that the PRC was not required to provide the parties with the substance of the expert's advice; under another set of facts the expert could fall under the category of a non-party expert subject to the restrictions on ex parte communications of Section 8-8-17 NMSA 1978. *Qwest Corp. v. N.M. Public Regulation Comm'n*, 2006-NMSC-042, 140 N.M. 440, 143 P.3d 478.

8-8-14. Hearing examiners.

A. The commission may appoint a commissioner or a hearing examiner to preside over any matter before the commission, including rulemakings, adjudicatory hearings and administrative matters.

B. Except as provided in the New Mexico Insurance Code [59A-1-1 NMSA 1978], a hearing examiner shall provide the commission with a recommended decision on the matter assigned to him, including findings of fact and conclusions of law. The recommended decision shall be provided to the parties, and they may file exceptions to the decision prior to the final decision of the commission.

C. When the commission has appointed a hearing examiner to preside over a matter, at least one member of the commission shall, at the request of a party to the proceedings, attend oral argument.

History: Laws 1998, ch. 108, § 14; 2003, ch. 346, § 2.

ANNOTATIONS

The 2003 amendment, effective June 20, 2003, added Subsection C.

8-8-15. Commission rules; procedures for adoption.

A. Unless otherwise provided by law, no rule affecting a person outside the commission shall be adopted, amended or repealed except after public notice and public hearing before the commission or a hearing examiner designated by the commission.

B. Notice of the subject matter of the rule, the action proposed to be taken, the manner in which interested persons may present their views and the method by which copies of the proposed rule, amendment or repealing provisions may be obtained shall be published at least once at least thirty days prior to the hearing date in the New Mexico register and two newspapers of general circulation in the state and mailed at least thirty days prior to the hearing date to all persons who have made a written request for advance notice. For each rule, amendment or repealing provision that affects only one or a limited number of municipalities, towns, villages or counties, notice shall be published in the largest circulation newspaper published and distributed locally in those areas as well as in a newspaper of general circulation in the state. Additional notice may be made by posting on the internet or by using other alternative methods of informing interested persons.

C. If the commission finds that immediate adoption, amendment or suspension of a rule is necessary for the preservation of the public peace, health, safety or general welfare, the commission may dispense with notice and public hearing and adopt, amend or suspend the rule as an emergency. The commission's finding of why an emergency exists shall be incorporated in the emergency rule, amendment or suspension filed with the state records center. Upon adoption of an emergency rule that is intended to remain in effect for longer than sixty days, notice shall be given within seven days of filing the rule as required in this section for proposed rules.

D. The commission shall issue a rule within eighteen months following the publication of that proposed rule or it shall be deemed to be withdrawn. The commission may propose the same or revised rule in a subsequent rulemaking.

E. All rules shall be filed in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978]. Emergency rules shall be effective on the date the rules are filed with the state records center. All other rules shall be effective fifteen days after filing, unless a later date is provided by the rule.

History: Laws 1998, ch. 108, § 15; 2001, ch. 117, § 1.

ANNOTATIONS

The 2001 amendment, effective July 1, 2001, in Subsection B, revised the procedures for providing notice of proposed rulemaking by changing the day of publication requirement so that notice is to appear thirty days before the hearing date, instead of sixty; changing the publications in which notice shall be posted to two newspapers of

general circulation and the New Mexico register, instead of three newspapers; changed the day that notice needs to be mailed to those who provided a written request for advanced notice to thirty days before the hearing date, instead of sixty; and made a provision for emergency rules to become effective the date they are filed in Subsection E.

8-8-16. Record of proceedings.

Unless otherwise provided by law, the commission may by rule provide that oral proceedings before the commission may be taken by any means that provides a full and complete record, including tape recording or stenography. The commission by rule shall determine when tape recordings are transcribed. A party to the proceeding may request a copy of a tape recording or a written transcript if one is provided. The commission may charge a reasonable fee for a copy of a proceeding. Copy costs shall be determined by the commission by rule and money collected shall be deposited in the general fund.

History: Laws 1998, ch. 108, § 16.

8-8-17. Ex parte communications.

A. A commissioner shall not initiate, permit or consider a communication directly or indirectly with a party or his representative outside the presence of the other parties concerning a pending rulemaking after the record has been closed or a pending adjudication.

B. A hearing examiner shall not initiate, permit or consider a communication directly or indirectly with a party or his representative outside the presence of the other parties concerning a pending rulemaking or adjudication.

C. Notwithstanding the provisions of Subsections A and B of this section, the following ex parte communications are permitted:

(1) where circumstances require, ex parte communications for procedural or administrative purposes or emergencies that do not deal with substantive matters or issues on the merits are allowed if the commissioner or hearing examiner reasonably believes that no party will gain an advantage as a result of the ex parte communication and the commissioner or hearing examiner makes provision to promptly notify all other parties of the substance of the ex parte communication;

(2) a commissioner may consult with another commissioner or with advisory staff whose function is to advise the commission in carrying out the commissioner's rulemaking or adjudicative responsibilities;

(3) a hearing examiner may consult with the commission's advisory staff;

(4) a commissioner or hearing examiner may obtain the advice of a nonparty expert on an issue raised in the rulemaking or adjudication if the commissioner or hearing examiner gives notice to the parties of the person consulted and the substance of the advice and affords the parties reasonable opportunity to respond; and

(5) pursuant to the public regulation commission's rulemaking authority a party to a proceeding may consult with the commission's advisory staff. By July 1, 2004, the commission shall establish such rules.

