Opinion No. 63-158

November 20, 1963

BY: OPINION of EARL E. HARTLEY, Attorney General

TO: Louis R. Lopez Administrative Officer to Court Administrator Supreme Court Building Santa Fe, New Mexico

QUESTION

STATEMENT OF FACTS

The labor commissioner pursuant to the authority contained in Section 59-3-12, N.M.S.A., 1953 Compilation may take assignments of wage claims and institute civil actions for the recovery thereof. Under Section 59-3-13, N.M.S.A., 1953 Compilation he is entitled to free process and may institute actions for recovery of wage claims under $ 200 in the justice of the peace courts. However, while this procedure can operate without friction in District Courts, the justices of the peace are required to collect costs in advance for civil actions instituted in their courts per Section 36-19-6, N.M.S.A., 1953 Compilation (P.S.). Failure to comply with the requirements of this section constitutes a misdemeanor and can subject the justice to a fine and removal from office. Consequently there is a growing reluctance on the part of the justices to accept these cases of the labor commissioner. It is our understanding that while all of these cases could be instituted in the District Courts, to avoid a conflict, this procedure would most likely curtail their speedy disposition due to the increasing workload in the District Courts

Under the customary and required procedure for civil cases the justice remits the $ 7.50 costs collected by him to the Administrative Office of the Courts and is subsequently paid his $ 5.00 fee. This operates in effect as a reimbursement. However, in those few instances where no costs have been remitted, the Administrative Office has refused to pay the $ 5.00 fee.

QUESTIONS

1. May a justice of the peace accept the filing of a civil action by the labor commissioner, as assignee of wage claims, without requiring advance payment of the $ 7.50 court costs?

2. If the answer to Question 1 is Yes, and the court finds in favor of the defendant in a particular case, is the Administrative Office of the Courts allowed to pay the $ 5.00 fee to the justice of the peace?

CONCLUSION

1. Yes.

2. Yes.

OPINION

*{*369}* **ANALYSIS**

It is apparent from a reading of the foregoing facts that a serious inconsistency exists in the statutes mentioned therein. Our answer to question 1 above necessarily requires an analysis of these statutes to determine which one, if any, has been superseded by the other.

As stated above, the authority under which the labor commissioner operates in this area of wage claims is contained in Section 59-3-12, N.M.S.A., 1953 Compilation, which reads in part as follows:

"Section 59-312. Wage claims and liens to secure claims -- Assignment to labor commissioner for collection. -- The labor commissioner shall have power and authority to take assignments of wage claims, of employees against employers, and shall also have power to take assignments of liens upon real or personal property securing the claims of employees and laborers, and shall have power and authority to prosecute actions for the collection of such claims. . . ."

And the portion of Section 59-3-13, N.M.S.A., 1953 Compilation with which we are concerned reads as follows:

"Section 59-3-13. Wage claim actions by labor commissioner -- Costs -- Jurisdiction -- District Attorney to represent labor commissioner when necessary -- Appeals. -- (a) **In all actions brought by the labor commissioner as assignee under the provisions of the preceding section,** (59-3-12) **the labor commissioner shall be entitled to free process and shall not be obligated or required to give any bond or other security for costs.**

(b) Any sheriff, constable or other officer requested by the labor commissioner to serve any summons, writ, complaint, or order shall do so without requiring the labor commissioner to advance the fees or furnish any security or bond therefor.

(c) Where the claim or claims are less, or when joined together are less in the aggregate, than the sum of two hundred dollars ($ 200), **the labor commissioner may institute action therefor against the employer in any justice of the peace court having jurisdiction,** *{*370}* without referring the same to the district attorney. . . ." (Emphasis Added)

Both of the above were enacted by Laws 1937, Ch. 109, §§ 12 and 13 respectively. They were amended by Laws 1945, Ch. 48, §§ 1 and 2 respectively. The significance of

the amendment of Section 59-3-13, supra, is that subsection (c) was added. This then made it possible for the labor commissioner to institute actions in the justice of the peace courts. However, as will be pointed out later in this opinion, the conflict with which we are now confronted did not arise until 1947.

