Opinion No. 68-18

February 6, 1968

BY: OPINION OF BOSTON E. WITT, Attorney General

TO: Mr. Robert M. Rowley City Attorney City of Tucumcari Tucumcari, New Mexico

QUESTIONS

1. Does the general provision of Section 14-22-6 N.M.S.A., 1953 (1967 P.S.) which is applicable to Charges imposed by ordinance for service rendered for **any** municipal utility control the more specific provision of Section 14-23-2, supra, which applies only to electric utilities, thereby creating a lien upon the property owner for his tenant's delinquent unpaid electric bill when the electric utility account is in the tenant's name and supported by tenant's deposit?

2. Are these provisions, Sections 14-22-6 and 14-23-2, irreconcilable?

CONCLUSIONS

1. No.

2. No.

OPINION

*{*33}* **ANALYSIS**

Where a tenant has an electric utility account in his own name and supported by his own deposit, Section 14-23-2, N.M.S.A. 1953 Compilation (1967 P.S.) should be controlling. This statutory provision is explicit and unambiguous standing alone. It reads:

A municipality owning and operating an electric utility **shall charge only the person receiving the electric service** which shall be measured by the Kilowatt. (Emphasis supplied)

Ambiguity might arise when Sections 14-23-2 and 14-22-6, N.M.S.A. 1953 Compilation (1967 P.S.) are read together. This latter statutory provision, Section 14-22-6, states:

Any charge imposed by ordinance for service rendered by a municipal utility shall be:

(1) payable by the owner, personally, at the time the charge accrues and becomes due; and

(2) a lien upon the tract or parcel of land being served from such time.

Sections 14-23-2 and 14-22-6 are not irreconcilable.

It is conceivable that Section 14-22-6 can be read in one of two ways, either of which will **not** conflict with Section 14-23-2. First, Section 14-22-6 could be interpreted to be applicable only to owners of property who have become delinquent in their personal utility bills. Utilizing this reasoning, a tenant would be responsible for his own delinquent unpaid electric utility bill and the property owner would only be liable for his own electric utility bill.

A second, more reasonable approach to interpreting Section 14-22-6 would be to designate such statute as a general statute which applies to **all** utility charges against owners or tenants **except** those delinquent unpaid bills which are derived from electric utility service. The particular electric utility service should be controlled by the more specific statute, Section 14-23-2. This second approach is more logical in the light of a fair reading of both statutory provisions, coupled with the presumed legislative intent to have enacted reconcilable statutes which concern the same subject *{*34}* matter. Both statutes do relate to the same subject matter and both statutes were enacted in the same legislative session (1965 Laws, Chapter 300). This position is buttressed by two well accepted rules of statutory construction.

New Mexico Supreme Court decisions which are aligned with general case law state that whenever possible an attempt should be made to reconcile different statutory provisions relating to the same material. The presumption is that the legislature meant both statutory provisions to operate, and therefore an interpretation of the statutory provisions which would achieve this result should be employed.

The New Mexico Supreme Court adopted this principle in: **El Paso Electric Co. v. Milkman,** 66 N.M. 335, 347 P.2d 1002, (1959; **Atchinson T&S.F. Ry. Co. v. Town of Silver City,** 40 N.M. 303, 59 P.2d 351; **State ex rel State Park & Recreation Commission v. New Mexico State Authority,** 76 N.M. 1, 411 P.2d 984, (1966). See also, **Maxwell, On the Interpretation of Statutes,** 8th edition (pg. 139, 147).

In summary, the above decisions reflect a principle of statutory construction which simply means that where statutes relate to the same class of things they are in pari materia, and, if possible by reasonable construction, they are to be both construed, and effect is to be given to every provision of each.

The provisions of Section 14-22-6 and 14-23-2, supra can also be reconciled by the application of a second well-founded principle of statutory construction accepted by the New Mexico Supreme Court, general case law and text writers. This principle holds that where general and specific statutes are enacted relating to the same subject matter, the statute enacted for the primary purpose of dealing with a particular subject prescribing terms and conditions covering the subject supersedes a general statute which does not specifically refer to that subject **although broad enough to cover it. State v. Spahr,** 64 N.M. 395, 328 P.2d 1093, (1958), adopted this rule and the court concluded that where a statute deals with a subject in general terms and another deals with a part of

the same subject in a more definite way, the special, more definite statute governs. This rule also has been enunciated by additional recent New Mexico Supreme Court decisions in **State v. Lujan,** 76 N.M. 111, 412 P.2d 405, (1966) and **Lopez v. Barreras,** 77 N.M. 52, 419 P.2d 251, (1966).

The conclusion of this opinion is that only the tenant should be liable for an electric utility bill if such electric utility account was, in fact, in the tenant's name, with the tenant's supporting deposit, and with the tenant receiving the electric utility service as controlled by Section 14-23-2.

By: Spencer T. King

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