

Opinion No. 61-51

June 16, 1961

BY: OPINION OF EARL E. HARTLEY, Attorney General Norman S Thayer, Assistant Attorney General

TO: Mr. A. M. Frazier, Commission Counsel, Employment Security Commission, P.O. Box 1799, Albuquerque, New Mexico

QUESTION

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Is a county clerk entitled to collect a fee for recording the warrant of the Employment Security Commission issued for failure of an employer to pay his unemployment compensation contribution?

CONCLUSION

No.

OPINION

ANALYSIS

Section 59-9-15, N.M.S.A., 1953 Compilation, provides that, in the event an employer fails to pay his contributions, or interest thereon, into the unemployment compensation administration fund, the Employment Security Commission may issue a warrant under its official seal directed to the sheriff of any county of the state, commanding him to levy upon and sell the real and personal property of the person owing the contribution. The same section also provides:

"The sheriff to whom any warrant, issued under this section, is directed shall, within five (5) days after receipt of the same, file with the county clerk of his county a copy thereof **(for which said clerk shall make no charge)**, and thereupon "the county clerk shall record the same upon his records and the day when such copy is filed." (Emphasis added).

The question of payment of a recording fee arises because of the enactment of Chapter 77 Laws of 1961, amending Section 71-2-9, N.M.S.A., 1953 Compilation to provide that the county clerks may collect a fee when the state, its public boards and commissions, municipalities, districts and subdivisions file "instruments affecting real estate which have been made to them as **grantees or vendees**, including rights-of-way for roads, easements or other instruments affecting real estate."

Clearly, warrants of the Employment Security Commission are not instruments made to the Commission as a grantee or vendee. They are instruments made **by** the commission as claimant of a lien.

It is also clear, however, that the commission's warrants do constitute "other instruments affecting real estate", because they create a lien against the property when they are filed. See Section 59-9-15, *supra*. But, in our opinion, Chapter 77, Laws of 1961, does not apply to warrants of the Employment Security Commission. We have already seen that it only applies where the state agency is a grantee or vendee, which is not the case with warrants of the Employment Security Commission. Part B of Chapter 77, provides that "such filings shall have the full legal effect of recording and be legal notice of the rights of said public entities or districts in and to said rights-of-way, easements or other interests **conveyed or granted** by said instruments affecting such real estate." The underlined words clearly have no application to an Employment Security Commission warrant, for such a warrant does not convey or grant anything.

Moreover, Chapter 77 applies only to instruments that affect real property, while commission warrants run against both real and personal property. We think it unlikely that the legislature would permit a fee for recording a warrant that affected real property, but deny a fee for recording a warrant that affected only personal property.

There is yet another reason for our conclusion. Chapter 77, Laws of 1961 is a general statute, and it does not expressly repeal Section 59-9-15, which is a statute dealing specifically with warrants of the Employment Security Commission. It is a familiar rule that a subsequent general statute does not impliedly repeal a prior specific statute, unless that result is absolutely necessary. See **Levers v. Houston**, 49 N.M. 169, 159 P. 2d 761; **Waltom v. City of Portales**, 42 N.M. 433 81 P. 2d 58; **A. T. & S. F. Ry Co. v. Town of Silver City**, 40 N.M. 305, 59 P. 2d 351; **State ex rel Armijo v. Romero**, 19 N.M. 1, 140 PAC. 1069. That result is not necessary here and we hold that Section 59-9-15, *supra*, is still in full force and effect as it applies to the recording of warrants of the Employment Security Commission.

Therefore, it is our opinion that a county clerk may not collect a fee for recording a warrant issued by the Employment Security Commission.