In order to fully appreciate how the inconsistency comes about the following must be considered:

"Section 36-19-1. Costs of justices of the peace. -- A. Except as provided in section 36-19-18, New Mexico Statutes Annotated, 1953 Compilation, justices of the peace shall collect the following costs:

For each civil or criminal case docketed . . . $ 7.50

For making and certifying copies of any papers or records in his office, for each one hundred words . . .20

. . . ."

"Section 36-19-6. Civil cases -- Payment of costs in advance. -- A. The party at whose application any civil suit is instituted, or writ or other civil process is issued, or services performed, **shall pay in advance** the costs required by law to be collected by justices of the peace.

B. Every justice of the peace **shall collect in advance from every party instituting any civil suit in his court the costs required by law to be collected.** If any justice of the peace dockets any civil action in his court or issues any process in any civil action in his court without collecting the required costs in advance from the party instituting the action, he is guilty of a misdemeanor and shall be fined not more than one thousand dollars ($ 1,000) for each offense, and removed from office." (Emphasis Added)

The 1963 Laws of New Mexico effected significant changes concerning the administration of justice of the peace courts. The justices throughout the State are now under the direct supervision and control of the Administrative Office of the Courts, whereas, previously they were responsible to their respective counties. This has resulted in a more strict and uniform control over the entire operation of these courts.

Section 36-19-6, supra, however, is not a new enactment. This law first came into existence through Laws 1889, Ch. 22 § 7, in the following form:

"The party at whose application any civil suit is instituted or writ or other civil process is issued or services performed shall pay in advance, **if so demanded by the justice of the peace or constable,** the fees allowed by this act for such services as are necessary or ordinarily necessary to be rendered in like cases; except, that pay in advance for the collection of executions shall not be demandable." (Emphasis Added)

Note that the underlined portion of the above appears to make it discretionary with the justice to collect the costs in advance. This section remained in substantially *{*371}* the same form until an amendment was made by Laws 1947, Ch. 27, § 1, which amendment deleted the portion stressed above, placed an affirmative duty upon the justices to collect the costs in advance, and made it a misdemeanor for any justice of the peace to violate the provisions of the statute. After this 1947 amendment there have been two subsequent amendments (one by Laws 1955, Ch. 223, § 3 and another by Laws 1963, Ch. 300, § 14), but these have been insignificant for our purposes. Thus, the net effect of these changes appears to have placed upon the justices of the peace a mandatory duty to collect costs in civil actions in advance, where at one time they were permitted to exercise their discretion.

At this point it will be helpful to summarize the effect of the changes made concerning Sections 59-3-13 and 36-19-6 supra. Referring back to our previous discussion regarding these sections, it can be seen that it was in 1945 that the labor commissioner was authorized to institute his actions on wage claims in justice of the peace courts providing he met the jurisdictional requirements; and, it was in 1947 that the mandatory duty was placed upon the justices of the peace to collect the costs for civil actions in advance from "every party instituting any civil suit." Therefore, the previously mentioned inconsistency has actually existed since 1947, though we understand that it is only since the effective date of the 1963 law that there has been an expressed reluctance by the justices to accept the labor commissioner's cases.

Apparently some problem arose in 1954 on the above because on July 12, 1954 Attorney General Opinion No. 5987 (unpublished) issued from this office. In that opinion it was stated that the wording of the statute was mandatory for all justices of the peace in the State, and, that wherever a claim for wages was filed by the labor commissioner, no court costs could be charged in advance. It was added that whenever a judgment is recovered in a justice of the peace court by the labor commissioner, court costs and service fees should be included in the judgment and when recovered turned over to the justice. We agree with that conclusion and this opinion may be considered supplementary thereto.

