

Opinion No. 68-107

October 25, 1968

BY: OPINION OF BOSTON E. WITT, Attorney General

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QUESTION

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Laws 1968, Chapter 51 (Section 13-2-30 et seq. N.M.S.A., 1953 Comp. 1968 Interim Supp.) provides for the imposition, under certain conditions, of a county sales tax, the proceeds of which are to be used for the support of "indigent hospital patients" who are residents of the county imposing the tax and deposited to the credit of the county indigent hospital claims fund.

What standards must be followed in making a determination as to payment of claims in the following particulars:

1. Who are indigents?
2. Is the establishment of the indigent hospital claims fund and use of it for the prescribed purposes lawful?
3. Is there a right to recover against one legally responsible for the support of the "indigent" or against the "indigent" if able to reimburse the county by reason of subsequently acquired assets?
4. May the county recover from one who fraudulently obtains money from the fund?

CONCLUSIONS

1. See analysis.
2. Yes, see analysis.
3. Yes, see analysis.
4. Yes.

OPINION

{*171} **ANALYSIS**

Laws of 1968, Chapter 51 contains no provisions for determining the eligibility of persons entitled to hospital support. Its provisions deal almost exclusively with the imposition and collection of the sales tax. Santa Fe County did hold the special election required by the provisions of the act and the imposition of the tax was approved by those voting on the question. The tax is presently being collected.

The title of the act refers to support of "indigent hospital patients" as does Section 2 (A) and (D) of the act. There are no other provisions of the 1968 act, supra, which are pertinent or helpful in considering the questions asked.

In 1965 the legislature enacted Sections 13-2-12 et. seq. N.M.S.A., 1953 Comp. (P.S.) (Laws 1965, Chapter 234) called the Indigent Hospital Claims Act. This act provided some guidelines for determining what patients were entitled to assistance in the payment of hospital expense. It also provided for the imposition of a property tax, under certain conditions, to defray the cost of such payments and for the obtaining of a judgment against the county for such costs in the event the fund was exhausted and the voters had failed to approve a tax levy in excess of the twenty-mill limitation of our Constitution. Article VIII, Section 2. This legislation was considered by our Supreme Court in **Board of Directors of Memorial General Hospital of Las Cruces vs. County Indigent Hospital Claims Board of Dona Ana County**, 77 N.M. 475, 423 P.2d 994 (1967). Under the facts of that case the voters of Dona Ana County had failed to approve the necessary levy and an attempt was being made to proceed under the provisions concerning a judgment levy, the fund having been exhausted. The court in that case, without determining what a "public debt" is within the exception contained in Article VIII, Section 2, held that the type of obligation there being considered was not a "public debt." It further held that the provision for a judgment levy and payment which would have the effect of exceeding the constitutional twenty-mill limitation on taxes levied was an attempt to circumvent the constitutional provision and was therefore unconstitutional. The court did not consider the effect of other provision of the 1965 act, supra.

This office had occasion to construe the word "indigent" within the indigent burial act (Sections 13-2-4 et seq. N.M.S.A., 1953 Comp. and with reference to Section 12-7-1, et seq. N.M.S.A., 1953 Comp.) in Opinion No. 65-161, Report of the Attorney General, 1965. Those statutes required a construction that a decedent was not an indigent, within the meaning of the act, if there were any sums, no matter how small to defray the costs of burial or if there was a visible estate out of which to defray such costs or a friend or relative would undertake to bury him.

{*172} If the provisions of the 1965 Hospital Claims Act, supra, are not considered there is no statutory definition of an indigent within the provisions of the 1968 Hospital Claims Act. In such case a definition would have to be sought from other statutory definitions, including that in Opinion 65-161, supra, and from other available sources. If, on the other hand, the provisions of the 1965 act, supra, are to be considered, either as an aid in construction or because portions of the act not necessarily ruled unconstitutional in

Board of Directors v. County Indigent Hospital Claims Board, supra, are still in effect we have rather definite assistance in obtaining a definition.

The 1965 Indigent Hospital Claims Act contained no specific severability clause. A specific severability clause included as a part of a statute is a valuable aid in determining a legislative intent that it desired an act to be considered severable. **Sutherland, Statutory Construction**, Third Ed. Vol. II. § 2408. It is not essential that such a clause be expressly set forth if the legislative intent as to severability can otherwise be ascertained. **Sutherland, Statutory Construction**, supra, § 2409, § 2417. Our Supreme Court has followed this principal. **In re Gibson**, 35 N.M. 550, 4 P.2d 643 (1931). In **Safeway Stores v. Vigil**, 40 N.M. 190, 57 P.2d 287 (1936) and **Clovis National Bank v. Calloway**, 69 N.M. 119, 364 P.2d 748 (1961) the court considered the effect of an express severability clause and concluded that it merely reinforced the rule and presumption of an intent that only invalid portions of legislation would fail unless an opposite conclusion was necessarily reached under the operation of the statute being considered. In the case of **Bradbury & Stamm Construction Co. v. Bureau of Revenue** 70 N.M. 226. P.2d 808 (1962) the court discussed the lack of an express severability clause at some length and concluded that it was an aid but not an inexorable command. The court stated the rule in this jurisdiction to be as follows:

"It is well established in this jurisdiction that a part of a law may be invalid and the remainder valid, where the invalid part may be separated from the other portions, without impairing the force and effect of the remaining parts, and if the legislative purpose as expressed in the valid portion can be given force and effect, without the invalid part, and, when considering the entire act it cannot be said that the legislature would not have passed the remaining part if it had known that the objectionable part was invalid. (Citations omitted)

