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March 10, 1989

OPINION
OF
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Opinion No. 89-07

BY: Carol A. Baca
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TO: The Honorable Harroll H. Adams
State Auditor
PERA Building, Room 302
Santa Fe, NM 87503

QUESTIONS:

1. Is the Middle Rio Grande Conservancy District (the "District") subject to audit by the State Auditor?
2. Do Sections 73-14-68 and 73-16-28 NMSA 1978 exempt the District from the provisions of the Audit Act?

CONCLUSION:

1. Yes.
2. Section 73-14-68 is inapplicable to the District. Section 73-16-28(B) does not exempt the District from the provisions of the Audit Act.

ANALYSIS:

Section 12-6-3 of the Audit Act, Sections 12-6-1 to 12-6-14 NMSA 1978, states:

- A. The financial affairs of every agency shall be thoroughly examined and audited each year by the state auditor, personnel of his

office designated by him or by independent auditors approved by him....

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

(Emphasis added).

Section 12-6-2 of the Audit Act specifically defines the term "agency" as including conservancy districts.

The Middle Rio Grande Conservancy District (the "District") is a conservancy district subject to the 1927 Conservancy Act. Middle Rio Grande Conservancy Dist. v. Chavez, 44 N.M. 240, 243, 101 P.2d 190, 191 (1940). Section 73-16-28(B) of the Act provides:

At least once a year, or oftener if the court shall so order, the [conservancy district's] board shall make a report to the court of its proceedings and an accounting of receipts and disbursements to that date, which shall be filed with the clerk. Thereupon the court shall order the auditing of said accounts by competent public accountants, who shall file their reports thereon with the clerk, which audit shall be in lieu of and fulfill all purposes of any audit now required by law for any similar political subdivision of the state.

(Emphasis added).

The "court" to which the section refers is the "conservancy court," defined as the state district court in which a particular conservancy district filed its petition for organization. Section 73-14-3(G) NMSA 1978.

1 The Act is codified in scattered sections of Chapter 73, NMSA 1978. See the catchline in the notes to Section 73-14-1 NMSA for a list of the sections where the Act is codified.

In Att'y Gen. Op. 5658 (1953), the Attorney General considered whether Section 77-2927 NMSA 1941² (now Section 73-16-28(B) NMSA 1978) exempted the District from an audit by the State Comptroller under former Section 7-107 NMSA 1941,³ repealed by 1957 N.M. Laws, ch. 251, § 12. Section 7-107 was a part of the 1923 Comptroller's Act, "the purpose of which [Act] was to create a uniform system of accounting and auditing of all offices, boards, and institutions handling public moneys." Att'y Gen. Op. 1787 (1937). Section 7-107 specifically required the Comptroller to prescribe the form in which agencies and local public bodies kept all books, records and accounts of their offices and the form of vouchers used to initiate disbursements of public funds. In addition, such entities were to submit "all reports," including audit reports, required by the Comptroller. In concluding that the District was not subject to an audit by the Comptroller, Opinion 5658 stated:

[T]his office is in concurrence with prior Attorney General's opinions and with the spirit of the law requiring those persons handling public moneys and being in the nature of public corporations, boards or commissions, to follow procedures outlined by the State Comptroller in the supervision of their accounts. This is modified by the fact that the law specifically exempts the Middle Rio Grande Conservancy District from an "audit" by the Comptroller's office, which law has never been repealed or amended by implication or otherwise.

The general authority to require audit reports of state agencies and local public bodies that was formerly vested in the Comptroller by Section 7-107 currently lies with the State Auditor by virtue of the Audit Act.⁴

2 1927 N.M. Laws, ch. 45, § 527.

3 1923 N.M. Laws, ch. 48, § 5, as amended by 1941 N.M. Laws, ch. 46, § 1.

