Opinion No. 55-6289

September 23, 1955

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. John D. Murphy, District Attorney, Second Judicial District County Court House, Albuquerque, New Mexico

You have presented to this office for our opinion the following question:

Does Chapter 87, Laws of 1953, repeal Section 1, Chapter 89, Laws of 1947, insofar as the compulsory filing of insurance policies or security bonds in the office of the District Court Clerk is made necessary?

In summary, Section 1, Chapter 89, Laws of 1947, (Section 59-10-3, N.M.S.A., 1953) provides for the filing of a good and sufficient undertaking in the nature of insurance or bond to secure the payment of Workmen's Compensation benefits which may become due. An exception is made in the event an employer shows to the satisfaction of the District Judge that he is financially solvent and that the filing of such security undertaking is unnecessary. If such be the case, the Judge issues a certificate to that effect and the certificate is filed. Where the insurance policy or bond is in an unlimited amount, no approval by the District Judge is required. If there is a limit on the amount of the undertaking, then the District Judge must approve it. Further, the address of the parties to the undertaking must appear on the instrument filed, whether it be an insurance policy, bond or certificate.

The purpose of the statute is apparent. Firstly, it insures through judicial supervision, that a proper undertaking in sufficient amount will be available to pay any claims which may arise against an employer. Secondly, by providing the address of the parties to the undertaking, it gives notice of the place where process may be served.

Now if the purpose above is the same as that embodied in Chapter 87, Laws of 1953 (Section 59-10-4, N.M.S.A., 1953), a repeal by implication may be indicated. If the purposes are different, then, a fortiori, there is no repeal by implication and the two statutes exist together, each in full force and effect.

The pertinent part of Chapter 87, Laws of 1953, reads:

"Election on the part of any employer to be subject to this act, including the employer of private domestic servants, farm and ranch laborers, or of three (3) or less employees, may be made by filing in the office of the clerk of the district court for the county in which such workman is or it is contemplated at the time of such agreement, such workman is to be employed, either a written statement to the effect that he accepts the provisions of this act, **or an insurance or security undertaking as required by section 57-1903 NMSA, 1941 Compilation Pocket Supplement."** (Underlining ours)

The portion underlined above was added by the Legislature in 1953.

Now the purpose of the statute partially quoted above: It is to afford the employer a means of electing whether or not he shall come under the act. Those engaged in extra hazardous occupations come within the act automatically unless affirmative action is taken to exempt themselves from the act. However, those not engaged in extra hazardous occupations do not automatically come within the operation of the act. They may, however, avail themselves of the act by taking affirmative action indicating that they elect to do so. Prior to 1953, those engaged in nonhazardous occupations could elect to come under the act only by filing a written statement to the effect that the employer accepted the provisions of the act. The filing of a policy or other undertaking alone was not an election. Eaves vs. Contract Trucking Co., 55 N.M. 463, 235 P. 2d 530.

It was the above case which precipitated the legislative amendment in 1953. The purpose of the amendment was to permit those in nonhazardous occupations to exercise their election by filing their policy or other undertaking, and to correct the admitted erroneous holding in the Eaves case, supra. Garrison vs. Bonfield, 57 N.M. 533, 260 P. 2d 718.

Thus, it is seen that the two statutes have as their end different purposes, one to insure that proper security is available, the other to afford a means of election.

Further language in the Garrison case, supra, points to conclusion we reach here:

". . . The insurance company has collected the premium and agreed to pay the losses, if any, and instead of advising its customer **where the policy should be filed, as well as the necessity for filing a notice,** . . ." (Emphasis ours)

Thus, two purposes being served and there being nothing necessarily incompatible between Section 1, Chapter 89, Laws of 1947 and Chapter 87, Laws of 1953, and there being no express repeal, this office is of the opinion that the two statutes stand, each in full force and effect. Your inquiry is answered in the negative.

I trust the above answers your question satisfactorily

By: Santiago E. Campos

Assistant Attorney General