

CAINE
Aldrich
Daniels

January 22, 1957
Opinion No. 57-13

REQUESTED BY : Representative William J. Harkness

OPINION BY : ROBERT MORRISON, The Attorney General
Bernard T. Caine, Assistant Attorney General

QUESTIONS :

1. Is the General Construction Safety Code adopted by the Industrial Commission on August 15, 1940, now in effect?
2. If so, can violations thereof be prosecuted under A. R. S. § 23-932?

CONCLUSION :

1. No.
2. If it were in effect, yes.

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QUESTION ONE :

(1) The general powers of the Industrial Commission are found at A. R. S. § 23-107. The pertinent provision is at A. R. S. § 23-107 A (1), which reads:

"A. The commission has full power, jurisdiction and authority to:

1. Administer and enforce all laws for the protection of life, health, safety and welfare of employees in every case - - "(Emphasis supplied)

(2) Under Chapter 6, Title 23, of the Arizona Revised Statutes, Article 1, entitled "Scope of Workmen's Compensation", in Section 23-901 (7) appears this definition:

"'Order' means and includes any rule, regulation, direction, requirement, standard, determination or decision of the commission."

(3) Rule-making powers of the Commission are stated at A. R. S. § 23-922. The two sections (23-923 and 23-924) immediately following provide for the publication of rules and general orders and their distribution. These provisions were in force and effect prior to August 15, 1940.

(4) By resolution, The Industrial Commission of Arizona, adopted a "General Construction Safety Code" effective August 15, 1940. This safety code establishes rules and regulations and prescribes standards for the protection of the life, health and safety of employees in various types of work.

(5) In 1952, the Legislature adopted the "Administrative Procedure Act" effective as of July 1, 1952. That act now appears as Chapter 6, Title 41, of the Arizona Revised Statutes (§ 41-1001 to 41-1008). Section 5, Chapter 97, of the 1952 Session Laws, reading as follows, does not appear in the 1956 Arizona Revised Statutes:

"Sec. 5. Not later than six months after the effective date of this Act, each agency shall file in the office of the secretary of state a certified copy of every rule adopted by it, and in effect at the time of such filing. All rules not so filed shall be of no force and effect.
- - -"

Undoubtedly it was not carried over into the 1956 Arizona Revised Statutes for the reason that it was felt it was no longer applicable.

(6) Under the Administrative Procedure Act, at A. R. S. § 41-1001 (1), "Agency" is defined as follows:

" 'Agency' means every agency, board, commission, department or officer authorized by law to exercise rule-making powers or to - - - -"

(7) The office of the Secretary of State and The Industrial Commission, each represents that a certified copy of the said "General Construction Safety Code" adopted August 15, 1940, was not filed within six months of the effective date of the "Administrative Procedure Act". In fact, each states such has never been filed with the Secretary of State. It is the opinion of this office that the rule-making power of The Industrial Commission, except for fixing rates (23-922 and 41-1004 B), is further conditioned upon compliance with the Administrative Procedure Act. Therefore, for failure on the part of the Industrial Commission to file said General Construction Safety Code in the office of the Secretary of State, said code is not now operative and has not been in effect since January 1, 1953.

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QUESTION TWO

- (1) Under A. R. S. § 23-901 (7), "order" has been defined as including "any rule, regulation, direction, requirement, standard, - - -".
- (2) The violation of an "order" of The Industrial Commission is denounced in A. R. S. § 23-932 as a misdemeanor.
- (3) If and when said Safety Code is readopted by The Industrial Commission and filed with the office of the Secretary of State in compliance with the provisions of the Administrative Procedure Act, criminal violation thereof can be enforced by agents (inspectors) of The Industrial Commission swearing out Criminal Complaints after consultation with the County Attorney.

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