"Chapter 195, Laws 1961, does not contain a severability clause, and appellants strongly urge that its absence creates a presumption that the legislature intended the entire section to fail if any of its provisions be invalid. In approaching the question of the constitutionality of a statute, we do so bearing in mind that every presumption is to be indulged in favor of the validity and regularity of the legislative act. Citations omitted)

"The fact that the 1959 amendment to § 72-16-5 contained a severability clause while the 1961 amendment did not is urged by appellants as a strong reason for presuming that the legislature did not intend the 1961 statute to be separable. While the fact that in previous enactments providing exemptions to the federal government and state the severability clause was enacted and was omitted from the last enactment, may be considered along with other rules as an aid in determining the legislative intent, it is nevertheless only an aid and is not compelling. The presence or absence of a severability clause merely provides one rule of construction which may be considered and may sometimes {*173} aid in determining legislative intent, 'but it is an aid merely; not an inexorable command.' (Citations omitted)."

The court then looked to the purpose of the entire act and concluded that striking the invalid portion would not defeat such purpose. Similarly, here, the purpose of the 1965 act, supra, was to provide a means of paying the hospitalization costs of indigents. The fact that one of alternative methods of so doing was invalid does not defeat the purpose of the act so long as other methods free from constitutional objection remain. It is our conclusion that the portion of the 1965 act declared unconstitutional was severable from the remainder of the statute and the balance of such act is not affected. This conclusion is reinforced by the reference in the 1968 act, supra, Section 2 (d) to the "County Indigent Hospital Claims Fund" which was created by the 1965 act, supra.

Having so concluded both the 1965 and 1968 acts must be construed. They both relate to the same subject matter -- payment of costs of indigent patients. Such being the case they are considered in part materia and are construed together so as to make one operative and cohesive body of law on the subject. **Torres v. Grant**, 63 N.M. 106, 314 P.2d 712 (1957). This is so even though enactments of different legislatures are being considered. **State ex rel Hughes, v. Cleveland**, 47 N.M. 230, 141 P.2d 192 (1943); **State v. Prince**, 52 N.M. 15, 189 P.2d 993 (1948); **State v. Gonzales**, 78 N.M. 218, 430 P.2d 376 (1967).

There is no reason why the 1965 and 1968 statutes, supra, cannot be construed in pari materia. They both relate to the same subject matter. The valid remaining portion of the 1965 act, supra, provides for a method of imposing an ad valorem tax to pay the cost of indigent hospital patients. It also provides for definitions of indigents and procedures for carrying out the purpose of the legislation. None of these conflict in any way with the 1968 act, supra, which provides for an alternative method of raising such funds through a sales tax.

Section 4 (B) (Section 13-2-15 (B), N.M.S.A., 1953 Comp. [P.S.]) of the 1965 act, supra, defines an indigent patient. It still being the law and capable of being construed in pari materia with the 1968 act, supra, it controls, and funds from the indigent hospital claims act may only be expended for private hospital care for persons meeting such definition which reads as follows:

"'Indigent patient' means a person who has been admitted to a hospital for care, and who can normally support himself and his dependents on present income and liquid assets available to him but taking into consideration this income and those assets and his requirement for other necessities of life, for himself and his dependents, is a person who is unable to pay the cost of the hospital care administered; the term includes a minor who has been admitted to a hospital for care, and whose parent or the person having his custody is normally able to support the minor on present income and liquid assets available, but, taking into consideration this income and those assets and the requirements for necessities of life for himself and for his dependents, is a person who cannot pay the hospital cost of the minor's care."

There does not appear to be any valid basis to question the validity of the creation of the county hospital claims fund or the expenditure of it in the manner outlined in the acts

in question. Article IX, Section 14 of our Constitution specifically excludes such provision and use from its prohibition.

You next ask concerning recovery of sums spent on behalf of {^{*}174} an "indigent hospital patient" who subsequently acquires property removing him from the class of "indigent." Section 15 of the 1965 act (Section 13-2-26, N.M.S.A., 1953 Comp. [P.S.]) specifically provides as follows:

"A. The payment of any claim to a hospital on behalf of an indigent patient, creates a preferred claim in favor of the fund against the estate of the indigent patient and a lien against all real property or interest in real property vested in or later acquired by the indigent patient or any person or persons legally responsible for his debts for the amount of the payment made from the fund to the hospital, without interest. Such claims shall be preferred over all claims except charges of the last sickness and funeral of the deceased and allowances made by the court for the maintenance of the widow and children, taxes, municipal levies, cost of administration and attorney's fees.

B. Proceeds recovered from such claims shall be placed into the fund.

C. The board shall file a certificate of payment to the hospital on behalf of the indigent patient. The certificate shall constitute notice to the public that the lien created by the Indigent Hospital Claims Act [13-2-12 to 13-2-29], has attached. County clerks shall receive, index and file certificates and releases of liens created by the certificate, free of charge."

The express language of this section is clear and does not require construction. Under the circumstances therein set forth the lien may be foreclosed against later acquired property of the present "indigent patient" or any person or persons legally responsible for his debts. Such legal responsibility relates to the date of determination of indigency. The definition contained in Section 4 of the 1965 act, supra, as to "indigent patient" would appear to be equally applicable in determining assets for recovery of costs permitted by Section 15 of the act, supra.

The intent of the statutes being construed is clear that payment is to be made only on behalf of those defined therein as "indigent hospital patients" who are residents of the county. A person who fraudulently obtains such payment would not be within such definition of an "indigent hospital patient" and recovery is specifically authorized by and may be had by virtue of the provisions of Section 14 of the 1965 act, supra. Such right of recovery is irrespective of any other available right of recovery for such fraudulent misrepresentation.

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