

Opinion No. 58-05

January 15, 1958

BY: OPINION OF FRED M. STANDLEY, Attorney General Alfred P. Whittaker,
Assistant Attorney General

TO: Mr. Edward M. Hartman, Director, Department of Finance and Administration, P. O.
Box 1359, Santa Fe, New Mexico

QUESTION

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Is there any legal prohibition to having printed on state warrants that same are invalid if not presented for payment within six months after the date of issuance?

CONCLUSION

No; see analysis.

OPINION

ANALYSIS

Article IV, Section 30, of the Constitution of New Mexico prohibits the payment of money out of the State treasury except upon warrant drawn by the proper officer. In accordance with the constitutional requirement, Sec. 11-2-43, N.M.S.A., 1953, as amended by Laws of 1957, Ch. 252, now provides that all disbursements of public funds of the State shall be made upon warrants drawn by you upon the treasury, based upon itemized vouchers. Ch. 252, Laws of 1957, also provides certain exceptions to this procedure, not here material.

We find no statutory provision for the invalidation of warrants which have been duly issued and outstanding. The Legislature has made specific provision for the situation in which a warranty duly issued and outstanding may be lost or destroyed, and the conditions under which a duplicate warrant may be issued in such situation (§§ 11-2-45, 11-2-46, N.M.S.A., 1953). However, Ch. 252, Laws of 1957, imposes upon the Director of the Department of Finance and Administration broad powers and duties with respect to the entire procedure for the presentation, processing and pay-of claims for money due from public funds for purchases made or services rendered. In the execution of such functions, Ch. 251, Laws of 1957 (§ 11-1-32, N.M.S.A., 1953) authorizes the director to "make and adopt such reasonable administrative and procedural rules and regulations as may be necessary to carry out the duties of the department and the divisions thereof."

We understand that the problem giving rise to your inquiry is occasioned by the existence of a substantial number of state warrants which have been duly issued in the past and which have been outstanding for substantial periods, and are still outstanding. It is apparent that the situation described, involving as it does the continued encumbrance of public funds, may reasonably be deemed an impediment to the efficient accomplishment of the functions delegated by the Legislature to the Department of Finance and Administration. Accordingly, in the view of this office, a regulation requiring the cancellation of warrants issued after the promulgation of such regulation, upon the expiration of six months from issuance, would be valid and reasonable, assuming that provision is to be made for the issuance of a duplicate warrant upon reasonable terms.

Your inquiry cuts more deeply than this, however, since it contemplates the invalidation of warrants which may be duly issued and outstanding, and the invalidation of the underlying claim against public funds, as well. The problem thus presented is more complex.

There can be no question of the power of the State to enact legislation which would explicitly require the voiding of all state warrants duly issued and not presented for payment within a reasonable period prescribed. The power to enact statutes of limitation is a legislative power (see 53 C.J.S., Limitations of Actions, § 2). And the sovereign generally has the right to lay down any conditions - even if harsh or arbitrary - with which creditors must comply, as a condition of payment of their demands. **Wilder v. South Carolina State Highway Department**, 90 S.E. 2d 635 S.C., 1955). Statutes of this type have been enacted in other states. See 33 West's Anno. California Codes, Government, §§ 17070 through 17073.

However, the Legislature of New Mexico has not enacted any such explicit legislation. In the absence of such legislation, the formulation of a regulation limiting the time for presentation of claims generally might be viewed as an attempt to exercise a power not delegated by the Legislature, and so of questionable validity. In so stating, we recognize the sovereign immunity of the State from suit without its consent, a rule firmly recognized by our Supreme Court. E.G., **Eyring v. Board of Regents**, 59 N.M. 3, 277 P. 2d 550 (1954), **Vigil v. Penitentiary**, 52 N.M. 224, 195 P. 2d 1014 (1948). Nevertheless, mandamus presumably would lie to compel payment of a claim against public funds evidenced by a warrant duly issued and outstanding; and the right to bring such action now is barred only by the applicable statute of limitations. See **State ex rel. Stephens v. State Corp. Comm.**, 25 N.M. 32, 176 Pac. 866 (1918), and 53 C.J.S., Limitations of Actions, § 84.

The possible question raised is more apparent than real, in the view of this office. In the absence of a legislative declaration invalidating contractual stipulations which limit the time within which a party to a contract may enforce his rights thereunder, an agreement which limits the time for bringing an action thereon to a period less than that prescribed by statute is valid, so long as the period stipulated is reasonable. **Burlew v. Fidelity & Casualty Company of New York**, 122 S.W. (2d) 990, 121 A.L.R. 751 (Ky., 1938), and

following annotation. New Mexico has adhered to the prevailing view and recognized such an agreement. **Electric Gin Co. v. Firemen's Fund Ins. Co.**, 39 N.M. 73, 39 P. 2d 1024 (1935). We find no statute which would invalidate such a stipulation.

The broad powers of the sovereign to impose conditions in dealing with its creditors have been indicated. In view of the authorities just above cited, this office concludes that any agreements for purchases to be made or for services to be rendered, made on behalf of the State, may lawfully provide that any warrant issued in payment of the claim must be presented within the reasonable period stated therein. This should be done in the first instance by the contracting agency. It follows that the Director of the Department of Finance and Administration may lawfully provide by regulation that all agreements on behalf of the State for purchases to be made or for services to be rendered shall be subject to the condition that any warrant issued in payment of the claim must be presented within the reasonable period prescribed; that all vouchers submitted as the basis for claim against public funds shall contain such stipulation; and that all warrants to be issued on the basis of such vouchers shall contain the same stipulation. Sec. 11-2-70, N.M.S.A., 1953 (1957 P.S.) (Laws) 1957, Ch. 252, Sec. 10).