

Opinion No. 42-4148

September 2, 1942

BY: EDWARD P. CHASE, Attorney General

TO: Hon. John L. Hinds Justice of the Peace Raton, New Mexico

{*241} Your District Attorney, Fred J. Federici, has requested this office to render you an opinion on the following question: whether or not the exemption statute, namely, Chapter 47, Laws of 1941, applies to garnishment, or whether it is limited to execution, attachment or sale.

Section 59-119 of the 1929 Compilation provides as follows:

"Should it appear from the garnishee's answer, or adjudged upon issue tried, that the garnishee has in his possession or had when the writ was served any effects of the defendant **subject to execution**, the court shall render a decree requiring the garnishee to deliver up to the sheriff such effects which shall be held by him subject to the order of court for the satisfaction of any judgment that may be rendered against the defendant."

Section 59-128 of the 1929 Compilation further provides:

"Except as in this article otherwise provided, when judgment is rendered against any garnishee the execution shall be such as is allowed by law in cases of ordinary judgments."

Also, our Supreme Court held in the case of McFadden vs. Murray, 32 N.M. 361, that "garnishment is not a device by which exempt property may be reached."

In view of the above cited case and quotations from our laws, it is my opinion that the provisions of Chapter 47, Laws of 1941, applies to garnishment proceedings.

By HARRY L. BIGBEE,

Asst. Atty. General