

Opinion No. 53-5741

April 23, 1953

BY: RICHARD H. ROBINSON, Attorney General

TO: Alva J. Coats, Executive Secretary New Mexico Dry Cleaners Association P. O. Box 426 Albuquerque, New Mexico

{*142} This will acknowledge receipt of your letter of April 14, 1953, requesting the opinion of this office as to the interpretation to be given to several apparently inconsistent provisions of Chapter 125 of the Laws of 1953. This chapter provides for a lien for services and work performed on various described articles of personal property and provides for the enforcement of such a lien. Sec. 1 of the Act provides that the person furnishing such services or work will not have a lien unless a notice is posted on the premises reading as follows:

"All articles left for (state the type of service provided) and not called for in **three (3) months** will be sold for charges pursuant to Chapter 125, 1953 Laws of New Mexico."

Sec. 4 of the Act reads as follows:

"Three (3) months after the debt for which the lien is claimed becomes due, the lien claimant may enforce such lien by either a suit to foreclose the lien or by a sale as hereinafter {*143} provided."

Sec. 5 (a) of the same act provides that sale to enforce the lien without foreclosure proceedings may not be brought until six (6) months after the date for which the lien is claimed becomes due.

You state that it is your opinion that the failure to provide either a three months or six months period in all instances was due to oversight. While this may be so we cannot make such an assumption from a mere reading of the provisions of the act. We cannot say that the Legislature did not intentionally provide different periods of time in the above mentioned sections of Chapter 125, Laws of 1953. The only apparent inconsistency is in allowing the commencement of court proceedings to foreclose the lien after three months while requiring a six month period to pass before permitting sales without judicial proceedings. Since the judicial procedure is the more time consuming, it is logical to allow procedure of that type to begin at an earlier date than non-judicial procedure.

It is our opinion that the notice provided for must use the period of three months as specifically provided in § 1 of the Act and that under §§ 4 and 5 (a) of the Act a lien claimant may commence foreclosure proceedings in court at any time after three months from the date for which the lien claimed becomes due, or may sell the property

under the non-judicial procedure provided in § 5 of the Act at any time after six months from the date upon which the lien claimed became due.

By: Walter R. Kegel

Assist. Attorney General