

Opinion No. 21

**Armory Board—State Controller
—Purchasing Agent—State Accountant
—Statutes—Chapter 194, Laws of
1951—Section 82-201, Revised Codes of
Montana, 1947—Boards and Offices.**

Held: Under Chapter 194, Laws of 1951, the offices of two ex-officio members of the Armory Board are abolished and replaced by the State Controller. The number of members on the Board is thereby reduced and the State Controller will sit as ex-officio member thereof.

June 8, 1951.

Mr. W. H. Clarke, Chairman
Montana Armory Board
Helena, Montana

Dear Mr. Clarke:

You have requested my opinion on the effect of the passage of House Bill 137, Chapter 194, Montana Session Laws, 1951, on the composition of the Armory Board.

The Montana Armory Board was established by Section 1 of Chapter 161, Laws of 1939, to consist of five members appointed by the Governor. Chapter 161 was amended by Chapter 123, Laws of 1941, to consist of seven members. It was again amended by Chapter 204, Laws of 1943, to consist of five members "one of whom shall be the State Accountant, one of the State Purchasing Agent, and the other three appointed by the Governor." This was the state of the law governing the composition of the Armory Board until the enactment of Chapter 194, which eliminated the State Purchasing Agent and the State Accountant and transferred the duties of those offices to the State Controller.

While the Controller Bill does not mention the Armory Board nor specifically amend Section 82-201, Revised Codes of Montana, 1947, it is clear that the state legislature has power to abolish any state office created by it "as by enactment of a new statute impliedly repealing the statute creating the office, as by transferring its duties to another office." 59 C. J., States, Section 116.

In 42 Am. Jur., Public Administrative Law, Section 17, it is stated:

"Experimentation is frequent in the field of administration, and particular administrative agencies are sometimes abolished and new ones created embodying the fruits of the experiment, or old agencies are reorganized, or their functions transferred to another agency."

"Powers vested in a particular administrative body may be superseded by a grant of the same powers to another agency."

Thus, since the legislature is free to abolish or transfer the duties of any board that it creates, it follows that it has the power to alter such a board. Section 14 of Chapter 194 reads in part:

"The controller shall continue and complete any and all work undertaken and carry out all valid contracts entered into by said incumbent state purchasing agent and incumbent state accountant in such manner as to preserve the continuity of all official action taken by them or either of them."

The Purchasing Agent and the State Accountant served ex-officio on the Armory Board. It follows that, as a part of the transferred duties, the Controller would serve on the Armory Board.

There could be no additional appointments made, for the statute specifically sets out the appointments to be made. They have been made. The only vacancies—if it were held that the number should be five, would be the ex-officio members. Since those offices are abolished, the openings on the Armory Board could never be filled. Therefore, it is my opinion that the Legislature must be held to have intended that the number of members on the Armory Board is to be reduced by the abolition of the offices of the ex-officio members and the transference of the duties to the Controller, and that the Controller will be ex-officio to a member of the Armory Board.

Very truly yours,
ARNOLD H. OLSEN
Attorney General