

Opinion No. 52-5498

February 20, 1952

BY: JOE L. MARTINEZ, Attorney General

TO: R. F. Apodaca Superintendent of Insurance State Corporation Commission Santa Fe, New Mexico

{*213} This is in reply to your letter in which you ask an opinion as to whether a domestic mutual insurance company organized under the provisions of Section 60-301 New Mexico Statutes Annotated would be permitted to issue non-assessable insurance policies under the same conditions and terms as provided under Section 60-1111 New Mexico Statutes Annotated as would such company organized under the provisions of Section 60-1101, New Mexico Statutes Annotated.

Section 60-1111 concerning the contingent liability of policy holders as originally enacted in the Laws of 1917 and as amended by Chapter 40 of the Laws of 1949 is applicable to mutual employers' liability and compensation insurance companies and not to insurance companies generally.

It is my opinion that the provisions of Section 60-1111 apply only to domestic mutual employers' liability and compensation insurance companies. It is my opinion that the only domestic mutual insurance company which could issue non-assessable policies under the provisions of Section 60-1111 would be a domestic mutual company organized in accordance with the provisions of Section 60-1101.

The enactment by our Legislature of Chapter 74 of the Laws of 1951, which appears as Section 60-1119 New Mexico Statutes Annotated 1941 in my opinion shows more strongly that the over-all legislative intent was to permit domestic mutual insurance companies to operate as ordinary domestic insurance companies issuing regular non-assessable policies only when they had acquired unencumbered surpluses of over \$ 150,000.

It is my opinion that the law did not contemplate the organization of mutual insurance companies under the provisions of Section 60-301.

I trust that this will answer your inquiry fully.