Opinion No. 87-24

June 1, 1987

OPINION OF: HAL STRATTON, Attorney General

BY: Scott D. Spencer, Assistant Attorney General

TO: Mr. Snider Campbell, Savings & Loan Supervisor, Financial Institutions Division, Regulation & Licensing Department, Bataan Memorial Building, Room 137, Santa Fe, New Mexico 87503

QUESTIONS

Whether Senate Bill 138 supersedes Section 61-18-54.1 NMSA 1978.

CONCLUSIONS

No.

ANALYSIS

Senate Bill 138, passed by the 38th legislature at its first session, provides as follows:

Section 1. PARTNERSHIPS AND CORPORATIONS MAY BE REPRESENTED BY PARTNER, OFFICER OR DIRECTOR IN PROCEEDINGS IN MAGISTRATE AND METROPOLITAN COURT. ---- In any proceeding in the magistrate and metropolitan Courts of this state, a partnership or a corporation that is a party may be represented by a partner, officer or director of the partnership or corporation even though the partner, officer or director is not an attorney.

Section 61-18-54.1 provides as follows:

Nothing in the Collection Agency Act shall be construed to prevent collection agencies from taking assignments of claims in their own name as real parties in interest for the purpose of billing and collection and bringing suit in their own names thereon; provided that no suit authorized by this section may be instituted on behalf of a collection agency in any court unless the collection agency appears by a duly authorized and licensed attorney at law. In such a suit, the court may, in its discretion, authorize payment of reasonable attorney fees and costs to the prevailing party as otherwise provided by law.

We assume that you are asking whether collection agencies, who may be corporations or partnerships, now may represent themselves in magistrate and metropolitan court by and through partners, officers, or directors.

Section 61-18-54.1 NMSA 1978, enacted in 1979, modified the holding in **State ex rel. Norvell v. Credit Bureau of Albuquerque, Inc.,** 85 N.M. 521, 514 P.2d 40 (1973). In that case, the Supreme Court of New Mexico held that a collection agency could not carry on the business of practicing law by taking assignments of claims and proceeding in its own name even though in some instances it employed licensed attorneys to prepare legal papers and conduct trials. It is our opinion that, because section 61-18-54.1 is a specific provision regulating collection agencies, and because Senate Bill 138 is a general provision regarding partnerships and corporations, the specific provision must prevail over the general provision. Where one statute deals with a subject in general terms and another deals with a part of the same subject in a more specific way, the more specific statute will be construed to be an exception to the general statute. **City of Alamogordo v. Walker Motor Company, Inc.,** 616 P.2d 403, 94 N.M. 690 (1980). It is therefore our opinion that collection agencies, upon taking assignments of claims in their own name, must bring suit on those claims through a licensed attorney.

Furthermore, we note that the Supreme Court recently has amended Rule 2-107 of the Rules of Civil Procedure for the Magistrate Courts and Rule 3-107 of the Rules of Civil Procedure for the Metropolitan Courts. Those rules have been amended to authorize closely held corporations, whose voting shares are held by single shareholder or group of shareholders, and certain partnerships to appear in magistrate and metropolitan courts by and through their authorized officers, general managers, or general partners. Those rules also provide, however, that "a collection agency may not file a suit unless the collection agency appears by a licensed attorney-at-law." Because the Supreme Court specifically prohibits collection agencies from representing themselves as plaintiffs, we construe that to be an exception to the new rules regarding corporations and partnerships. The new rules do not prohibit a collection agency, if it is a closely held corporation or small partnership, from representing itself in cases in which it is a defendant through an officer, general manager, or general partner in magistrate or metropolitan court. According to those rules, a collection agency, even if it is a corporation or partnership, may not file any suit in magistrate or metropolitan court unless it appears by a licensed attorney-at-law. Because the Supreme Court has the power to regular practice in the magistrate and metropolitan courts, **State ex. rel. Anaya v. McBride,** 88 N.M. 244, 539 P.2d 1006 (1975), those rules, with section 61-18-54.1, continue to restrict a collection agency's ability to appear in those courts, notwithstanding S.B. 138.

ATTORNEY GENERAL

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