

Opinion No. 65-219

November 2, 1965

BY: OPINION OF BOSTON E. WITT, Attorney General Oliver E. Payne, Deputy Attorney General

TO: Honorable Austin E. Roberts, State Representative, P.O. Box 659, Farmington, New Mexico

QUESTION

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Does Section 18-1-37, N.M.S.A., 1953 Compilation (P.S.), which provides that reasonable attorney fees may be taxed as costs to the party which prevails in an action on an open account, apply only where the open account sued upon occurred on or subsequent to the effective date of the act, June 18, 1965?

CONCLUSION

Yes.

OPINION

{*357} ANALYSIS

Section 18-1-37, supra, provides as follows:

"Collection of open accounts -- Attorney fees. -- In any civil action in the district court to recover on an open account, the prevailing party may be allowed a reasonable attorney fee set by the court, and taxed and collected as costs."

As a general rule statutes are to be construed as prospective rather than retrospective unless there is a clear legislative intention to the contrary. **Gallegos v. A.T.&S.F. Ry Co.**, 28 N.M. 472, 214 P. 579, **Wilson v. New Mexico Lumber & Timber Co.**, 42 N.M. 438, 81 P. 2d 61, **Board of Education of City of Las Vegas v. Boarman**, 52 N.M. 382, 199 P. 2d 998, {*358} **Bradbury & Stamm Const. Co. v. Bureau of Revenue**, 70 N.M. 266, 372 P. 2d 808, **Clark v. Ruidoso-Hondo Val. Hospital**, 72 N.M. 9, 380 P. 2d 168. This office has ruled similarly in Attorney General's Opinion No. 3493, March 26, 1940, and more recently Attorney General's Opinion No. 65-144, August 3, 1965, reviewed the rules of statutory construction on retroactive effect and decided that Section 59-10-18.2, N.M.S.A., 1953 Compilation (P.S.), was to receive only prospective effect.

We are not compelled by any words found in 18-1-37, supra, that the legislature intended that any kind of retroactive effect be given to this statute. Therefore, to accord

with the New Mexico decisions on the prospective effect to be given statutes we are of the opinion that reasonable attorney's fees can be awarded as costs only where the open account sued upon occurred on or subsequent to June 18, 1965.