

Opinion No. 53-5668

February 12, 1953

BY: RICHARD H. ROBINSON, Attorney General

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

{*59} On February 4th you addressed an inquiry to this office concerning {*60} whether or not the state, its departments, and the political subdivisions, including municipalities, when purchasing insurance, are subject to the 2% premium tax as set forth in § 60-401 N.M.S.A., 1941 Comp., as applied to insurance companies admitted to do business in the State of New Mexico, and § 60-440 N.M.S.A., 1941 Comp., as applied to surplus line brokers.

Sec. 60-401 sets out certain fees charged by the State of New Mexico and the Superintendent of Insurance in behalf of the State of New Mexico, and such fees are assessed against "every insurance company transacting or seeking admission to transact business in the State of New Mexico." This act also applies to every agent licensed to do business in the State of New Mexico, every non-resident broker licensed to do business in the State of New Mexico, and other fees applicable to insurance. Two paragraphs of the above cited section are as follows:

"Every insurance company licensed to transact an insurance business in the state of New Mexico shall also pay annually on or before the first day of March each year, two (2%) per centum of the gross premiums, membership and policy fees received by it on insurance covering risks within the state during the preceding calendar year, less all return premiums including dividends paid or collected to policyholders and premiums received for reinsurance on New Mexico risks.

"The payment of the aforesaid taxes, licenses and fees provided for in this act shall be in lieu of all other taxes, licenses, and fees of every kind, now or hereafter, imposed by this state or any political subdivision thereof, on any insurance company or agent thereof, excepting the regular state, county and city taxes on property located in the state of New Mexico."

You will note that the premium tax above mentioned is assessed against the insurance company. There is no provision whatsoever exempting cities, counties or the State of New Mexico set out therein. The second paragraph quoted above states that this tax is in lieu of "all other taxes, licenses, and fees of every kind now or hereafter, imposed by this state or any political subdivision thereof." The statute does not adopt the exemptions set out in other taxing statutes merely by exempting the insurance companies from other taxes. The Sales or Emergency School Tax, § 76-1405 N.M.S.A., 1941 Compilation, exempts the political sub-divisions of this state from that tax. That exemption exclusive to that tax and does not carry over to other taxes. The fact that the

2% premium tax is a tax in the same amount as the 2% school tax does not give any applicability to the latter tax or its exemptions. The Sales or Emergency School Tax is provided for the maintenance and furtherance of education in the state. The 2% premium tax goes to the maintenance and enforcement of the insurance regulations of this state.

Sec. 60-440 N.M.S.A., 1941 Comp., which deals with surplus line brokers imposes the same tax as set out in § 60-401 and the tax is imposed against the surplus line brokers.

The "Insurance Fund" is also the beneficiary of this tax. This statements applicable to the insurance companies authorized to do business in the State of New Mexico, and in reference to § 60-401 N.M.S.A., 1941 Compilation are equally applicable to any surplus line broker.

{*61} It is the opinion of this office that the tax assessed against the insurance companies under the two statutes cited above are applicable to all policies, regardless of the nature of the purchaser of those policies, and includes policies purchased by the state, its departments, counties and cities. It is within the power of the Insurance Commissioner to regulate the premiums to be charged and whether or not this tax shall be passed on to the purchaser of an insurance policy, making a higher total premium, and in the event he decides that the tax should be passed on in the policy, then and in that event the state, its departments and political subdivisions are in no different position than any other purchaser of an insurance policy.

We sincerely hope that this answers your inquiry.

By: Fred M. Standley

Assist. Attorney General