

Opinion No. 44-4488

March 24, 1944

BY: EDWARD P. CHASE, Attorney General

TO: Mr. Benjamin D. Luchini, Chairman-Executive Director, Employment Security Commission of New Mexico, P. O. Box 1301, Albuquerque, New Mexico

We are in receipt of your letter of March 23, 1944, in which you state that your agency wishes to destroy workers' applications for benefits on file in your office for the period from 1938 up to December 31, 1941. You ask our opinion as to whether there is any statute in New Mexico specifying the time such records must be preserved.

Please be advised that we have no statute dealing with the preservation of records of this nature. While the Commission is not specifically given the power to prescribe rules and regulations concerning the preservation of their records, yet, by Section 57-811 of the 1941 Compilation, it is given very broad rule making power. It therefore appears to me that the Commission would be acting within its power if it promulgated a rule providing for the destruction of obsolete records.

I am not overlooking Section 41-3602, which makes it unlawful for any person to **unlawfully** destroy any public record of the state, yet, it is my opinion that if the proper rule were adopted, and the records destroyed pursuant to that rule, that such destruction would be lawful.

By ROBERT W. WARD,

Asst. Atty. General