4 Until 1957 the State Comptroller, not the State Auditor, performed all of what are termed the "post-audit" duties relating to audit reports. 1957 N.M. Laws, ch. 251, abolished the office of State Comptroller and 1957 N.M. Laws, ch. 248, placed such post-audit duties in the State Auditor. At

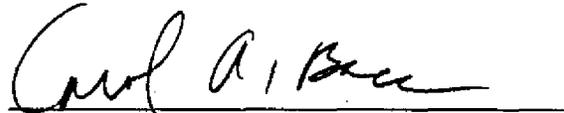
In view of the fact that the State Comptroller's audit duties under Section 7-107 were repealed in 1957, the question becomes what the phrase "in lieu of any audit now required by law" means within the context of Section 73-16-28(B). (Emphasis added). As indicated earlier, Section 73-16-28(B) was enacted in 1927, three years after Section 7-107 was enacted. The word "now," as used in statutes similar to Section 73-16-28(B), ordinarily refers to the moment the statute takes effect and refers only to other statutes then in effect. Application of Marino, 23 N.J. Misc. 159, 42 A.2d 469 (1945); D.M. Buckingham v. Fifth Judicial Dist. Court, 60 Nev. 129, 102 P.2d 632 (1940). Sometimes, however, the courts give "now" an "ambulatory meaning." In such cases the courts have interpreted "now" as meaning "now or hereafter" and as denoting the moment when, from time to time, a statute is read and applied. County Bd. of Education of Russell Co., et al. v. Taxpayers & Citizens of Russell Co., 276 Ala. 472, 163 So. 2d 629 (1964); Larson v. American Title & Ins. Co., 52 So. 2d 816 (Fla. 1951).

We are not aware of a New Mexico case interpreting the word "now" in a statute such as Section 73-16-28(B). However, the fundamental rule of statutory construction in New Mexico is that words in a statute are to be given their ordinary and usual meaning, unless a different intent is clearly indicated. See, e.g., Tafoya v. New Mexico State Police Bd., 81 N.M. 710, 714, 472 P.2d 973, 977 (1966); State ex rel. State Hwy. Comm'n v. Marquez, 67 N.M. 353, 359, 355 P.2d 287, 291 (1960). Furthermore, we cannot dismiss the word "now" as used in Section 73-16-28(B) as mere surplusage, because each and every word of a statute must be assigned some meaning. Cromer v. J.W. Jones Construction Co., 79 N.M. 179, 441 P.2d 219 (1968); Kendrick v. Gackle Drilling Co., 71 N.M. 113, 376 P.2d 176 (1962). We believe, therefore, that the exception in Section 73-16-28(B) only refers to former Section 7-107 NMSA 1941, which was in effect at the time Section 73-16-28(B) was enacted, and not to the Audit Act, which was not enacted until 1969. It is unnecessary for us to decide whether enactment of the Audit Act repealed Section 73-16-28(B) by implication.

the same time, the legislature placed the so-called pre-audit duties (including such things as prescribing forms of vouchers and accounting methods and procedures) in a newly-created Department of Finance and Administration. See Thompson v. Legislative Audit Commission, 79 N.M. 693, 695, 448 P.2d 799, 801 (1969). In 1969, the Audit Act revised and recodified the State Auditor's duties. See 1969 N.M. Laws, ch. 68.

Finally, Section 73-14-68, which refers to a biennial audit of certain conservancy districts, is inapplicable to the question of the State Auditor's authority over the District. Section 73-14-69 NMSA 1978 states in part: "The provisions of this act [73-14-54 to 73-14-69 NMSA 1978] shall not apply to nor be construed as affecting conservancy districts having more than 100,000 acres, formed prior to July 1, 1952, whether agricultural or otherwise, included within said conservancy district, subject to conservancy assessment." The District covers over 277,000 acres of land and was formed prior to July 1, 1952. Report of the Chief Engineer of the Middle Rio Grande Conservancy District, Vol. 1 (Aug. 15, 1928). Section 73-14-68 does not apply to the District and, therefore, cannot have the effect of exempting it from the Audit Act. See also Atty Gen. Op. 5658 (1953) and Att'y Gen. Op. 88-34 (1988).


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