

Opinion No. 41-3947

November 8, 1941

BY: EDWARD P. CHASE, Attorney General

TO: Mr. Don R. Casados, Chairman State Corporation Commission Santa Fe, New Mexico

{*124} In your letter dated November 5, 1941, you request an opinion upon two questions, as follows:

"1. Whether Sections 32-501, 32-502, 32-503, 32-504 and 32-505, New Mexico Statutes Annotated have not, in effect, been repealed by the passage of the Constitution, specifically, Article 11, Section 6.

"2. Whether there is any provision under which the Commission may legally accept for filing a Certified Copy of the Record of Proceedings of the meeting, filed with the County Clerk, as provided in Section 32-505 of the 1929 Compilation."

Article XI, Section 6 of the State Constitution provides as follows:

"Subject to the provisions of this constitution, and of such requirements rules and regulations as may be prescribed by law, the state corporation commission shall be the department of government through which shall be issued all charters for domestic corporations and amendments or extensions thereof, and all licenses to foreign corporations to do business in this state; and through which shall be carried out all the provisions of this constitution relating to corporations and the laws made in pursuance thereof. The commission shall prescribe the form of all reports which may be required of corporations by this constitution or by law, and shall collect, receive and preserve such reports, and annually tabulate and publish them. All fees required by law to be paid for the filing of articles of incorporation, reports and other documents, shall be collected by the commission and paid into the state treasury. All charters, papers and documents relating to corporations on file in the office of the secretary of the territory, the commissioner {*125} of insurance and all other territorial offices, shall be transferred to the office of the commission."

Article XI, Section 13 of the State Constitution provides as follows:

"The legislature shall provide for the organization of corporations by general law. All laws relating to corporations may be altered, amended or repealed by the legislature, at any time, when necessary for the public good and general welfare, and all corporations, doing business in this state, may as to such business, be regulated, limited or restrained by laws not in conflict with the constitution of the United States or of this constitution."

Article XXII, Section 4 of the State Constitution provides as follows:

"All laws of the Territory of New Mexico in force at the time of its admission into the Union as a state, not inconsistent with this constitution, shall be and remain in force as the laws of the state until they expire by their own limitation, or are altered or repealed; and all rights, actions, claims, contracts, liabilities and obligations, shall continue and remain unaffected by the change in the form of government."

Section 32-501 sets up the procedure for forming a non-profit corporation for certain purposes and Section 32-502 provides that a record of the proceedings of the meeting shall be certified and delivered to the county clerk for filing, and thereafter such association shall become a corporate entity.

In dealing with the subject of tax exemptions, our Supreme Court has held that Section 141-110 of the 1929 Code has been superseded by Article VIII, Section 3 of the Constitution, in view of the fact that the constitutional provision covers the whole field of tax exemption. *Albuquerque Alumnae Ass'n. of Kappa Gamma Fraternity v. Tierney*, 37 N.M. 156, 20 P. (2d) 267. However, the Court has also held that a statute in force at the time the Constitution was adopted may remain in force as to certain provisions not inconsistent with the Constitution and be modified insofar as certain provisions may be inconsistent therewith. *Farmers' Development Company v. Rayado Land & Irrigation Company*, 18 N.M. 138, 134 P. 216.

But it is a general principle of law that when the whole subject matter is covered by a subsequent constitutional provision or a substitute statute that the prior statute inconsistent therewith is repealed by implication. 59 C. J., Section 520, page 919.

In *State v. Sargent*, 18 N.M. 627, at page 634, the Court made this statement:

"Certain powers are specifically conferred by the Constitution, section 6, [Illegible Words] supra, and such the Corporation Commission may exercise without legislation."

The above cited case dealt with the question of whether the constitutional provision was self-executing insofar as it substituted the Corporation Commission for the Commissioner of Insurance, and upon that particular point it was held that Section 6, Article XI, was not self-executing. However, from that case it is to be inferred that Article XI, Section 6, is self-executing insofar as it authorizes the Corporation Commission only as the agency under which a charter can be issued to a domestic corporation and further authorizes the Commission to prescribe forms for reports, etc., and collect all fees required to be {*126} paid for the filing of articles of incorporation, reports and other documents pertaining to corporations.

Section 32-106 of the 1929 Code, being Chapter 112, Section 1, Laws of 1917, provides that three or more persons may become a corporation for any lawful purpose or purposes whatever, and Section 32-109 and 32-110 of the 1929 Code, provide for filing the certificate of incorporation with the State Corporation Commission and for the beginning of the corporate existence thereafter.

The Constitution and the statutes passed subsequent to the adoption of the Constitution appear to be inconsistent with Sections 32-501 and 32-502 of the 1929 Code, and since the Constitution, together with the subsequent acts, cover the entire field theretofore covered by these two sections, I am of the opinion that these two sections have been repealed by implication and that a corporation, even though it may be a non-profit corporation organized for some purpose enumerated in Section 32-501, would still have to file its articles of incorporation with the Corporation Commission, and a mere filing of the minutes or proceedings of a meeting with the county clerk is not sufficient to constitute such an association a legally organized corporation.

The remaining three sections, 32-503, 32-504 and 32-505, are not necessarily inconsistent with the constitutional provision nor the subsequent corporation laws, except the provision in Section 32-503 to the effect that the trustees and directors of such a corporation "shall have perpetual succession," in view of the fact that under Section 32-108, the period limited for the duration of a corporation is one hundred years.

Since these three sections last above mentioned deal only with the powers of the trustees and directors, the officers and by-laws, and filling of vacancies, I do not believe the same have been repealed by implication.

In answer to your second question, it is my opinion, in view of the answer to the first question, that you may not legally accept for filing a certified copy of the record of proceedings, as provided in Section 35-502 of the 1929 Code, but you should require the certificate of incorporation to be filed with you in the first instance and collect the fee as provided in Section 32-223, sub-section (13), of the 1929 Code.

By C. C. McCULLOCH,

Asst. Atty. General