

Opinion No. 41-3705

February 3, 1941

BY: EDWARD P. CHASE, Attorney General

TO: Mr. Tom W. Neal Director, Legislative Reference Bureau Santa Fe, New Mexico

{*31} This will acknowledge receipt of your letter of the 29th wherein you request an opinion as to whether or not certain municipal ordinances passed under the authority of Sections 90-501 to 90-150 New Mexico Statutes, Annotated, 1929 Compilation, are at this time valid in view of the fact that said sections of the Code were repealed by Chapter 73, Session Laws of 1933, and Chapter 33, Special Session Laws of 1934, both of which were declared unconstitutional by our Supreme Court in the case of Safeway Stores v. Vigil, 40 N.M. 190.

Our Supreme Court, in the Safeway case above referred to, declared both acts of 1933 and {*32} 1934, above referred to, **invalid in their entirety**. It is well settled that an unconstitutional act is not a law; it confers no rights; it imposes no duties; it affords no protection, it is, in legal contemplation, as unoperative as though it had never been passed. See Farrington v. Mensching, 79 N. E. 884, also 59 C. J. 886, Section 479.

There are numerous authorities to the effect that where an act which attempts to repeal a prior act on the same subject is declared void, as a whole, the prior act stands in full force. See Key No. 168 and Key No. 143, Digest System.

In view of the foregoing, it is my opinion that ordinances passed under and by virtue of Sections 90-501 and 90-510, New Mexico Statutes, Annotated, 1929 Compilation, are entirely valid; that said sections were not repealed by either the act of 1933 or 1934 for the reason that said acts were both declared **void in their entirety**.

Your attention, however, is called to Chapter 145, Session Laws of 1937. This 1937 law follows in substance Sections 90-501 to 90-510 of the 1929 Compilation. Unquestionably, the sections of the code have either been amended or repealed by implication by Chapter 145 of the Laws of 1937.

Trusting that the foregoing sufficiently answers your inquiry, I am,

By HOWARD F. HOUK,

Asst. Atty. General