

Opinion No. 39-3258

August 28, 1939

BY: FILO M. SEDILLO, Attorney General

TO: Mr. Robert Valdez, Chairman, State Corporation Commission, Santa Fe, New Mexico. Mr. Harllee Townsend, Jr. Executive Director, New Mexico Aeronautic Commission, Santa Fe, New Mexico.

{*99} This opinion is in response to your written request dated August 15, concurred in both by the State Corporation Commission and the New Mexico Aeronautic Commission, for our views as to the validity of Section 5 of Chapter 199, New Mexico Session Laws of 1939.

Specifically you gentlemen inquire whether Section 5 of said Chapter 199 contravenes and is in conflict with Section 16 of Article IV of the New Mexico constitution.

Section 16 of Article IV of the New Mexico constitution provides as follows:

"The subject of every bill shall be clearly expressed in its title, and no bill embracing more than one subject shall be passed except general appropriation bills and bills for the codification or revision of the laws; but if any subject is embraced in any act which is not expressed in its title, only so much of the act as is not so expressed shall be void. General appropriation bills shall embrace nothing but appropriations for the expense of the executive, legislature and judiciary departments, interest, sinking fund, payments on the public debt, public schools, and other expenses required by existing laws; but if any such bill contain any other matter, only so much thereof as is hereby forbidden to be placed therein shall be void. All other appropriations shall be made by separate bills."

Section 5 of Chapter 199, New Mexico Session Laws of 1939, provides as follows:

"All of the powers heretofore granted to the State Corporation Commission of aircraft other than aircraft engaged as common carriers is hereby transferred and conferred upon the New Mexico Aeronautics Commission."

The title of said Chapter 199 provides as follows:

"AN ACT TO ENABLE THE STATE OF NEW MEXICO TO PARTICIPATE IN THE AERONAUTICS TRAINING PROGRAM OF THE FEDERAL GOVERNMENT; CREATING THE NEW MEXICO AERONAUTICS COMMISSION AND AUTHORIZING THE STATE BOARD OF FINANCE TO ARRANGE FOR ANY NECESSARY FINANCING."

The true test of the validity of any statute under the provisions of Section 16, Article IV of the Constitution, is whether the title fairly gives such reasonable notice of the subject

matter of the statute itself as to prevent the mischief intended to be guarded against. State vs. Ingalls, 18 N.M. 211.

In Attorney General's Opinion No. 3106 this office recently stated and held as follows:

"While the title of a bill may be very general and very brief, and need not be in any sense an index, still its function is to apprise the Legislature of the purposes intended to be accomplished by the bill. The Constitution by Article 4, Section 16, provides that 'the subject of every bill shall be clearly expressed in its title ___ but if any subject is embraced in any act which is not expressed in {**100*} its title, only so much of the act as is not expressed shall be void.' The Supreme Court has held that the purpose of that provision is 'to prevent surprise or fraud upon the Legislature by means of provisions in bills of which the titles give no intimation, and which therefore might be overlooked and carelessly or unintentionally adopted.' State vs. Ingalls, 18 N.M. 211."

A reading of the title of Chapter 199, supra, discloses the subject matter of the bill to be an act enabling this state to participate in the aeronautics training program of the federal government, creating a commission with respect thereto and making necessary provisions for financing the program.

Sections 1, 2, 3 and 4 of the act are clearly in line with the title. However, there is nothing in the title to intimate in the least that by Section 5 the Corporation Commission was to be stripped of its powers over all aircraft as provided for in Chapter 71, New Mexico Session Laws of 1929. (Chapter 12, New Mexico Statutes Annotated, 1929 Compilation.)

In other words, it strikes me that Section 5 of the act might very well have been "overlooked and carelessly or unintentionally adopted" by the Legislature, and if so, according to State vs. Ingalls, supra, Section 5 would be invalid and unconstitutional.

In view of the foregoing it is my opinion that Section 5 of Chapter 199, New Mexico Session Laws of 1939, violates and is in contravention of Section 16 of Article IV of the New Mexico Constitution.

The remainder of the act is, however, not affected by this ruling because said Section 16 of Article IV provides that "only so much of the act as is not expressed (in its title) shall be void."

Trusting the foregoing sufficiently answers your inquiry, I am,

By: FRED J. FEDERICI,

Asst. Atty. Gen.