

Opinion No. 47-5080

September 26, 1947

BY: C. C. McCULLOH, Attorney General

TO: Mr. Victor Salazar, Commissioner of Revenue, Bureau of Revenue, Santa Fe, New Mexico,

{*91} This will acknowledge receipt of your letter of September 25, 1947 in which you request an opinion from this office as to the interpretation to be given Section 15, Chapter 212, Laws of 1947, (S.B. 180, 18th Legislature).

Your specific question is whether or not Section 15 of the above act means that a collection agency cannot threaten legal proceedings against any debtor, **even though the collection agency follows up the threat with legal proceedings.**

Section 15, Chap. 212, Laws of 1947 provides as follows:

"It shall be unlawful for a collection agency to coerce or intimidate any debtor by delivering or mailing any paper or document simulating or intending to simulate, a summons, warrant, writ, or court process as a means for the collection of claims, **or to threaten legal proceedings against any debtor**, provided, however, that nothing contained herein shall prohibit a collection agency from informing a debtor that, if the claim is not paid, it will be referred to an attorney for such action as he may deem necessary, without naming a specific attorney."

The statute, in clear terms, makes it unlawful for a collection agency to threaten legal proceedings against any debtor. It does not go on to say that the threat becomes lawful when and if the legal proceedings are actually carried out. Furthermore, the statute provides a lawful procedure -- that is, the collection agency may state in its communication to the debtor that if he does not pay the claim it will be referred to an attorney for such action as he may deem advisable.

Whether or not Section 15, Chapter 212, Laws of 1947, as interpreted herein, might be deemed unconstitutional, is for the courts to determine. All we are doing is giving effect to the clear language of the statute, and it is the rule in this jurisdiction that all doubts which may exist as to whether the statute is or is not constitutional, should be resolved in favor of the constitutionality of the same.

In view of the above, I am of the opinion that it would be unlawful for a collection agency to threaten legal proceedings against any debtor, notwithstanding that the {*92} collection agency follows up such threat with legal proceedings.