

Opinion No. 61-63

July 19, 1961

BY: OPINION OF EARL E. HARTLEY, Attorney General Oliver E. Payne, Assistant Attorney General

TO: Mr. Willis Lovelace, Chairman, State Racing Commission, P.O. Box 8546, Station C, Albuquerque, New Mexico

QUESTION

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1. Must rules and regulations promulgated by the State Racing Commission be filed with the Supreme Court Librarian?
2. If not so filed, are such rules and regulations completely ineffective?

CONCLUSIONS

1. Yes.
2. No; ineffective only as to those who have no actual knowledge of the rule or regulation.

OPINION

ANALYSIS

The answer to your first question is governed by Section 4-10-13, N.M.S.A., 1953 Compilation, which provides as follows:

"It is hereby **required** and made the duty of the official head of each state office, **commission**, agency, department or institution, except the legislative or judicial branches of the state government, **immediately after the issuance** of any official report, pamphlet, publication, **regulation, rule**, code of fair competition notice, promulgation, order or similar instrument issued, prescribed or promulgated by such office, agency or institution of general application, to file three (3) copies of each such document above named with the librarian of the Supreme Court library of the State of New Mexico, who shall cause to be noted on each of said copies the day and hour of the filing thereof, two (2) of which copies so filed shall be and remain in the custody of said librarian as a permanent record of the state of New Mexico, and shall during office hours be open to public inspection." (Emphasis added)

Your second question is whether unfiled rules and regulations are completely ineffective. The answer is no. Section 4-10-19, N.M.S.A., 1953 Compilation, provides as follows:

"In addition to present requirements for publication or posting before rules, orders and regulations become effective, no rule, order or regulation shall be valid as against any person who does not have actual knowledge thereof, until copies have been filed and made available for public inspection as provided in Section 1 (4-10-13) of this act."

The Supreme Court of New Mexico interpreted this Section in the case of **Maestas v. Christmas**, 63 N.M. 447, 321 P. 2d 631, and held that rules and regulations of the Highway Department providing that all no-passing zones in opposite directions will be marked with a solid yellow line on each side of a broken white line **were effective** against the defendant, although unfiled, where the defendant admitted that he understood the significance of the yellow barrier lines on highways.