

Mutual Domestic Water Consumer Associations are subject to the New Mexico Audit Act, which is available on our Web site (<http://www.saonm.org/auditrules-TOC.html>), according to New Mexico Attorney General's Opinion No. 90-30, (<http://www.ago.state.nm.us/Opinions/pdf/op-search.pdf>) which is available on their Web site.

Under the act, Mutual Domestic Consumer Water Associations are also subject to the annual Audit Rule "Requirements for Contracting and Conducting Audits of Agencies," which also is available on our web site.

Opinion No. 90-30

December 27, 1990

OPINION OF HAL STRATTON

Attorney General

BY: Carol A. Baca

Assistant Attorney General

TO: The Honorable Harroll Adams

State Auditor

PERA Building, Rm. 302

Santa Fe, NM 87503

QUESTION:

Are the following entities subject to audit under the New Mexico Audit Act: (a) water and sanitation districts created pursuant to the Water and Sanitation District Act, NMSA 1978, Sections 73-21-1 to 73-21-54 (Repl. Pamp. 1987); (b) acequias and community ditch associations subject to NMSA 1978, Sections 73-2-1 to 73-2-64; (c) and associations created pursuant to the Sanitary Projects Act, NMSA 1978, Sections 3-29-1 to 3-29-19 (Repl. Pamp. 1984).

CONCLUSION:

Yes.

ANALYSIS:

Section 12-6-3(A) of the Audit Act, NMSA 1978, Sections 12-6-1 to 12-6-14 (Repl. Pamp. 1988) provides that "[t]he 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." As used in the Audit Act, "agency" means: *any department, institution, board, bureau, court, commission, district or*

committee of the government of the state, including district courts, magistrate courts, district attorneys and charitable institutions for which appropriations are made by the legislature; every political subdivision of the state, created under either general or special act, which receives or expends public money from whatever source derived, including but not limited to counties, county institutions, boards, bureaus or commissions; municipalities; drainage, conservancy, irrigation or other special districts; school districts; and every office or officer of any of the above.

Id. Section 12-6-2 (emphasis added). After examining the legislature history and other language used in the Audit Act, AG Op. No. 87-65 (1987) concluded that this definition includes all local public bodies that handle public funds and should be construed liberally to apply to a wide range of public entities.

It is well-established that the legislature has the authority to create political subdivisions, in addition to counties, municipalities and school districts, for a public purpose. *Albuquerque Met. Arroyo Flood Con. A. v. Swinburne*, 74 N.M. 487, 495, 394 P.2d 998, 1003 (1964). *Gibbany v. Ford*, 29 N.M. 621, 626, 225 P. 577, 579 (1924), defined a political subdivision as "formed or maintained for the more effectual or convenient exercise of political power within certain boundaries or localities, to whom the electors residing therein are, to some extent, granted power to locally self-govern themselves." Irrigation districts, for example, have been held to be a political subdivisions because, among other reasons, there is a legislative declaration in NMSA 1978, Section 73-13-44 that they are "bodies corporate and politic." *Tompkins v. Carlsbad Irr. Dist.*, 96 N.M. 368, 370, 630 P.2d 767, 769 (Ct. App. 1981).