

## Opinion No. 53-5814

September 10, 1953

**BY:** RICHARD H. ROBINSON, Attorney General

**TO:** Mr. James F. Lamb Chairman State Corporation Commission State Capitol Building Santa Fe, New Mexico

{\*222} This is in reply to your request for an opinion, upon whether Laws of 1947, Chapter 139, Section 1 (§ 3-713 N.M.S.A., 1941 Compilation, as amended, et seq.) requires orders and regulations of your Commission to be filed and made available for public inspection with the Librarian of the Supreme Court of the State of New Mexico.

Section 1, Laws of 1947, Chapter 139 (§ 3-713 N.M.S.A., 1941 Compilation, as amended) requires the official head of each state office, commission, agency, department or institution, **except the Legislative or Judicial Branches of the State Government**, to file three copies with the Librarian of the Supreme Court of the State of New Mexico of any official report, pamphlet, publication, regulation, rule, code of fair competition notice, proclamation, order or similar instrument.

Laws of 1947, Chapter 139, Section 2 makes provision for the filing on or before August 1, 1947, of all such orders and regulations and rules with the Supreme Court Librarian of the State of New Mexico. Such prior orders which in his opinion have **general applicability**, Laws of 1947, Section 4, Chapter 139, Laws 1947 (Section 3-720 N.M.S.A.) provides that no rule or regulation or order shall be valid against any person who does not have actual notice thereof until the above provided for filing has been accomplished.

It is clear that the purpose of the Legislature in enacting this statute was to supplement Laws of 1931, Chapter 154, Section 2 which required the official head of each state office, commission, department or institution, immediately after the issuance of any official report, pamphlet or publication relating to the affairs of such office, commission, department or institution, to immediately file three copies of each such publication with the Librarian of the Supreme Court of the State of New Mexico. (N.M.S.A. § 3-713) The intent of the Legislature was to provide the means upon by which the public should be given notice, not only of the summaries of the official acts compiled, but to extend this to other instruments affecting the public in the normal course of affairs.

It is to be noted that the Laws of 1947, Chapter 139, Section 1, amended Laws of 1931, Chapter 154, Section 2 by broadening the scope {\*223} of the requirement and by limiting the requirement by excepting the Legislative or Judicial Branches of the State Government. Although the State Corporation Commission is in many of its functions performing legislative duties delegated to them by the Legislature, they are not made a part of the Legislative Branch of the State Government, and of course, are not a part of the Judicial Branch of the State Government.

Article XI, Section 4 of the Constitution of the State of New Mexico provides among other things that the Commission shall prescribe its own rules of order and procedure, except so far as specified in this Constitution, and in the case of **In Re Atchison Topeka and Santa Fe Railroad Company, 37 N.M. 194, 20 P. 2nd 918**, the Court there stated that the power to prescribe its own rules of order and procedure is exclusively granted to the Commission and is not to be exercised by the Legislature. This would apply to the duties given to the State Corporation Commission by the Constitution, and which are not subject to the requirements, rules and regulations prescribed by the Legislature, wherein they are charged with the duties of fixing, determining, regulating, supervising, and controlling all charges and rates of railway express, telephone, telegraph, sleeping car and other transportation and transmission companies and common carriers within the State. All other duties and responsibilities given to the Commission outside of the Constitution and subject to the Legislature are therefore within the requirements, Laws of 1947, Chapter 139, Section 4, (§ 3-720 N.M.S.A.).

It is therefore the opinion of this office that all official reports, pamphlets, publications, regulations, rules, codes of fair competition, proclamations, orders, issued, prescribed or promulgated by the State Corporation Commission of general application should be filed in accordance with the statute, with the Supreme Court Librarian of the State of New Mexico, with the exception of any rule or regulation or order or other document of the Corporation Commission, wherein it is exercising its duty of fixing, determining, supervising, regulating and controlling all charges and rates of railway, express, telephone, telegraph, sleeping car, or similar company and common carrier within the State. It is to be noted that Laws of 1947, Chapter 139, Section 4, applies only to those documents affecting the public or a group of persons who do not have actual notice thereof. This requirement would only apply to the rules, regulations, orders and similar instruments within the provisions of the statute which apply to the public and not to specific individuals who could not be considered to be part of the public. As an illustration of this, if the Commission in the performance of its duty in the regulation of motor carriers, passes a rule or order affecting the motor transportation industry, such rule or order should be filed in compliance with the above stated statute. But in the case of orders or notices or other related acts of the Commission, not involving the public, such filing with the Supreme Court Librarian would not be required.

Orders involving tariffs of motor carriers and matters relating to the public convenience and necessity should be filed as required. Likewise, all official orders, reports, pamphlets, publications, regulations, or proclamations issued relative to the Corporation Department, the Insurance Department, or the Franchise Tax Department, should be so filed with the Librarian of the Supreme Court of the State of New Mexico.

It is to be noted in this respect {\*224} that the notice provision provided herein is an addition to the present requirements for publication or posting.

We trust that this is of some assistance to you in this matter.

By: William J. Torrington

Assist. Attorney General