Opinion No. 80-15

April 28, 1980

OPINION OF: Jeff Bingaman, Attorney General

BY: Albert L. Pitts, Assistant Attorney General

TO: William S. Huey, Secretary, Natural Resources Department

PUBLIC FINANCES

The Warrant Cancellation Act does not extinguish the indebtedness of the State when a check is lost and the payee fails to negotiate a state check within one year of its payable date. (Opinion of the Attorney General No. 68-87 overruled.)

FACTS

In the Spring of 1978 the State Park and Recreation Division ordered 500 stack chairs and 2 dollies from Fixtures Manufacturing Corporation for a total cost of $10,802.21. The division received the goods and two checks were issued to Fixtures by the Department of Finance and Administration -- the first on May 18, 1978 for $101.51 and the second on May 19, 1978 for $10,700.70. Fixtures received both checks and on May 24, 1978 routinely mailed them to its bank for deposit. This deposit was lost in the mail and the checks never reached the bank. In a letter dated July 9, 1979, Fixtures requested that the Division reissue the checks paying for this business transaction. On July 19, 1979 the Division advised Fixtures that it was prohibited from issuing new checks by the Warrant Cancellation Act, Sections 6-10-55 to 6-10-57 NMSA 1978.

QUESTIONS

Does the Warrant Cancellation Act extinguish the indebtedness of the State when a check is lost and the payee fails to negotiate a state check within one year of its payable date?

CONCLUSIONS

No. Opinion of the Attorney General No. 6887 dated August 27, 1968 is overruled.

ANALYSIS

The Warrant Cancellation Act, enacted in 1963, charges the responsible fiscal officer with the mandatory duty of cancelling any check that remains unpaid for one year after it becomes payable. See Section 6-10-57(A) NMSA 1978. Section 6-10-57(D) NMSA 1978, provides in part:

"D. Warrants cancelled under Subsection A of this section are void and the indebtedness evidenced thereby is extinguished, which is hereby declared to be an express condition of every contract under which state warrants are issued . . ."

OPINION

In our opinion the meaning of this section is clear and unambiguous. It states that the indebtedness evidenced by the check alone, not the indebtedness evidenced by the underlying contract, is extinguished. If the legislature had intended to create a special one year statute of limitations, it could have easily done so by deleting the phrase "evidenced thereby."

Assuming, however, that Section 6-10-57(D) is ambiguous in that it *{*138}* could also mean that any indebtedness of the State is extinguished one year after issuance of the warrant if not negotiated, such ambiguity would nevertheless be resolved to reach the same conclusion. When we turn to other statutory provisions for guidance in handling public moneys, we learn that in 1963, when the Warrant Cancellation Act was enacted, Section 6-10-59 NMSA 1978, formerly Section 11-2-45, NMSA, 1953 Comp., granted state fiscal agents discretionary authority to issue duplicate warrants. Two years later, the legislature amended Section 11-2-45 by Laws of 1965, Chapter 50, Section 1, and mandated that state fiscal agents issue duplicate warrants. Presumptively, the legislature took this action in 1965 with full knowledge of the terms of the Warrant Cancellation Act. Thus, the latter interpretation of Section 6-10-57(D) would limit by implication the applicability of Section 6-10-59 whereas the former interpretation would not affect its meaning.

The law in New Mexico is settled that a statute should be construed to give effect to all of its parts when possible. **Bird v. Apodaca,** 91 N.M. 279 (1977); **Keller v. City of Albuquerque,** 85 N.M. 134 (1973); **Postal Finance Co. v. Sisneros,** 84 N.M. 724 (1973). If there are conflicting statutory provisions then the rules of statutory construction direct that, insofar as it is practical, the courts are to make them consistent, harmonious and sensible. **State ex rel. Clinton Realty Co. v. Scarborough,** 78 N.M. 132 (1967); **Mathieson v. Hubler,** 92 N.M. 381 (Ct.App. 1978). And finally, if a statute is ambiguous the general rule is that the law should be interpreted to accomplish the legislative intent. **State ex rel. Newsome v. Alarid,** 90 N.M. 790 (1977); **Burroughs v. Board of County Commissioners of Bernalillo County,** 88 N.M. 303 (1975); **Trujillo v. Romero,** 82 N.M. 301 (1971).

In applying these rules of statutory construction to this question, it is apparent that the legislature intended that Section 6-10-57(D) simply mean that the indebtedness as evidenced by the warrant alone be extinguished, and not indebtedness provable by an underlying contract. This interpretation fully acknowledges the legislative history affecting Section 6-10-57(D), gives full force and effect to all statutory provisions, is consistent and harmonious with Section 6-10-59 and is in accord with common sense and reason.

Accordingly, we hereby overrule the conclusion reached in Opinion No. 68-87 insofar as it is inconsistent with this opinion.

ATTORNEY GENERAL

Jeff Bingaman, Attorney General