

Opinion No. 60-37

March 3, 1960

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

TO: Miss Hazel Gardner Administrative Assistant N. M. Commission on Alcoholism P. O. Box 2111 Santa Fe, New Mexico

QUESTION

QUESTIONS

1. In the event of the death of the husband would you be able to collect from the wife's separate estate for medical services rendered the husband while living?
2. In the event of the death of the wife, would you be able to collect from the husband's separate estate for medical services rendered the wife while living?

CONCLUSIONS

1. See analysis.
2. See analysis.

OPINION

{*390} ANALYSIS

Section 57-3-9, N.M.S.A., 1953 Compilation, provides:

"The separate property of the wife is not liable for the debts of her husband, but is liable for her own debts, contracted before or after marriage."

Section 57-3-6, N.M.S.A., 1953 Compilation, provides:

"The earnings of the wife are not liable for the debts of the husband."

This section, however, does not keep the earnings of the wife from {*391} being community property. **Albright v. Albright**, 21 N.M. 606, 157 P. 662.

The community is liable for community debts and there is a presumption that all debts contracted during the marriage are community debts. **Strong v. Eakin**, 11 N.M. 107, 66 P. 539. The community property and the husband's personal property would be primarily liable for his debts. See § 29-1-9, N.M.S.A., 1953 Compilation, (P.S.)

If there is no community property and the husband has no separate property, the wife is required to support her husband from her separate property if the husband is unable to do so because of his infirmity. If such were the case, you could recover from the wife for necessary medical services rendered on behalf of the infirm husband. § 57-2-5, N.M.S.A., 1953 Compilation.

Question number 2 is partially answered by § 57-2-3, N.M.S.A., 1953 Compilation, which provides:

"If the husband neglect to make adequate provision for the support of his wife, except in the cases mentioned in the next section, any other person may, in good faith, supply her with articles necessary for her support, and recover the reasonable value thereof from the husband."

This section includes furnishing medical expenses to the wife and if the prerequisites were proven then you could recover from the husband's separate property for the reasonable value of the services rendered. It should be noted that the Supreme Court has held that where the wife executes her individual promise to pay for such medical services and in the absence of a showing that the person rendering the services was actually looking to the husband to pay and the lack of proof that the husband actually neglected to secure and provide such services for his wife, neither the husband nor the community is obligated to pay for the services. **Chevallier v. Connors**, 33 N.M. 93, 262 P. 173. If the wife executes a promissory note to secure the medical services furnished her, it is regarded as her individual debt and may be collected only out of her personal estate, absent the requisites of § 57-2-3, supra.

In the absence of the above, we do not feel that the husband's separate estate would be obligated to pay a debt incurred by the wife.

By: B. J. Baggett

Assistant Attorney General