Administrative Office of the Courts

FOR IMMEDIATE RELEASE
Nov. 6, 2020

Contact: Barry Massey, public information officer
bmassey@nmcourts.gov
505-827-4805
505-470-3436

Supreme Court issues opinion on state's authority to enforce public health orders

SANTA FE – The Legislature has authorized state officials to impose civil administrative penalties to enforce public health emergency orders restricting business operations, the New Mexico Supreme Court concluded in an opinion issued Thursday.

The Court's unanimous written opinion provides the detailed legal reasoning for an oral decision issued from the bench in August following a hearing in which attorneys presented arguments to the justices.

A group of businesses had filed a lawsuit in district court challenging emergency health orders issued during the COVID-19 pandemic. Gov. Michelle Lujan Grisham petitioned the state's highest court to resolve the legal dispute.

The Court concluded that the Legislature empowered the governor and other state officials to enforce public health order restrictions on businesses through a provision in the Public Health Emergency Response Act (PHERA), which provides for a fine of $5,000 a day for violations. The law offers due process to those facing potential civil penalties, the justices noted, because the Department of Health must conduct an administrative hearing before a fine can be imposed.

"The spirit and intent of the Act suggests that the penalty provision is applicable to *all* violations of orders and other measures lawfully exercising the powers conveyed thereunder," the Court held in an opinion written by Justice Judith K. Nakamura.

In addition to restricting businesses through powers granted under the PHERA, the Court stated, the secretary of the Department of Health has authority under the Public Health Act to respond to a public health emergency.

"We conclude that, the Governor having declared a public health emergency and having empowered the Secretary of Health to coordinate a response to the COVID-19 crisis, the Secretary was authorized (under the PHERA and the PHA, concurrently) to issue emergency

orders forbidding gatherings of people to “control and abate” the transmission of COVID-19 in locales such as restaurants,” the Court write. “Arguments that the PHERA does not so authorize the Secretary are ultimately unpersuasive.”

The Court declined to address a legal question over whether the state must compensate businesses subject to temporary closures or other public health order restrictions because those actions represent a “taking” of private property by the government. The justices stated that the records and filings in the case provided “insufficient facts” to resolve the issue.

###

To read the decision in *Grisham v. Reeb*, No. S-1-SC-38336, please visit the New Mexico Compilation Commission's website using the following link:

https://nmonesource.com/nmos/nmsc/en/item/488119/index.do