

## **Opinion No. 59-212**

December 30, 1959

**BY:** OPINION of HILTON A .DICKSON, JR., Attorney General

**TO:** Mr. Dan Sosa, Jr. District Attorney Third Judicial District Second Floor, Court House Las Cruces, New Mexico

### **QUESTION**

#### QUESTION

May the Memorial General Hospital in Las Cruces, financed in part by the City of Las Cruces and Dona Ana County, use the services of a credit bureau to collect bad debts for the hospital and pay for such services from revenues received by the hospital?

#### CONCLUSION

Yes.

### **OPINION**

#### {\*326} **ANALYSIS**

We first make the assumption that under the proposed arrangement between the Credit Bureau and the Memorial General Hospital, the hospital will vest in the credit bureau no authority whatsoever to compromise the debts due and owing to the hospital.

The only possible objection we can see to such an arrangement is a possible contravention of Article IV, Section 32 of the New Mexico Constitution which reads as follows:

"No obligation or liability of any person, association or corporation held or owned by or owing to the State, or any municipal corporation therein, shall ever be exchanged, transferred, remitted, released, postponed, or in any way diminished by the legislature, nor shall any such obligation or liability be extinguished except by the payment thereof into the proper treasury, or by proper proceeding in court. Provided that the obligations created by Special Session Laws 1955, Chapter 5 running to the state or any of its agencies, remaining unpaid on the effective date of this amendment are void. (As amended November 4, 1958.)"

You will note that this section was amended November 4, 1958. However, the only change made by the amendment from the language of the provision as originally enacted, was the proviso relating to obligations created by Chapter 5 of the Special Session Laws of 1955.

We have found no case from New Mexico or any other jurisdiction interpreting this or similar constitutional provisions as regards the use of private agencies to collect debts due the State or any of its agencies or subdivisions. However, with our basic assumption in mind we do not view this as a compromise of a debt due and owing the hospital but merely the appointment of the credit bureau as an agency for collection.

You have stated that the credit bureau will be used for collections only after your office has made an attempt to collect the debt but prior to an institution of a suit for such collection. Since the collection is under your supervision at that time only when proceedings (legal) have actually been instituted, you will have the authority to compromise the debt. The Supreme Court of New Mexico in *State v. State Investment Company*, 30 N.M. 491, 239 P. 741, (1925), held that Article IV, Section 32 did not abrogate the right of the District Attorney under his authority as now spelled out in Section 17-1-15, NMSA 1953 Comp. to compromise suits in which he is representing the state or a county.

We are aware of our Opinion No. 5662, dated February 6, 1953 holding that the Board of Directors has {\*327} no authority to write off uncollectible accounts for the maintenance of pay patients. However, the arrangement you propose does not constitute a write-off of an uncollectible account by the hospital.

We see no objection to charging the cost of paying for such a service out of the funds available to the hospital, either as provided by the City of Las Cruces, Dona Ana County, for collections from pay patients.

By: Philip R. Ashby

Assistant Attorney General