

Opinion No. 42-4098

June 4, 1942

BY: EDWARD P. CHASE, Attorney General

TO: Mr. H. Leslie Williams Assistant District Attorney Albuquerque, New Mexico

{*205} This is in response to your recent request for an opinion as to the constitutionality of Chapter 189, Laws of 1941.

The title to the above act does not include any provision relative to penalty for violation of the act.

There is ample authority to the effect that if the title of a bill relates to the regulation of certain professions or businesses, that no provision for violation of the act need be included in the title since penalties for violations are germane to the general purpose stated in the title.

In 59 C. J., Page 815, Section 395, the general rule is stated as follows:

"Under a constitutional requirement that the subject of an act shall be expressed in its title, a statute may ordinarily include provisions giving a remedy or prescribing a penalty for a violation of or noncompliance with the principal requirements of the act, although such provisions are not expressly indicated in the title, but no penalty can validly be imposed for an act other than those included within or suggested by the title, and it has been held that where the title gives no indication that the statute is regulatory a provision for a penalty cannot validly be included therein."

In Sutherland on Statutory construction, Page 230, Section 136, the author states the rule as follows:

"An act to regulate any specified business, or the use of property, or regulating human conduct in any way, or to prohibit acts or things, or to protect persons or public or private rights, may include penal provisions, or provisions imposing a civil liability or giving a civil remedy, without such penalties liabilities or remedies being referred to in the title."

See also People vs. T. Wah Hing, 190 P. 622.

In view of the fact that Chapter 189, Laws of 1941, is a regulatory act, and in view of the fact that the penalty provisions are pertinent to the subject expressed in the title, I am of the opinion that Chapter 189, Laws of 1941, is constitutional.

By WILLIAM R. FEDERICI,

Asst. Atty. General