Opinion No. 89-29

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OPINION OF: HAL STRATTON, Attorney General

BY: Elizabeth A. Glenn, Assistant Attorney General

TO: Nicholas L. Kennedy, III, Chief Deputy District Attorney, Office of the District Attorney, Ninth Judicial District, Curry County Courthouse, Clovis, New Mexico 88101

QUESTIONS

Does NMSA 1978, § 34-6-24, as amended, or some other provision of New Mexico law, require that Curry County continue to provide space, maintenance and utilities for the Juvenile Probation Office after responsibility for that office is transferred to the Youth Authority pursuant to NMSA 1978, § 32-1-7, as amended?

CONCLUSIONS

Yes.

ANALYSIS

This question requires us to analyze various statutory provisions governing juvenile probation services which were amended by the State Legislature in 1988, effective July 1, 1989. Our analysis of those provisions leads us to conclude that counties are required to provide the services specified in NMSA 1978, § 34-6-24, for juvenile probation facilities operated by the Youth Authority.

Until July 1, 1989, Section 32-1-7(A) of the Children's Code, NMSA 1978, §§ 32-1-1 through 32-1-45 (Repl. Pamp. 1989), authorized the district courts to "establish juvenile probation services consisting of juvenile probation departments, divisions or offices." NMSA 1978, § 32-1-7(A) (Repl. Pamp. 1986). Also until July 1, 1989, NMSA 1978, § 34-6-24 (Repl. Pamp. 1981) provided that

Each board of county commissioners shall provide adequate quarters for the operation of the district court, and provide necessary utilities and maintenance service for the operation and upkeep of the district court facilities.

A combined reading of these statutes imposed on counties the obligation to provide quarters, utilities and maintenance for juvenile probation services established by district courts. Accordingly, Curry County has been providing space and utilities for a juvenile probation office in the Curry County courthouse.

Section 32-1-7(A) of the Children's Code was amended in 1988, effective July 1, 1989, to provide that "[j]uvenile probation services shall be provided by the community services division of the youth authority." 1988 N.M. Laws, ch. 101, § 20.[1] The Youth Authority was created at the same time Section 32-1-7 was amended. See 1988 N.M. Laws, ch. 101, §§ 1 through 16 (codified at NMSA 1978, §§ 9-20-1 to -16 (Repl. Pamp. 1989)). It was established to

administer certain laws and exercise certain functions relating to children and youth formerly administered and exercised by the juvenile facilities division and other units of the corrections department, the human services department, the health and environment department **and the juvenile probation offices of the district courts.**

NMSA 1978, § 9-20-2 (Repl. Pamp. 1989) (emphasis added). The amendments to Section 32-1-7, therefore, relieved the district courts from responsibility for providing juvenile probation services by transferring that responsibility to the Youth Authority.

Section 34-6-24 was amended in the same chapter of the 1988 legislation which established the Youth Authority and amended Section 32-1-7, and now provides that "[e]ach board of county commissioners shall provide adequate quarters for the operation of the district court, including juvenile probation services," along with necessary maintenance and utilities. 1988 N.M. Laws, ch. 101, § 45 (codified at NMSA 1978, § 34-6-23 (Cum. Supp. 1989)) (emphasis added). This amendment is confusing because if district courts are no longer responsible for juvenile probation services, it makes little sense to include those services within the operations of district courts for which counties must provide space, utilities and maintenance.

If a statute is ambiguous, we must apply rules of statutory construction to ascertain the legislative intent. One commonly applied rule is the "pari materia" rule:

[A]ll of the provisions of a statute, together with other statutes in pari materia, must be read together to ascertain the legislative intent. Particular words, phrases and provisions must be construed with reference to the leading idea or purpose derived from the whole statute. Thus, each part should be construed in connection with every other part so as to produce a harmonious whole....The connection of a particular clause with other clauses in the same statute, and with those in pari materia, must be considered with relation to the conclusions which, on comparison with other clauses, may reasonable and obviously be drawn.

Allen v. McClellan, 75 N.M. 400, 402, 405 P.2d 405, 406-07 (1965) (citations omitted). See also Reed v. Styron, 69 N.M. 262, 269, 365 P.2d 912, 917, (1961) ("where a comparison of one clause with the statute as a whole makes a meaning clear the act must be so construed as to make the whole consistent"). Courts also presume that the Legislature is informed as to existing law, and does not intend to enact useless statutes, State ex rel. Bird v. Apodaca, 91 N.M. 279, 284, 573 P.2d 213, 218 (1977), or laws "not in accord with common sense or sound reasoning." City Comm'n of Albuquerque v. State, 75 N.M. 438, 444, 405 P.2d 924, 928 (1965). See also Cromer v. J.W. Jones Co.,

79 N.M. 179, 184, 441 P.2d 219, 223 (Ct. App. 1968) (statute should be construed so that its clauses are not surplus or superfluous). Finally, a court will not apply a strict interpretation of the language of a statute if it would defeat the purpose of the legislation or lead to injustice, absurdity or contradiction. Montoya v. McManus, 68 N.M. 381, 389, 362 P.2d 771, 776 (1961). See also State v. Ellenberger, 96 N.M. 287, 289, 629 P.2d 1216, 1218 (1981) (statute will be construed in "a manner which will not render its application absurd or unreasonable and which will not defeat the object of the Legislature").

Based on these rules, we conclude that Section 34-6-24, as amended, was intended to require counties to continue to provide facilities for juvenile probation services after those services were transferred to the youth Authority. The 1988 amendments to both Section 34-6-24 and Section 32-1-7 were included in the same act, 1988 N.M. Laws, ch. 101, and under the pari materia rule, must be considered together. The act created the Youth Authority, transferred authority for juvenile probation services from the district courts and expressly provided that counties should provide facilities for juvenile probation services. Read literally, the amendment to Section 34-6-24 merely requires counties to provide facilities for whatever juvenile probation services were operated by district courts, including their juvenile probation services, before the statute was amended. This interpretation would render the amendment useless and without purpose, which is contrary to the principles discussed above. In addition, because district courts no longer would provide juvenile probation services after the effective date of the amendment, this interpretation would have the absurd result of requiring counties to provide facilities for operations that no longer existed. Accordingly, our opinion is that the Legislature was aware of how Section 34-6-24 was interpreted before the 1988 amendment and, because it intended to withdraw juvenile probation services from the responsibility of the district courts, wanted to ensure that counties would continue to provide space and utilities for those services as provided by the Youth Authority.

Support for our interpretation also is found in uncodified provisions of 1988 N.M. Laws, ch. 101. Section 47 of the act provides that on July 1, 1989 "all appropriations, money, records, property, equipment and supplies of each juvenile probation office in each judicial district shall be transferred to the youth authority" and "all juvenile probation officers, their support staffs and the respective chiefs in each of the thirteen judicial districts transferred from the district courts to the youth authority shall remain in their respective districts and shall be subject only to voluntary transfer, if necessary." This indicated that the Legislature contemplated that the Youth Authority would operate its juvenile probation services at the same locations at which they were conducted before they were transferred from the district courts. Given this, it is logical to assume that, by amending Section 34-6-24, the Legislature meant to provide that counties would continue to furnish facilities for juvenile probation services operated in each judicial district.

ATTORNEY GENERAL

HAL STRATTON Attorney General

GENERAL FOOTNOTES

n1 NMSA 1978, § 32-1-7(A) was amended again during the 1989 legislative session, 1989 N.M. Laws, ch 328, § 2, to provide that the community services division is responsible for "juvenile probation and parole services."