**Opinion No. 70-25**

March 6, 1970

**BY:** OPINION OF JAMES A. MALONEY, Attorney General

**TO:** Mr. Patrick F. Hanagan District Attorney Roswell, New Mexico

## QUESTIONS

STATEMENT OF FACTS

Lea General Hospital is converting to computerized billing and is programming all accounts. If actions on older accounts, some going back to inception of the hospital, are barred by the statutes of limitations, then money and effort need not be expended in programming these accounts.

The agreements made by the debtors contains the statement:

"I will be responsible for payment of this account. Signature."

QUESTIONS

Is a County or Municipal Hospital barred by the statute of limitations, in bringing an action on accounts that are past the prescribed time?

CONCLUSION

Yes.

## OPINION

*{*41}* **ANALYSIS**

The first question presented is whether the obligation of the debtor is an account, which would be subject to a four year limitation under Section 23-1-4, N.M.S.A., 1953 Compilation which is set out:

"Accounts -- Unwritten contracts -- Injuries to property -- Conversion -- Fraud -- Unspecified actions -- Four-year limitation. -- Those founded upon accounts and unwritten contracts; those brought for injuries to property or for the conversion of personal *{*42}* property or for relief upon the ground of fraud, and all other actions not herein otherwise provided for and specified within four [4] years."

The second question is whether the words, "I will be responsible for payment of this account. Signature." bring the debt under Section 23-1-3, N.M.S.A., 1953 Compilation,

which applies to written contracts and carries a six year limitation. This section is set out:

"Notes -- Written instruments -- Judgments of courts not of record -- Six-year limitation -- Computation of period. -- Those founded upon any bond, promissory note, bill of exchange or other contract in writing, or upon any judgment of any court not of record, within six [6] years.

"Provided, however, That (should) [if] the payee of any bond, promissory note, bill of exchange or other contract in writing or upon any judgment of any court not of record, has heretofore or shall hereafter enter into any contract or agreement in writing to defer the payment thereof, or contract or agree not to assert any claim against the payor or against the assets of the payor until the happening of some contingency, the time during the period from the execution of such contract or agreement and the happening of such contingency shall not be included in computing the six-year period of limitation above provided."

An account whether written or unwritten is a contract between debtor and creditor. 1 Williston on Contracts, **§** 3, p. 8 3rd ed. The words, "I will be responsible for payment of this account" followed by signature would seem to establish a written contract. However, Section 23-1-4, supra, stating ". . . those founded upon accounts and unwritten contracts . . .", does not indicate that only unwritten accounts are included, on the contrary, many accounts are written. Section 23-1-3, supra, applies to written contracts, but if such written contract is an account, as is here the case, Section 23-1-4, supra applies, and such account would be subject to a four year limitation.

The next question is whether this municipal or county hospital is not barred by the New Mexico statutes of limitations because of its status? Our analysis will take a twofold approach. First the New Mexico case of **Directors of Insane Asylum of New Mexico v. Boyd,** 37 N.M. 36, 17 P.2d 358 (1933), held that the statute of limitations did not apply to a hospital which was a state institution. The following is from the **Boyd** case:

"Appellants maintain that their plea of the statute of limitations should have been sustained. The asylum is a state institution (section 1, art. 14, Const.), controlled by its officials and maintained at public expense . . . The loss of this claim would fall on all of the people of the state. Statutes of limitation ordinarily do not run against the state. State v. Board of County Commissioners, 33 N.M. 340, 267 P.72. The appellee being an agency of the state, operating an asylum for the insane -- a governmental function -- the statute of limitation do not apply. (Cases omitted.) Wood on Limitations (4th Ed.) vol. 1, p. 170, 37 C.J. p. 715, states the rule: 'According to the weight of authority the statute of limitations cannot be pleaded against an action by a state hospital for the insane a body politic and corporate created by the state to carry out a public charity, and supported by the public revenues and controlled by the state's officers, to recover for board and medical attention furnished to an inmate.'"

However, the New Mexico Insane Asylum at Las Vegas, now known as the New Mexico State Hospital at Las Vegas, is expressly a state institution. New Mexico Constitution, Article XIV, Section 1, is set out:

"The penitentiary at Santa Fe, the Miner's Hospital at Raton, the New Mexico State Hospital at Las Vegas, the New Mexico Boys' School at Springer, the Girls' Welfare Home at Albuquerque, the Carrie Tingley Crippled Children's Hospital at Truth or Consequences and the Los Lunas Mental Hospital at Los Lunas are hereby confirmed as State Institutions."

*{*43}* Thus the **Boyd** case indicates that the statutes of limitations would not act as a bar against state institutions.

A county or municipal hospital is not legislatively or constitutionally an expressed state institution.

Therefore, the indication, though not conclusive, from the **Boyd** case, is that a county or municipal hospital would be barred by the statutes of limitations after the passage of the prescribed time period.