D. A commissioner or hearing examiner who receives or who makes or knowingly causes to be made a communication prohibited by this section shall disclose it to all parties and give other parties an opportunity to respond.

E. Upon receipt of a communication knowingly made or caused to be made by a party to a commissioner or hearing examiner in violation of this section, the commissioner or hearing examiner may, to the extent consistent with the interests of justice and the policy of the underlying statutes, require the party to show cause why his claim or interest in the proceeding should not be dismissed, denied, disregarded or otherwise adversely affected on account of the violation of this section.

History: Laws 1998, ch. 108, § 17; 2003, ch. 346, § 3; 2004, ch. 81, § 1.

ANNOTATIONS

The 2004 amendments, effective May 19, 2004, revised Paragraph (2) of Subsection C to require the adoption of rules governing consultation with the commission's advisory staff.

The 2003 amendment, effective June 20, 2003, added Paragraph C(5).

Expert's status. — Although an expert's relationship with the PRC and the expert's advice fell within the definition of advisory staff in Section 8-8-13(A) NMSA 1978 so that the PRC was not required to provide the parties with the substance of the expert's advice; under another set of facts the expert could fall under the category of a non-party expert subject to the restrictions on ex parte communications of Section 8-8-17 NMSA 1978. *Qwest Corp. v. N.M. Public Regulation Comm'n*, 2006-NMSC-042, 140 N.M. 440, 143 P.3d 478.

8-8-18. Recusal of commissioner or hearing examiner.

A. A commissioner or hearing examiner shall recuse himself in any adjudicatory proceeding in which he is unable to make a fair and impartial decision or in which there is reasonable doubt about whether he can make a fair and impartial decision, including:

(1) when he has a personal bias or prejudice concerning a party or its representative or has prejudged a disputed evidentiary fact involved in a proceeding

prior to hearing. For the purposes of this paragraph, "personal bias or prejudice" means a predisposition toward a person based on a previous or ongoing relationship, including a professional, personal, familial or other intimate relationship, that renders the commissioner or hearing examiner unable to exercise his functions impartially;

(2) when he has a pecuniary interest in the outcome of the proceeding other than as a customer of a party;

(3) when in previous employment he served as an attorney, adviser, consultant or witness in the matter in controversy; or

(4) when, as a candidate for office, he announced how he would rule on the adjudicatory proceeding or a factual issue in the adjudicatory proceeding.

B. If a commissioner or hearing examiner fails to recuse himself when it appears that grounds exist, a party shall promptly notify the commissioner or hearing examiner of the apparent grounds for recusal. If the commissioner or hearing examiner declines to recuse himself upon request of a party, he shall provide a full explanation in support of his refusal to recuse himself.

History: Laws 1998, ch. 108, § 18.

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Recusal not warranted. — Commissioners properly declined to recuse themselves since the timing of their remarks indicated that they were based on the evidence adduced in the rate case, as well the direct testimony filed by the Public Service Company of New Mexico (PNM) in the present case. *Albuquerque Bernalillo County Water Util. Auth. v. N.M. Pub. Regulation Comm'n*, 2010-NMSC-013, 148 N.M. 21, 229 P.3d 494.

8-8-19. Prohibited acts; candidates; commissioners and employees.

A. As used in this section, in addition to the definitions provided in Section 2 [8-8-2 NMSA 1978] of the Public Regulation Commission Act:

(1) "affiliated interest" means a person who directly controls or is controlled by or is under common control with a regulated entity, including an agent, representative, attorney, employee, officer, owner, director or partner of an affiliated interest. For the purposes of this definition, "control" includes the possession of the power to direct or cause the direction of the management and policies of a person, whether directly or indirectly, through the ownership, control or holding with the power to vote of ten percent or more of the person's voting securities;

(2) "intervenor" means a person who is intervening as a party in an adjudicatory matter or commenting in a rulemaking pending before the commission or has intervened in an adjudicatory or rulemaking matter before the commission within the

preceding twenty-four months, including an agent, representative, attorney, employee, officer, owner, director, partner or member of an intervenor;

(3) "pecuniary interest" includes owning or controlling securities; serving as an officer, director, partner, owner, employee, attorney or consultant; or otherwise benefiting from a business relationship. "Pecuniary interest" does not include an investment in a mutual fund or similar third-party-controlled investment, pension or disability benefits or an interest in capital credits of a rural electric cooperative or telephone cooperative because of current or past patronage; and

(4) "regulated entity" means a person whose charges for services to the public are regulated by the commission and includes any direct or emerging competitors of a regulated entity and includes an agent, representative, attorney, employee, officer, owner, director or partner of the regulated entity.

