

Opinion No. 66-68

May 27, 1966

BY: OPINION OF BOSTON E. WITT, Attorney General Paul J. Lacy, Assistant Attorney General

TO: Mr. Louis Lopez, Administrative Assistant to Court Administrator, Supreme Court Building, Santa Fe, New Mexico

QUESTION

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Upon receipt of the sheriff's return nulla bona, can the Justice of the Peace proceed in execution in another county of this state under Section 24-1-1 New Mexico Statutes Annotated, 1953 Compilation?

CONCLUSION

No.

OPINION

{*84} ANALYSIS

The question has been raised that Section 24-1-1, supra, is applicable to Justice of the Peace Courts. Section 24-1-1, supra, reads as follows:

"The party in whose favor any judgment, order or decree in any court may be returned, shall have execution therefor in conformity to the order, judgment, or decree. Said execution may be issued to the sheriff of any county of the state, and levy and sale made in any county wherein the judgment debtor may have property subject to execution.

The court where the judgment or decree was rendered shall have jurisdiction over all matters growing out of the levy or sale under any execution."

If Section 24-1-1, supra, is applicable to Justice of the Peace Courts then this statute would be in direct conflict with the provisions of Section 36-6-9 New Mexico Statutes Annotated, 1953 Compilation, which reads as follows:

"When any execution issued by {*85} a justice of the peace is returned nulla bona the judgment sought to be enforced thereby may, upon the application of the judgment creditor, or his agent, be docketed by the clerk of the district court for the county within which the justice is holding office, and acting as such justice, in the same manner in

which judgments of the district court are docketed, and thereupon the clerk of said district court may issue execution on said judgment in the same way and with the same force and effect as though said judgment had been recorded in said district court; Provided, that the judgment creditor making such application, as aforesaid, shall file with the clerk of the district court a duly certified transcript of the judgment, and also a duly certified copy of the execution issued by the justice and of the return thereon."

It has been suggested that Section 24-2-1, supra, should control over the provisions of Section 36-6-9, supra, because the latter section was enacted before the former. However, we are of the opinion that this is not the correct statutory interpretation to be placed upon these sections. It is a general maxim of statutory interpretation that specific statutes control over general. We are of the opinion that Section 36-6-9 is specific and, therefore, it controls. This remedy should be used.