

Opinion No. 42-4065

April 13, 1942

BY: EDWARD P. CHASE, Attorney General

TO: Mr. Tom Summers, Chief New Mexico State Police Santa Fe, New Mexico

{*178} This will acknowledge receipt of your letter of April 9, 1942, by which you have requested an opinion of this office as to whether or not the provisions of sub-section (b), Section 11-854 New Mexico Statutes Annotated, 1929 Compilation are still effective in view of the provisions of Chapter 199, Laws of 1941. Sub-section (b) of Section 11-854, New Mexico Statutes Annotated, 1929 Compilation, provides:

"The driver of any motor vehicle who is arrested upon a charge that the lamps, brakes or steering equipment of such vehicle are improperly adjusted, or are unsafe, or fail to comply with the requirements {*179} of this act, shall be allowed forty-eight hours within which to bring such equipment into conformance with the requirements of this act. It shall be a defense to any such charge that the person arrested produce in court, or submit to the prosecuting attorney a certificate from an official adjusting station showing that within forty-eight hours after such arrest such equipment has been made to conform with the requirements of this act."

Chapter 199, Laws of 1941, is an act prescribing necessary lighting equipment for vehicles on the highways. Section 1 (a), Chapter 199, Laws of 1941, provides in part as follows:

"It is a misdemeanor for any person to drive or move * * * on any highway any vehicle * * * which is in such unsafe condition as to endanger any person, or which does not contain those parts or is not at all times equipped with such lamps or other equipment in proper condition and adjustment as required in this article * * *."

The additional sections of the act prescribes in detail what lighting equipment must appear on vehicles, and the condition in which that equipment must be maintained. Certain sections of the earlier law relating to lighting equipment on vehicles were repealed by Chapter 199, Laws of 1941, but no general or special repeal was made of the provisions of Sub-section (b), Section 11-854, New Mexico Statutes Annotated, 1929 Compilation. Nor, is there anything in Chapter 199, Laws of 1941 which would indicate that a person after being arrested for defective lighting would not have forty-eight hours in which to improve that condition.

It is quite obvious that the Legislature was cognizant of the provisions of Sub-section (b), Section 11-854, New Mexico Statutes Annotated, 1929 Compilation, for the reason that any of its related sections were specifically repealed. See Section 28 in Chapter 199, Laws of 1941. It is to be noted also that Sub-section (a), Section 11-854, New Mexico Statutes Annotated, 1929 Compilation, has been amended several times,

(Chapter 32, Laws of 1931 and Chapter 198, Laws of 1937), but that Sub-section (b), Section 11-854, New Mexico Statutes Annotated, 1929 Compilation, has been retained in its original form.

In view of the foregoing, it is my opinion that the provisions of Sub-section (b), Section 11-854, New Mexico Statutes Annotated, 1929 Compilation is still part of the law, and that a person arrested for operating a vehicle with unsafe lights, brakes or steering equipment shall be allowed forty-eight hours to comply with the law as to such equipment as prescribed by Chapter 199, Laws of 1941.

Trusting that the foregoing sufficiently answers your inquiry, I am

By GEO. H. HUNKER, Jr.

Asst. Atty. General