

## Opinion No. 46-4970

December 16, 1946

**BY:** C. C. McCULLOH, Attorney General

**TO:** Mr. C. J. Boyd, Chairman N. M. Aeronautics Commission Santa Fe, New Mexico

{\*291} We wish to acknowledge your inquiry of the 14th of December, 1946, wherein inquiry was made as to whether or not Article XI of the New Mexico Constitution, wherein certain economic regulatory power over common carriers is vested in the State Corporation Commission, is self-executing.

It is stated in 12 C.J., Section 131, page 735 that a constitutional provision which imposes a duty on an officer is self-executory. Certainly a duty to regulate common carriers is imposed on the State Corporation Commission by Section 7 of Article XI, as that section provides: "The Commission shall have power and be **charged with the duty** of fixing, determining, supervising, etc. \* \* \*".

This particular article of our Constitution came under the scrutiny of the Supreme Court of New Mexico in the case of *In re Atchison, Topeka and Santa Fe Ry. Co.*, 37 N.M. 194, 20 Pac. 2d 918, wherein the Court held that the Corporation Commission was given an exclusive grant of power which was not to be exercised by the legislature.

The presumption is that all provisions of the Constitution are self-executing. (See 11 Am. Jur. Sec. 72, p. 689.)

It seems rather apparent from the foregoing that Article XI of the New Mexico Constitution is self-executing.

You made further inquiry that in event Section 47-105 -- 110, inclusive, New Mexico Statutes, 1941 Compilation were specifically repealed, as to whether or not the State Corporation Commission would thereby be rendered impotent insofar as economic regulation of aircraft or common carrier by aircraft is concerned.

It is my opinion that the repeal of such sections would not have this effect.

In *Delgado v. Romero*, 17 N.M. 81, page 86 it was held that "the mere fact that legislation might supplement and add to \* \* \* does not render such provisions ineffective in the absence of such legislation."

In other words, the aforementioned legislation merely supplements Article XI of the New Mexico Constitution, and as it is in itself self-executing, the repeal of any supplemental legislation would not render the State Corporation Commission impotent insofar as the economic regulation of aircraft or common carriers by aircraft is concerned.

{\*292} Trusting I have satisfactorily answered your inquiry, I am.

By ROBERT V. WOLLARD,

Asst. Atty. General