

Opinion No. 59-125

August 27, 1959

BY: HILTON A. DICKSON, JR., Attorney General

TO: Mr. Robert H. Sprecher Assistant District Attorney Fifth Judicial District Roswell, New Mexico

{*194} This is in answer to your recent request for our opinion on the following question:

Was the Occupational Disease Disablement Act (Sections 59-11-1 through 59-11-42, N.M.S.A., 1953 Compilation), reinstated by the decision of the New Mexico Supreme Court in **State ex rel Hovey Concrete Products Co. Inc., v. Mechem**, 63 N.M. 250, 316 P. 2d 1068 (1957).

The answer to your question is that the decision in the **Hovey Concrete Products** case in effect reinstated the Occupational Disease Disablement Act.

The Occupational Disease Disablement Act, along with Sections 59-10-1 through 59-10-35, supra, being the previous Workmen's Compensation Act, was repealed by Chapter 246, Section 94, Laws of 1957. The reason for this repeal is obvious. The new law (all of said Chapter 246) was intended as a substitute for both the previous Workmen's Compensation Act and the Occupational Disease Disablement Act. However, the Supreme Court in the **Hovey Concrete Products** case, declared Chapter 246 in its entirety unconstitutional because it authorized commissioners appointed by the Governor to decide questions of fact between private litigants and render decisions having the force and effect of judgments. This, in the opinion of the majority, was an unconstitutional delegation of judicial power to the Commission, in violation of Article III, Section 1 and Article VI, Section 1 of the New Mexico Constitution.

The Court further held that Section 94 fell with the rest of Chapter 246, so that "Workmen's Compensation laws existing prior to the 1957 Act" were revived. In my opinion, the Occupational Disease Disablement Act was included in the "Workmen's Compensation Laws" so revived.

Therefore, the Occupational Disease Disablement Act, repealed by Section 94, Chapter 246, Laws of 1957, was revived by the decision in the **Hovey Concrete Products** case.

By: PHILIP R. ASHBY,

Assistant Attorney General