

## **Opinion No. 62-14**

January 24, 1962

**BY:** OPINION OF EARL E. HARTLEY, Attorney General Oliver E. Payne, Assistant Attorney General

**TO:** Mr. Keith Moore, State Bank Examiner, State Banking Department, Santa Fe, New Mexico

### **QUESTION**

#### QUESTION

Is an organization which demands that an alleged debtor pay directly to his creditor the amount said to be due or have legal proceedings instituted against him operating a collection agency within the meaning of the Collection Agency Act?

#### CONCLUSION

Yes.

### **OPINION**

#### ANALYSIS

A question has arisen as to whether the J. W. Burns Protection Agency, a national organization, is operating a collection agency within the purview of the Collection Agency Act. (Sections 67-15-22 through 67-15-89, N.M.S.A., 1953 Comp.)

The method of operation used by this particular agency consists of representing creditors in attempting to secure payment of "bad debts" and in so doing to send three letters to the alleged debtor demanding that he pay the debt directly to the creditor or have legal proceedings instituted against him.

The substantive content of the three letters, which are apparently mailed locally, is as follows:

#### **First Letter**

"Our Representative is making a preliminary examination of the accounts of \_\_\_\_ previous to considering the taking of legal action to effect settlement on delinquent claims.

An unpaid account in the above amount, which our client says is just and legally due appears against you.

As this may be an oversight on your part, we are mailing this notice ten days in advance of any proceedings, so that you may have an opportunity to make settlement with your creditor before costs are added.

This account must be paid or satisfactory arrangements for payment must be made with your creditor immediately.

Very truly yours,

J. W. BURNS

PROTECTIVE AGENCY

Absconding debtors located and prosecuted through our tracing and receiving departments."

### **Second Letter**

"The above captioned account has been referred to this department for immediate attention.

You have been requested on several occasions to adjust this matter with **your creditor** or they would take such remedy as the law permits.

If there is any legitimate reason for your not paying this legal obligation or you find that there should be some adjustment, now is the time you should assert it.

You are aware that court action is expensive, not only in money but time lost.

To avoid additional cost of expensive litigation, you would do well to communicate with **your creditor** at once, otherwise we shall advise immediate suit involving the taking of judgment, levy and garnishment proceedings.

Very truly yours,

J. W. BURNS

PROTECTIVE AGENCY

By Legal Forwarding Department"

### **Third Letter**

"You have been notified that the above claim has been handed to us for immediate attention.

This claim is a legal and just obligation and we have guaranteed to collect or **prosecute**.

We are withholding action in this matter for ten days, giving you ample time to communicate with **your creditor**.

If you fail to get in touch with **your creditor** within the time limit, it will be evident that this claim is not only a just one, but that you are attempting to avoid payment of a legal obligation.

We shall then order legal proceedings brought against you involving judgment, levy or garnishment forthwith.

Very truly yours,

J. W. BURNS

PROTECTIVE AGENCY

Absconding debtors located and prosecuted through our tracing and receiving departments."

Section 67-15-31, N.M.S.A., 1953 Comp., provides as follows:

"No person shall conduct within this state a collection agency **or** engage within the state in the business of collecting claims for others, **or** of soliciting the right to collect or receive payment from another of any claim, or advertise, or solicit either in print, by letter, in person or otherwise, the right to collect **or** receive payment for any other of any claim, or seek to make collection **or** obtain payment of any claim on behalf of another without having first applied for and obtained a license." (Emphasis added)

It is our opinion that J. W. Burns Protective Agency does "seek to make collection or obtain payment" of claims on behalf of others even though it does not actually handle any money itself. In this connection, we deem it appropriate to point out that the demand letters themselves contain a line where the "collection charges" are noted. It would be rather anomalous to say that one who charges for collections is not operating a collection agency.

It should be noted that there were reasons underlying enactment of the Collection Agency Act other than the desire to insure protection of the customer's money. One compelling reason for the State regulation of this general type of business is to prevent improper or illegal collection methods. And if, by the simple expedient of advising debtors to pay directly to their creditors, the public protection features of the Collection Agency Act could be evaded, the Act would lose much of its effectiveness.