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August 31, 1987

OPINION
OF
HAL STRATTON
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Opinion No. 87-51

By: Scott Spencer
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To: Tom F. Thornhill
General Services Department
Purchasing Division
Joseph M. Montoya Building - Room 2016
1100 St. Francis Drive
Santa Fe, New Mexico 87503

QUESTION:

Whether a vendor may bill the state for late charges on a delinquent account.

CONCLUSION:

No, unless authorized by statute, written contract, or required by a regulatory agency.

ANALYSIS:

In Bradbury and Stamm Construction Company v. Bureau of Revenue, 70 N.M. 226, 372 P.2d 808 (1962), plaintiff sought interest against the state on taxes judicially determined to have been collected illegally. The Court defined interest as "compensation allowed by law or fixed by the parties for the detention of money, or allowed by law as additional damages for loss of use of the money as damages, during the lapse of time since the accrual of the claim. 70 N.M. at 238, 372 P.2d at 816.

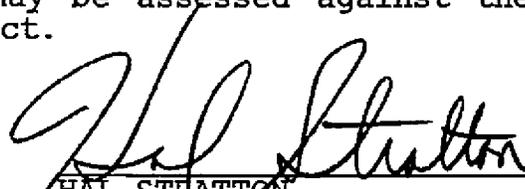
The Court reaffirmed New Mexico's long-standing posture on this issue when it stated:

It is the general rule that in the absence of statute, interest is not chargeable against the government because of a delay or a default... And there is no implied contract of any kind that the state will pay interest on its indebtedness... The state is liable for interest only when made so by statute.

70 N.M. at 238, 372 P.2d at 816. See also Gregory v. State, 32 Cal. 2d 700, 197 P.2d 728 (1948); Walker v. State, 103 S.W.2d 404 (Tex. Civ. App. 1937); State v. Bonnett, 114 Utah 546, 201 P.2d 939 (1949); because there are no state laws generally obligating the state to pay late charges or interest penalties, it is the opinion of this office that the state is not obligated to pay late charges and interest penalties for delinquent accounts unless it is so bound by an act of the legislature or by the terms of a lawful contract.

Certain regulatory agencies may approve rates chargeable to customers, which could include the state or its agencies. If those approved rates include late charges or interest penalties, the state would be obligated as would any customer.

If this issue arises in connection with a contract governed by the Procurement Code, Section 13-1-28 to 13-1-199, the state is not obligated to pay late charges or interest penalties unless specifically required by the contract and included in the responsive bid or proposal. Pursuant to Section 37-1-23 NMSA 1978 the state is "granted immunity from actions based on contract, except actions based on a valid written contract." Statutes authorizing suit against the state will be strictly construed. State ex rel. Board of County Commissioners of Grant County v. Burks, 75 N.M. 19, 399 P.2d 920 (1965). That section also implies that no late charges or interest penalties may be assessed against the state unless based upon written contract.



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