

Opinion No. 54-5996

July 29, 1954

BY: RICHARD H. ROBINSON, Attorney General

TO: Chapin S. Carnes, Chairman State Collection Agency Board Bureau of Revenue Santa Fe, New Mexico

{*452} Receipt is acknowledged of your letter dated July 14, 1954, in which {*453} you request an opinion as to whether, under § 51-1805, N.M.S.A., 1941 Comp., pocket supplement, your Board may require that out of state concerns be licensed as long as their solicitors personally work within the State.

Insofar as material herein, the applicable statute, Section 51-1805, N.M.S.A., 1941 Comp., pocket supplement, reads as follows:

"Definitions. -- When used in this act:

(a) The term 'person' shall mean and include any individual, firm, co-partnership, joint adventure, association, corporation, or any other group or combination acting as a unit, and the plural as well as the singular number.

(b) The terms 'collection agency' and/or 'engaging in the collection agency business' shall mean and include all persons engaged directly or indirectly, as a primary or secondary object, business or pursuit, in soliciting claims for collection or in the collection of claims owed or due, or assorted to be owed or due to another, and any person when engaged in the collection of claims for another where the employment is for more than one person, shall be deemed to be 'engaged in the collection agency business' within the meaning of this act (§§ 51-1805 -- 51-1824).

(c) The term 'outside collector' shall mean any person employed by a 'collection agency' or any person 'engaged in the collection agency business,' to collect any 'claim,' assigned to it for collection.

(d) The term 'bureau of revenue' means the state bureau of revenue of the state of New Mexico, or any officer, commission, board or bureau that is now or may hereafter be charged with the administration of this act (§§ 51-1805 -- 51-1824).

(e) The term 'commissioner' shall mean the commissioner of the bureau of revenue.

(f) The term 'claim' shall mean and include any account, note, indebtedness or any other claim of whatsoever nature, but shall not exclude any claim not covered by this section.

(g) The term 'board' shall mean the collection agency board established by this chapter. (Laws 1947, Ch. 212, § 1; 1951, Ch. 187, § 1.)"

Since the terms "collection agency" and "outside collector" are specifically defined by the above quoted statute, we are bound by the definition in interpreting and construing the same.

Let us first consider the nature of the business of a collection agency, either inside of the State or outside of the State. Such agency is an agent of the creditor, governed by the ordinary laws of agency, and authorized to take all necessary steps to effectuate payment of the account. These steps must be summarized: (1) Demand for payment, either personally or by mail; (2) Receipt of payment and remittance of the creditor; (3) Employment of attorneys to enforce payment by legal action, or use of other coercive means.

Your first question deals and is concerned without of state concerns with solicitors who personally work within the State of New Mexico. If these solicitors (1) demand payment of an account either personally, through solicitors or by mail; (2) receive payment and remit same to credit of debtor or employ attorneys {**454*} or solicitors to enforce payment by legal action or coercive means, said outside concern is carrying on the business of a collection agency, and, therefore, is subject to our collection agency laws.

Passing now to the specific statute under consideration herein, its most striking feature is the fact that it governs any person engaging in the business of collecting, receiving or soliciting for payment for others of any account.

It is a cardinal rule of statutory construction that effect is to be given to every clause or word of a statute and no word is to be treated as unmeaning if a construction can be legitimately found which will preserve it and make it effectual. Sedgewick Statutory and Constitutional Law, page 200; and *Walter W. Oeflein, Inc. v. State*, 177 Wis. 394, 188 N.W. 633.

In view of the above quoted authorities, any out of the state concern, who solicits accounts without a license, either directly or indirectly, is carrying on the business of a collection agency and may be punished as provided in § 51-1820, N.M.S.A., 1941 Comp. pocket supplement.

Your second question is whether or not it is proper for the State Collection Agency Board to require that such out of state concerns not only be licensed but be required to maintain an office within the State, with a manager in charge actually devoting his time to the business of collections.

The pertinent part of § 51-1809, N.M.S.A., 1941 Comp., pocket supplement, provides that no license to operate a collection agency in New Mexico shall be granted to any person, if an individual, unless he be a bona fide resident of the State of New Mexico; nor to a corporation, or voluntary association, unless organized under the laws of the

State of New Mexico, or if a foreign corporation it has fully complied with the laws of the State of New Mexico, so as to entitle it to do business within the State of New Mexico, and provided further that no license shall be granted to any applicant who does not maintain an office, or place of business within the State of New Mexico, such fact shall automatically and without notice, act as a cancellation of the license previously issued to such licensee. The language of this statute, being directed to state officials, makes it mandatory.

It is, therefore, the opinion of this office that before an out of state concern is licensed to do a collection business in the State of New Mexico, either directly or indirectly, that said concern must maintain an office, or a place of business, within the State of New Mexico, with some responsible person in charge of said office, not necessarily a manager. However, in a case where an out of state collection agency, doing business in New Mexico entirely by mail, and if unsuccessful in collecting, turns the account or accounts to a duly licensed attorney in the State of New Mexico, such out of state concern is, and would be, engaged in interstate commerce and thus not subject to be licensed and regulated by this Act. Provided further, that if said out of state agency, instead of turning over the accounts to an attorney, sends or employs a personal representative in the State for the purpose of collecting accounts or bringing suits in the justice of the peace court, they are engaging in the business of a collection agency and are subject to the law and the rules and regulations of the collection agency board.

Trusting that this fully answers your inquiries, I remain

By: Hilario Rubio

Assist. Attorney General