

Opinion No. 69-69

July 1, 1969

BY: OPINION OF JAMES A. MALONEY, Attorney General Mark B. Thompson III,
Assistant Attorney General

TO: Victor C. Breen, District Attorney, Tenth Judicial District, 218 South Second Street,
Tucumcari, New Mexico 88401

QUESTIONS

QUESTIONS

May a district attorney as attorney for the publicly owned hospital in a suit against a debtor of the hospital, settle the case for less than the full amount of the judgment awarded to the hospital after the time for appeal by the debtor has expired?

CONCLUSION

Yes.

OPINION

{*104} ANALYSIS

In essence, the question posed requires an analysis of the following statute:

The attorney general and district attorneys of this state in their respective districts, **when any civil proceedings may be pending in their respective districts, in the district court**, in which the state or any county may be a party, whether the same be an ordinary suit, scire facias proceedings, proceedings growing out of any criminal prosecution, or other wise, **shall have power to compromise or settle said suit or proceedings, or grant a release or enter satisfaction in whole or in part, of any claim or judgment in the name of the state or county, or dismiss the same, or take any other steps or proceedings therein which to him may appear proper and right**; and all such civil suits and proceedings shall be entirely under the management and control of the said attorney general or district attorneys, and all compromises, releases and satisfactions heretofore made or entered into by said officers are hereby confirmed and ratified. (Emphasis added.) § 17-1-15, N.M.S.A., 1953 Compilation.

The constitutionality of the above statute was upheld by the New Mexico Supreme Court in a case where a district attorney and special counsel for the State Tax Commission compromised a tax suit. **State v. State Investment Co.**, 30 N.M. 491, 239 P.2d 41 (1925). The constitutionality of the statute was in question in view of Article IV, Section 32, New Mexico Constitution which provides as follows:

No obligation or liability of any person, association or corporation held or owned by or owing to the state, or any municipal corporation therein, shall ever be exchanged, transferred, remitted, released, postponed, or in any way diminished by the legislature, nor shall any such obligation or liability be extinguished except by the payment thereof into the proper treasury, or by proper proceeding in court. Provided that the obligations created by Special Session Laws 1955, Chapter 5 running to the state or any of its agencies, remaining unpaid on the effective date of the amendment are void. (The last sentence of this section was added in 1958.)

The constitutional provision is undoubtedly intended to prevent public officials from releasing debts justly owed to the state and to discourage collusion between public officials and private citizens.

It is our belief that a compromise and settlement of a judgment which is entered of record as a Satisfaction of Judgment would be a **proper proceeding in court** and alert the public to the action of the district attorney or attorney general. We would therefore conclude that Section 17-1-15, N.M.S.A., 1953 Compilation is completely harmonious with the constitutional provision.

Because Section 17-1-15 provides for a release, satisfactions, settlements, etc. in pending civil proceedings we must determine when a suit is pending for the purposes of a settlement. The Supreme Court of New Mexico has stated that "the authorities as to what is a 'pending case' are by no means uniform . . . the definitions of a pending case vary with the construction of each particular statute . . ." **Stockard v. Hamilton**, 25 N.M. 240, 180 P. 294 (1919). In **Stockard** the Supreme Court determined that a case in which the judgment was over one year old was no longer pending for the purposes of New Mexico Constitution, Article IV, Section 34. That constitutional provision prohibits an act of the legislature from affecting the right or remedy {**105*} of either party or changing the rules of evidence of procedure in a pending case.

On the other hand, the New Mexico Supreme Court has also held that a case is still pending for the purposes of taking a deposition in aid of execution under District Court Rule 69, Section 21-1-1 (69), N.M.S.A., 1953 Compilation:

Rule 69 . . . secures the attendance of the person desired to be examined as a witness by a subpoena, which is not an independent process, but issues only in connection with a pending action or proceeding.

State, ex rel Howell v. Montoya, 74 N.M. 743, 398 P.2d 263 (1965).

We believe, for example, that if a public hospital or other public agency represented by the district attorney or attorney general has been awarded a judgment and has sought to execute on that judgment under the provisions of Section 24-1-1, N.M.S.A. 1953 Compilation, and even if the time for appeal has expired, the district attorney may settle and compromise the judgment in order to collect. It is clear for those purposes the suit is still pending as explained in **State, ex rel Howell v. Montoya, supra**.

In addition, a judgment could be compromised and settled, if a transcript of judgment has been filed against the defendant debtors real property, §§ 21-9-6 & 7 N.M.S.A., 1953 Compilation, and suit brought to enforce the judgment. See §§ 24-1-22 to -25, N.M.S.A., 1953 Compilation. In this latter situation the suit which would be pending would be the suit to foreclose the judgment lien. There would be no doubt that the district attorney would have the authority under Section 17-1-15 to compromise or settle the claim for less than the full amount of the original judgment when it "may appear proper and right."