B. In addition to the requirements of the Financial Disclosure Act [10-16A-1 to 10-16A-8 NMSA 1978] and the Governmental Conduct Act [Chapter 10, Article 16 NMSA 1978], candidates for the commission, commissioners and employees of the commission shall comply with the requirements of this section and Sections 17 and 18 [8-8-17 and 8-8-18 NMSA 1978] of the Public Regulation Commission Act, as applicable.

C. A candidate for election to the public regulation commission shall not solicit or accept:

(1) anything of value, either directly or indirectly, from a person whose charges for services to the public are regulated by the commission. For the purposes of this paragraph, "anything of value" includes money, in-kind contributions and volunteer services to the candidate or his campaign organization, but does not include pension or disability benefits; or

(2) more than five hundred dollars (\$500) per election from any other person.

D. A commissioner or employee of the commission shall not:

(1) accept anything of value from a regulated entity, affiliated interest or intervenor. For the purposes of this paragraph, a commissioner may accept allowable campaign contributions when campaigning for reelection. For the purposes of this paragraph, "anything of value" does not include:

(a) the cost of refreshments totaling no more than five dollars (\$5.00) a day or refreshments at a public reception or other public social function that are available to all guests equally;

(b) inexpensive promotional items that are available to all customers of the regulated entity, affiliated interest or intervenor; or

(c) pension or disability benefits received from a regulated entity, affiliated interest or intervenor;

(2) have a pecuniary interest in a regulated entity, affiliated interest or intervenor, and if a pecuniary interest in an intervenor develops, the commissioner or employee shall divest himself of that interest or recuse himself from the proceeding with the intervenor interest; or

(3) solicit any regulated entity, affiliated interest or intervenor to appoint a person to a position or employment in any capacity.

E. After leaving the commission:

(1) a former commissioner shall not be employed or retained in a position that requires appearances before the commission by a regulated entity, affiliated interest or intervenor within two years of his separation from the commission;

(2) a former employee shall not appear before the commission representing a party to an adjudication or a participant in a rulemaking within one year of ceasing to be an employee; and

(3) a former commissioner or employee shall not represent a party before the commission or a court in a matter that was pending before the commission while the commissioner or employee was associated with the commission and in which he was personally and substantially involved in the matter.

F. The attorney general or a district attorney may institute a civil action in the district court for Santa Fe county or, in his discretion, the district court for the county in which a defendant resides if a violation of this section has occurred or to prevent a violation of this section. A civil penalty may be assessed in the amount of two hundred fifty dollars (\$250) for each violation, not to exceed five thousand dollars (\$5,000).

History: Laws 1998, ch. 108, § 19.

8-8-20. Commission reports.

By December 1 of each year, the commission shall report to the legislature and the governor regarding its activities for the previous year in sufficient detail to disclose the workings of the commission and the impact of regulation on the industries regulated by the commission. The report may include suggestions and recommended changes in law, as the commission deems appropriate, that would be in the public interest.

History: Laws 1998, ch. 108, § 20.

8-8-21. Temporary provisions; transfers.

A. Except as otherwise provided in this section, on January 1, 1999, all personnel and all money, appropriations, records, furniture, equipment, supplies and other property belonging to the state corporation commission, the insurance board, the fire board and the New Mexico public utility commission are transferred to the public regulation commission. On January 1, 1999, all personnel and all money, appropriations, records, furniture, equipment, supplies and other property belonging to the attorney general for the provision of legal services to the state corporation commission are transferred to the public regulation commission.

B. Except as otherwise provided in this section, on January 1, 1999, all existing contracts, agreements and other obligations in effect for the state corporation commission, the insurance board, the fire board or the New Mexico public utility commission shall be binding on the public regulation commission.

C. Except as otherwise provided in this section, on January 1, 1999, all pending cases, legal actions, appeals and other legal proceedings of every description and all pending administrative proceedings that involve the state corporation commission, the insurance board, the fire board or the New Mexico public utility commission shall be unaffected and shall continue in the name of the public regulation commission.

D. All rules, tariffs, orders and other official acts of the state corporation commission, the insurance board, the fire board or the New Mexico public utility commission shall continue in effect until amended, replaced or repealed by the public regulation commission; provided, however, that the public regulation commission shall review all rules of the state corporation commission and the New Mexico public utility commission by July 1, 2003.

E. All references in law, rules, tariffs, orders and other official acts to the state corporation commission, the insurance board, the fire board or the New Mexico public utility commission shall be construed to be references to the public regulation commission.

History: Laws 1998, ch. 108, § 80.

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Cross references. — For references to state corporation commission being construed as references to the public regulation commission, see 8-8-21 NMSA 1978.

Appeal procedures. — Section 8-8-21 NMSA 1978 authorizes the parties to treat final orders of the state corporation commission that were not removed to the supreme court prior to January 1, 1999, as final orders of the public regulation commission for purposes of appeal under Section 63-7-1.1 NMSA1978. *U.S. West Communs., Inc. v N.M. Pub. Regulation Comm'n*, 1999-NMSC-024, 127 N.M.375, 981 P.2d 789.