

Opinion No. 59-192

November 23, 1959

BY: OPINION OF HILTON A. DICKSON, JR., Attorney General

TO: Honorable Joe Callaway New Mexico State Treasurer P. O. Box 598 Santa Fe, New Mexico

QUESTION

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Do §§ 22 - 22 - 1 to 22 - 22 - 29, N.M.S.A. 1953 Comp. P.S operate to repeal § 16-3-25, N.M.S.A. 1953 Comp.?

CONCLUSION

Yes.

OPINION

{*296} ANALYSIS

We are aware of the holding in this state that repeal by implication will not be indulged unless the later act is so repugnant to the earlier as to render the repugnancy or conflict between them irreconcilable, and that the courts will, if possible, adopt that conclusion which under the circumstances permit both laws to be operative. **V.F.W. Post # 3015 v. Hull**, 51 N.M. 478, 188 P. 2d. 334.

However, where two statutes cannot be construed so as to give effect to each without contradiction or repugnancy or absurdity or unreasonableness, the last enacted will survive. **In re Martinez' Will**, 47 N.M. 6, 132 P. 2d. 422.

Section 16-3-25 was first passed in 1927 as Ch. 6, § 1, Laws of 1927 and was "An act providing for the transfer of unclaimed money in district courts to the court fund."

This section was codified in C.S. 1929 as § 34-309. The section was amended in 1941 and the title of the act was:

"An act amending section 34-309 of the New Mexico Statutes Annotated, 1929 Compilation, relating to unclaimed moneys held by the district courts of this state, limiting the time within which claims can be asserted to said moneys, and authorizing the district judge in their discretion to transfer said moneys to their court funds." -- Laws 1941, Ch. 95.

This state has now adopted a Uniform Unclaimed Property Act which has been approved by the National Conference of Commissioners on Uniform State Laws. This Act involves the disposition of unclaimed property, including tangible and intangible property, which is presumed abandoned by the owner.

Section 22-22-9 deals specifically with intangible personal property held by any court in this state, and provides that such property when held for 10 years and is unclaimed is thereby presumed to be abandoned.

Section 22-22-12 provides that a report shall be submitted on all property, tangible or intangible, presumed to be abandoned under the Act. Obviously this includes the intangible personal property referred to in § 22-22-9.

Section 22-22-14, et seq. provides for the transfer of the custody of this property to the state treasurer and its eventual escheat to the state.

That the term "intangible personal property" as used in § 22-22-9 above includes "money" can be resolved by the definition of {§297} the term as found in § 22-22-10, which reads in part as follows:

"All intangible personal property, * * *, including by way of illustration, **money**, stocks, bonds, certificates of memberships in corporations, * * *" (Emphasis Supplied).

There are then two statutes relating to the disposition of unclaimed money held by the courts. One statute permits the money to be paid into the court fund, at the discretion of the judge of the court, after it has remained unclaimed for a period of (6) six years, while the other directs that the money be turned over to the state treasurer if it remains unclaimed for a period of ten (10) years. There is an irreconcilable conflict concerning the disposition of these moneys, since the court cannot give effect to § 16-3-25 without placing itself in a position of being unable to comply with the mandatory language of § 22-22-9, et sequitur.

Section 22-22-9 being the later enactment on the subject of the disposition of unclaimed money held by the courts, its provisions are deemed to repeal § 16-3-25. **Radar v. Rhodes**, 48 N.M. 511, 153 P. 2d. 516.

By: B. J. Baggett

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