**Opinion No. 60-195**

October 17, 1960

**BY:** OPINION of HILTON A. DICKSON, JR., Attorney General

**TO:** Honorable Louis S. Page State Representative Santa Rosa, New Mexico

## QUESTION

QUESTION

If a debt or cause of action that is based on the sale or purchase of intoxicating liquors has been reduced to judgment, may a writ of garnishment be issued to enforce the judgment?

CONCLUSION

No.

## OPINION

*{*600}* **ANALYSIS**

The last paragraph of § 26-2-1, N.M.S.A., 1953 Comp., reads:

"But no writ of garnishment shall issue where the debt or obligation or the cause of action the original suit or the garnishment action is founded upon the sale or purchase of intoxicating liquors."

It is further provided in § 46-11-1, N.M.S.A., 1953 Comp., that:

"No action shall be maintained, nor shall any garnishment or attachment be issued to collect any debt for merchandise sold, served, and/or delivered in violation of this act. No writ of garnishment shall issue where the debt or obligation or the cause of action in the original suit or the garnishment action is founded upon the sale or purchase of intoxicating liquors by or from a retailer or dispenser as defined in section 61-101 of New Mexico Statutes 1941 Annotated (46-1-1)."

The second sentence of § 46-11-1, supra, was added by Laws of 1945, Chapter 93, § 1. Prior to the amendment, the section was compiled as § 61-1101, N.M.S.A., 1941 Comp., and read as follows:

"No action shall be maintained, nor shall any garnishment or attachment be issued to collect any debt for merchandise sold, served, and/or delivered in violation of this act, but nothing in the laws of this state shall be construed to prevent the maintenance of

any action or the issuance of any garnishment or attachment to collect a debt arising out of the sale of alcoholic liquor which sale was not made in violation of any law of this state."

We think the deletion of the second clause of § 61-1101, and the addition of the present second sentence of § 46-11-1, is significant. Where once no law was to be construed as preventing the issuance of garnishment to enforce a debt or obligation for the sale or purchase of intoxicating liquors, now the law expressly provides that no writ of garnishment shall issue to enforce such an obligation. As will be more fully developed, we think the legislature intended to abolish garnishment as a remedy to enforce a judgment as well as a debt or original cause of action where the obligation arose from the sale or purchase of intoxicating liquors.

§ 26-2-1, N.M.S.A., 1953 Comp., authorizes the issuance of writs of garnishment in any case where an original attachment may be issued. § 26-1-1, N.M.S.A., 1953 Comp., governing the issuance of writs of attachment, discloses that attachment is proper in cases of unmatured debts as well as matured debts. Hence, writs of garnishment are also available before any suit is brought to enforce the debt itself. As thus used, garnishment is a form of "initial" process. Reference to subsection (2) of § 26-2-1, supra, discloses that garnishment may also issue out of a suit already *{*601}* commenced to enforce a debt. As thus used, garnishment is an ancillary remedy, and is a form of "mesne" process. Subsection (3) of § 26-2-1, supra, discloses that garnishment may issue to enforce a judgment already entered. As thus used, garnishment is a form of "final" process.

It is absolutely clear, under §§ 26-2-1 and 46-11-1, supra, that garnishment is not available as a form of initial or mesne process, for when used as initial process it would be based on a debt for the sale or purchase of intoxicating liquors, and when used as mesne process, it would be based on a cause of action for the sale or purchase of intoxicating liquors. Your question, then, becomes whether garnishment is available as a form of final process to enforce a judgment already entered on a cause of action arising out of the sale or purchase of intoxicating liquors.

We think that, when the legislature used the words "cause of action in the **original** suit" in § 26-2-1 and § 46-11-1, supra, they anticipated some **subsequent** suit to enforce the judgment after it is entered, in other words, some form of final process. Knowing that garnishment is a commonly used form of final process, the legislature provided that no matter what the cause of action in the **subsequent** suit, if the cause of action in the **original** suit was based on the sale or purchase of intoxicating liquors, then garnishment should not be available as a remedy.

This view does not prevent the collection of debts based on the sale or purchase of intoxicating liquors, nor does it prevent the maintenance of suit to reduce them to judgment. Writs of execution may still be issued and levied against property in the possession of the judgment debtor. Other forms of final process are still available to enforce judgments, as, for instance, bills in aid of execution, and bills to set aside

fraudulent conveyances. But it is our opinion that writs of garnishment may not issue to enforce a judgment, where the cause of action in the suit out of which the judgment arose was based on the sale or purchase of intoxicating liquors.

By: Norman S. Thayer

Assistant Attorney General