There is a well recognized rule of statutory construction to the effect that when a subsequent enactment covering a field of operation coterminous with a prior statute cannot by any reasonable construction be given effect while the prior law remains in operative existence because of irreconcilable conflict between the two acts, the latest legislative expression prevails, and the prior law yields to the extent of the conflict. **Radar v. Rhodes,** 153 P. 2d 516, 48 N.M. 511; **In re Martinez' Will,** 132 P. 2d 422, 47 N.M. 6. Thus, an application of the foregoing principle in this instance would mean that because the latest legislative expression was made evident through the amendment of Section 36-19-6 supra, this Section would prevail over Section 59-3-13 supra. In effect there would be an implied repeal of the latter to the extent of the conflict. However, there is an equally well recognized rule of statutory construction to the effect that repeals by implication are not favored in the law. **State ex rel. Rives v. Herring,** 261 P. 2d 442, 57 N.M. 600; **State v. Valdez,** 279 P. 2d 868, 59 N.M. 112. The legislature is

presumed to intend to achieve a consistent body of law, and is likewise presumed to know the existing law at the time amendments are adopted. If, through any reasonable construction, the statutes can be permitted to exist and operate harmoniously, there will be no repeal by implication. **Bartlett v. U.S.** (C.A. 10th *{*372}* Cir. 1948) 166 F.2d 920. We believe that in this instance such a reasonable construction can and must be made. Section 36-19-6, supra, is a general statute applying to all civil cases in justice of the peace courts in New Mexico. And, Section 59-3-13, supra, is a special statute treating a minor phase of the same general subject. Thus, there is no reason why the special statute cannot be considered as an exception to the broader general law and have a coterminous operation therewith. In support of this reasoning, we quote the following from **Sutherland, Statutory Construction,** § 2021:

"The enactment of a general law broad enough in its scope and application to cover the field of operation of a special or local statute will generally not repeal a statute which limits its operation to a particular phase of the subject covered by the general law, or to a particular locality within the jurisdictional scope of the general statute. An implied repeal of prior statutes will be restricted to statutes of the same general nature, since the legislature is presumed to have known of the existence of prior special or particular legislation, and to have contemplated only a general treatment of the subject matter by the general enactment. Therefore, where the later general statute does not propose an irreconcilable conflict, the prior special statute will be construed as remaining in effect as a qualification of an exception to the general law."

Based upon the foregoing, it is our opinion that a justice of the peace may accept the cases in question without requiring advance payment of the $ 7.50 court costs.

In view of our conclusion above, question No. 2 requires consideration and a reply. To begin with, Sections 36-19-20 and 36-19-21, N.M.S.A., 1953 Compilation (P.S.) concern payments to justices of the peace. They read in pertinent part:

"Section 36-19-20. Justice court revolving fund. -- A. There is created in the state treasury the "Justice court revolving fund." Not later than the last day of each month, the director of the administrative office of the courts shall remit to the state treasurer, for credit to the justice court revolving fund, the amount of all costs received from justices of the peace.

B. All funds credited to the justice court revolving fund are appropriated to the administrative office of the courts for:

(1) payment of fees due justices of the peace for civil and criminal cases docketed; **. . ."**

"Section 36-19-21. Payments to justices of the peace. -- Payments from the justice court revolving fund of fees due justices of the peace shall be at the rate of five dollars ($ 5.00) for each civil and criminal case docketed."

We have stated previously, in our statement of facts, that the procedure followed, where civil cases are concerned, is that the justices remit all court costs collected by them to the Administrative Office of the Courts. Subsequently, they receive payment of their $ 5:00 fee for each case docketed. Should we assume that the intent of the legislature, in establishing this procedure, was to provide for payment of the $ 5.00 fee only if and when costs had been assessed in advance and remitted? We believe not. Section 36-19-21, *{*373}* supra, states unqualifiedly that the payment "shall be at the rate of five dollars for each civil and criminal case docketed." And, such a conclusion would make the receipt of the fee by the justice contingent upon the outcome of the case, inasmuch as a judgment against the defendant-employer would include costs. This cannot reasonably be assumed to have been the intent of the legislature in view of the changes effected in 1963 concerning this law.

Therefore, it is our opinion as to question No. 2 that, where the court finds in favor of the defendant in a case filed by the labor commissioner, the administrative office of the courts is allowed by Sections 36-19-20 and 36-19-21, supra, to pay the $ 5.00 fee to the justice of the peace.

By: Frank Bachicha, Jr.

Assistant Attorney General