Section 23-1-19, N.M.S.A., 1953 Compilation which is applicable to preceding statutes on limitation is set out:

"Actions to which limitations applicable. -- The above limitations and provisions shall not apply to evidences of debt intended to circulate as money; but shall, in other respects, be applicable in all other actions brought by or against all bodies corporate or politic, except when otherwise expressly declared."

A county-municipal hospital has been held to be a "local public body". Opinion of the Attorney General No. 69-78, dated July 17, 1969. Thus it is our opinion that the Lea General Hospital would be either a "corporate" or "politic" body, defined in Section 23-1-19, N.M.S.A., 1953 Compilation.

The recent case of **Board of Education, School District 16 v. Standhardt,** 80 N.M. 543, 458 P.2d 795 (1969) faced an interpretation of Section 23-1-19, N.M.S.A., 1953 Compilation. The court stated:

"It appears, therefore, to be the general rule that statutes of limitations do not run against the state unless the statute expressly includes the state or does so by clear implications but will run against county and other political subdivisions, including school districts, unless such may be deemed to be an arm of the state because of the particular governmental functions or purposes involved. Altman v. Kilburn, 45 N.M. 453, 116 P.2d 812, 136 A.L.R., 554 (1941); . . ., Here, however, we have the situation where our statute makes the statute of limitations 'applicable in all other actions brought by or against all bodies corporate or politic except when otherwise expressly declared.'"

The Court further holds that the statutes of limitations will not run against corporate or political bodies, unless the state is the real party in interest. The following is taken from the **Standhardt** case:

"From the above, it appears that the present rule in New Mexico is that the general statutes of limitations . . . with few amendments are applicable in all actions brought by or against bodies corporate or politic except when otherwise expressly declared. Should it appear, however, that the action, although brought in the name of such body corporate or politic, is in reality for the state which is the real party in interest and that the nominal plaintiff has no real interest in the litigations, then of course, the statute of limitations cannot be pled against the sovereign. On the other hand, if the suit is brought in the name of the state, but it is only the nominal party of record and its name is used to enforce a right which enures solely to the benefit of the body corporate or politic, then the statute of limitations can be pled as a bar to the action.

"Since our Statute ( **§** 23-1-19, supra) expressly provides that the limitations will run against all bodies corporate or politic we need not determine whether such bodies were exercising governmental functions or concerned with public rights in bringing the action; our only concern is whether the plaintiff is the real party in interest in the action . . .

"The local school district here is administered by the county or municipal board of education as provided for in **§§** 73-9-1 and 73-10-2, N.M.S.A., 1953 (Repealed by Ch. 16, **§** 301, N.M.S.L. 1967) . . . These characteristics of a body corporate and politic enumerated by the other jurisdictions are the same as those set forth in the above mentioned sections of the New Mexico statutes.

*{*44}* "The obligation here sued upon is one owned solely to the district as administered by appellee Board; it is the real party in interest . . . . The statute of limitations as pled, has run against it."

The Court in **Standhardt** develops the state of the law by citing **Hagerman v. Territory,** 11 N.M. 156, 66 P. 526 (1901).

"Under our system of government a county is a civil subdivision of the Territory, and exists as a municipal corporation merely for the purpose of carrying on the territorial government; and it is well settled that the plea of the statute of limitations is no defense to those actions by such corporation involving public rights, such as taxation, **unless the statute expressly so provides.** [Citing cases.] And, as we have already observed, our statute contains no such provision. Section 2916, C.L. of N.M., 1897."

The Court then states that Section 23-1-19, N.M.S.A., 1953 Compilation is the exception so provided in our present day statutes that causes the statutes of limitations to run against sub-divisions of the State.

"Section 2916 of the Compiled Laws of New Mexico, 1897, referred to in the quote above from the Hagerman case, present **§** 23-1-4, N.M.S.A., 1953 setting forth the four

year limitation. Certainly it contains no provision allowing the statute of limitations as a defense against municipal corporations or any other body. The section of the statute so providing was then **§** 2932 of the Compiled Laws of 1897, which is the present **§** 23-1-19, N.M.S.A., 1953. We can only conclude that the territorial court overlooked this section."

The factual question left for consideration is whether:

1. The state of New Mexico is the real party in interest and that the Lea General Hospital is but a nominal party; or

2. Whether the Lea General Hospital is either:

a. the real party in interest, or

b. if the hospital is a nominal party, so long as the state is not the real party in interest.

If the state has no interest in this matter regardless whether the hospital is the real or nominal party, then the statutes of limitations would apply as to bar the hospital from enforcing these accounts after the prescribed period of time.

We are presented with no facts or evidence that the State of New Mexico is the real party in interest behind the Lea General Hospital. Unless and until this fact is established, Section 23-1-4, N.M.S.A. 1953 Compilation, as supplemented by Section 23-1-19, N.M.S.A., 1953 Compilation must apply to the Lea General Hospital so as to prevent enforcement of these accounts beyond the prescribed period of time.

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