

Opinion No. 57-127

June 11, 1957

BY: OPINION OF FRED M. STANDLEY, Attorney General Robert F. Pyatt, Assistant Attorney General

TO: Honorable Tibo J. Chavez, State Senator, County of Valencia, Belen, New Mexico

QUESTIONS

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Whether Emergency Laws 1957, Chapter 61, § 1 has a retroactive as well as prospective effect?

CONCLUSION

Said section has a retroactive effect.

OPINION

ANALYSIS

Generally, statutes will not be given a retroactive interpretation, especially where the enactment is in derogation of a common law right or where such interpretation would interfere with an existing contract or create a new liability in connection with a past transaction, invalidate a previously valid defense, or where such an interpretation would render a statute unconstitutional **50 Am. Jur.**, Statutes, § 478. However, if the intention that a law be retroactive is manifest, such intention will control even though not expressly stated, **50 Am. Jur.**, Statutes, § 479. On the other hand, an emergency clause in the enactment is some indication that the law was not intended to have retroactive effect. **50 Am. Jur.**, Statutes. § 480.

Of interest in this connection is the case of **Orman v. Van Arsdell, et al.**, 12 N.M. 344, 78 P. 48, wherein our Court upheld an enactment by the Legislature which infringed upon a defendant's right to plead the statute of limitations to an action of debt, and in which such legislative enactment was given retroactive effect. The Court based its construction of the statute, in part, upon the fact that such language as "shall have been" and "may have been" was used, which, to the Court's way of thinking, indicated an intent by the Legislature to give the law retroactive operation.

Turning to Chapter 61, itself, we find that the last paragraph of § 1 thereof reads as follows:

"An owner of a mining claim located **prior** to the effective date of this act, **who has performed** discovery work, may avail himself of the provisions of this section by drilling a discovery hole, filling a discovery cut previously made and making of record the required affidavit." (Emphasis Supplied.)

Reading the entire section in its entirety, we are of the opinion that it was the intention of the Legislature to correct and alleviate certain doubts pertaining to discovery in the field of mining in New Mexico. We believe that the statute is to be liberally construed whenever the language thereof will permit. In the view that we take of the matter, we believe that the portion of the section which we have quoted clearly indicates that the Legislature intended that the statute have retroactive operation. Otherwise such, quoted provision has little or no meaning, which was a further basis for the reasoning of the Supreme Court in the Orman case, above cited. We deem the act to indicate a legislative intent that Section 1 has retroactive effect. To construe the provision otherwise would require the drilling of two discovery holes, which superfluous act was obviously not intended.