Opinion No. 58-91

May 1, 1958

BY: OPINION OF FRED M. STANDLEY, Attorney General Alfred P. Whittaker, Assistant Attorney General

TO: Ben Chavez, Secretary, State Board of Finance, Capitol Building, Santa Fe, New Mexico

QUESTION

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Section 28-1-2 (N.M.S.A., 1953) appears to require incorporated surety companies, as a condition of doing business in New Mexico, to deposit with the State Board of Finance $ 20,000 in government bonds as assurance for the payment of claims of persons in New Mexico to whom surety bonds run. Is this statute effective, so that compliance with its provisions should be required, in view of the regulation of surety companies by the Department of Insurance pursuant to Chapter 58, N.M.S.A., 1953?

CONCLUSION

No.

OPINION

ANALYSIS

The answer to this inquiry depends upon whether or not the provision in question was effectively repealed by Chapter 135 of the Laws of 1925.

Section 28-1-2, N.M.S.A., 1953 Compilation, reads in relevant part as follows:

"No incorporated surety company shall be permitted to do any business in this state until such company, in addition to other requirements of law shall deposit with the state board of finance the sum of not less than twenty thousand ($ 20,000) dollars, in bonds of the United States, of the state of New Mexico, or some county or city thereof, of the par value of twenty thousand ($ 20,000.00) dollars which deposit shall be held for the benefit and security of the persons, residing in the state of New Mexico, to whom surety bonds and other contracts of indemnity shall run, with the condition that such deposits shall not be surrendered to such company until all claims in this state shall have been satisfied. All such bonds and securities now on deposit with the state treasurer shall be immediately turned over and delivered by said state treasurer to the state board of finance. All such bonds and securities so deposited with the state board of finance which are not classed as 'Registered Bonds or Securities', and registered in the name of

the state of New Mexico, shall have endorsed thereon a statement to the effect that such bonds or securities are registered in the name of the state of New Mexico, and deposited with the state board of finance under the provisions of this section, and that such bonds or securities can only be released from such registration over the signatures of at least a majority of the state board of finance, endorsed thereon and attested by the great seal of the state of New Mexico. The state board of finance shall adopt and use a uniform form for the registry and release of all such bonds and securities registered by or under the terms of this act.

The state board of finance shall keep a record of all bonds so deposited, showing the name of the company depositing such bonds, the date of deposit, the par value of said bonds, and the disposition made of such bonds with the date of such disposition."

This provision had its inception in Chapter 122 of the Laws of 1909, which directed that bonds of public officers executed by an incorporated surety company shall not be accepted unless such surety company shall have made a specified deposit with the territorial treasurer, in addition to the other statutory qualifications to do business. This was amended by Chapter 87. Laws of 1913, which restated the deposit requirement as a condition to be met by any incorporated surety company in order to do business in the state, thus substantially expanding the function of the provision. Chapter 113 of the Laws of 1923 again amended the provision, the principal effect of the amendment being the substitution of the State Board of Finance as the agency with which the deposit was to be made, in place of the State Treasurer.

Chapter 135 of the Laws of 1925 was entitled:

"An Act Relating to Insurance and to Codify the Insurance Laws of the State of New Mexico."

This statute, in § 1, defined the word "Insurance" to mean "any form of insurance, bond or indemnity contract the issuance of which is legal in the State of New Mexico." It is apparent from examination of the provisions of this statute that the Legislature clearly intended to regulate all phases of the insurance business as therein defined. In the third paragraph of § 51 of this statute, the Legislature provided:

"No company shall be licensed to transact a bond and general business in the State of New Mexico unless it is possessed of a minimum paidup capital of $ 500,000.00, and a combined capital and surplus of not less than $ 750,000.00; nor unless it has first made a deposit of $ 20,000.00 in approved securities of one of the kinds authorized as an investment for an insurance company with the State Treasurer of New Mexico for the benefit of all its policies issued covering risks in this State."

Finally, in § 76 of the 1925 Law the Legislature provided:

"All laws or parts of laws relating to the subject of insurance now existing in the State of New Mexico are hereby repealed, except Section Sixty-four, Chapter XCIII, Session

Laws of 1923, being 'An Act to provide for the incorporation and organization of mutual domestic fire, hail and tornado insurance companies;' and Section Seventy-Seven, Chapter LXXXIII, Laws of 1917, being 'An Act providing for compensation of workmen engaged in certain occupations, and, in case of death, their dependent families, for personal injuries sustained in the course of employment such workmen, and establishing liability of employers on account thereof, and requiring security for payment, and providing legal proceeding for the recovery of the same;' and Section Seventeen thereof as amended and Reenacted by Chapter CLXXXIV in 1921; and Section Eighteen thereof as amended and Reenacted by Chapter CLXXXIV in 1920; and Section Seventy-nine, Chapter XLIII, Laws of 1921, being 'An Act providing for the issuance of certificates for the payment of sick, death or annuity benefits upon the lives of children between the ages of one and eighteen years, by fraternal beneficiary associations;' and Section Eighty, Chapter CXCVII, Laws of 1921, being 'An Act for the regulating and control of fraternal benefit societies.'"

The authorities generally support the effectiveness of a repeal by the enactment of comprehensive legislation intended to provide a systematic and complete set of rules with respect to the subject matter to which it relates, and this is so even in the absence of an express repealer. See I Sutherland, Statutory Construction, Third Edition, §§ 2018, 2019; 82 C.J.S., Statutes, §§ 285, 290, 292, 293. The rule which finds an implied repeal is, of course, inapplicable in the situation in which an express repealing clause declares specifically the effect of a codifying statute upon earlier statutes. See 82 C.J.S., Statutes, § 293, page 502.

The New Mexico cases which deal with situations at all close to the one presented by this inquiry support the conclusion reached in this opinion. In Patten v. Corbin, 42 N.M. 561 (1938), the Court held that a 1901 statute which amended a 1899 statute, if not repealed by a 1913 law expressly repealing the 1899 statute, was, in any event, repealed by the general repealer clause of the 1915 Codification. In Ellis v. New Mexico Construction Company, 27 N.M. 312 (1921), the Court held that a 1903 statute which furnished a complete procedure for the paving of streets of municipal corporations necessarily repealed various specific statutory provisions of older laws on the same subject matter. In Stokes v. New Mexico State Board of Education, 55 N.M. 213 (1951), the Court concluded that § 55-907, N.M.S.A., 1941, was repealed by implication by Chapter 123, Laws of 1941, following the **Ellis** case.

Based upon our review of the New Mexico cases and the authorities generally, this office concludes that the Legislature clearly evidenced its intent to repeal § 28-1-2, N.M.S.A., 1953 Compilation, and Chapter 135 of the Laws of 1925.

In reaching this conclusion, we have considered whether there is any valid constitutional objection to construction of the 1925 statute as above indicated, in view of the holding in Tindall v. Bryan. 54 N.M. 112 (1949), that an omnibus repeal statute violates Article IV, § 16 of the Constitution of New Mexico. That provision requires the subject of a bill to be clearly expressed in its title and invalidates any bill embracing more than one subject except general appropriation bills and bills for the codification or revision of the laws. In

view of the latter exception in the constitutional provision, and in view of the discussion of the term "subject" as used in that constitutional provision, which appears in the case of State ex rel. Taylor v. Mirabal, 33 N.M. 553 (1928), it is the conclusion of this office that the construction of the 1925 statute set forth above in this opinion does not offend the Constitution of New Mexico.