

Opinion No. 46-4898

May 8, 1946

BY: C. C. McCULLOH, Attorney General

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

{*226} We are in receipt of your letter of May 6, 1946, in which you ask whether Section 8, Chapter 205 of the Laws of 1941 (Section 57-812 of the 1941 Compilation), accepted 48 Stat. 113, U.S.C.A. Title 29, Section 49 C, as of the date of the enactment of Chapter 205, or whether it adopted future amendments to the Federal Act as well. The language of the statute is as follows:

"The provisions of the said Act of Congress, as amended, are hereby accepted by this State in accordance with Section 4 of said Act."

In terms this provision appears to be only an acceptance of Federal legislation. It speaks in the present, and does not purport to accept any future amendments or future Acts of Congress.

Therefore, based upon the language of Chapter 205 alone, it would be my opinion that this provision would not be construed to accept any amendments that were made after the effective date of Chapter 205.

Further, in actual operation, while this clause appears to be an acceptance of a Federal Act, it is, in fact, the incorporation of the Federal Statute by reference.

The author in 59 C.J. 618 says:

"Reference adopting future provisions of Acts of Congress by State is invalid, but the Act may nevertheless be valid insofar as it purports to adopt existing law."

See also 5 Am. Jur. 58.

In view of the foregoing, it is further my opinion that if the above quoted clause of Chapter 205 attempted to adopt future amendments to the Federal Act, that it would be unconstitutional to such extent as an unlawful delegation of authority.

By ROBERT W. WARD,

Asst. Atty. General