

Opinion No. 59-77

July 22, 1959

BY: Hilton A. Dickson, Jr., Attorney General

TO: Mr. Charles L. Craven Assistant District Attorney Aztec, New Mexico

Section 40-22-12, N.M.S.A., 1953 Compilation, providing for the disposition of fines assessed and collected under Sections 40-22-2 and 40-22-4, N.M.S.A., 1953 Compilation, (gambling statutes), is declared to be unconstitutional.

OPINION

{*122} This is written in reply to your recent request for an opinion on the following question:

What disposition should be made of fines assessed and collected under Sections 40-22-2 and 40-22-4, N.M.S.A., 1953 Compilation, in view of the provisions of Section 40-22-12 and Article XII, Section 4 of the New Mexico State Constitution?

It is my opinion that Section 40-22-12 is unconstitutional in that it contravenes Article XII, Section 4 of the New Mexico Constitution.

The pertinent portion of the New Mexico Constitution, Article XII, Section 4, reads as follows:

"All fines and forfeitures collected under general laws; . . . shall constitute the current school fund of the state."

Section 40-22-12, N.M.S.A., 1953 Compilation, reads as follows:

"The fines assessed and collected under the provisions of this act (40-22-1 to 40-22-12) shall go to the school fund of the school district, village, town or city in which such offense is committed, except in villages or cities of over one thousand (1000) inhabitants in which case one half of all fines go to the village, town or city."

It would seem that the words "general laws", as used in the Constitution, supra, is the nub of the problem with which we are confronted.

Lucero v. N.M. State Highway Department, 55 N.M. 157, paragraph (2, 3) reads as follows:

"We recently considered the question of special and general laws in *Crosthwait v. White*, 55 N.M. 71, 226 P. 2d 477, and there followed the decision in *State v. Atchison, T. & S. F. Ry. Co.*, 20 N.M. 562, 151 P. 305, and again approved the following definition

of general and special laws in 1 Lewis' Sutherland Stat. Const. (2d Ed.) § 197, and § 199:

'Laws of a general nature are such as relate to a subject of a general nature, and a subject of a general nature is one that exists or may exist throughout the state, or which affects the people of the state generally, or in which the people generally have an interest.

* * *

'Special laws are those made for individual cases, or for less than a class requiring laws appropriate to its peculiar condition and circumstances; * * *.'

This case gives the most recent definition of the terms general and special laws. The definition, as indicated, supra, follows the original pronouncement of our Supreme Court laid down in State v. Atchison, T. & S. F. Ry. Co., 20 N.M. 562.

{*123} It would appear from the foregoing judicial definition of general laws and special laws that Sections 40-22-2 and 40-22-4 are undoubtedly general laws.

An opinion rendered by this office on November 7, 1912, being No. 956, and found in Report of Attorney General, 1912-1913, held that "all fines and forfeitures collected under general laws . . ." shall constitute the current school fund of the state. Said opinion referred to Section 4, Article XII of the New Mexico Constitution.

Another opinion of this office, being No. 1030, dated May 2, 1913, found in Report of Attorney General, 1912-1913, page 195, held that fines as prescribed in Section 10 of the law governing the practice of medicine in New Mexico, printed as Chapter 34 of the laws of 1907 and Chapter 99, Laws of 1909, were general laws and the fines and forfeitures collected thereunder should be paid to the current school fund of the state as provided by Section 4, Article XII of the New Mexico Constitution.

Other opinion of this office having to do with similar questions follow the same line of reasoning as set forth in Opinions 956 and 1030, supra.

It is always with extreme reluctance that this office presumes to declare a statute to be unconstitutional. Under the circumstances herein we have no alternative. Section 40-22-4, N.M.S.A., 1953 Compilation, is unconstitutional in that it attempts to legislate in contravention to the provisions of our New Mexico Constitution.

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