

**Opinion No. 54-5930**

April 1, 1954

**BY:** RICHARD H. ROBINSON, Attorney General

**TO:** Mr. Lilburn C. Homan Special Assistant Bank Examiner c/o Office of the Governor  
Santa Fe, New Mexico

{\*377} On March 9 you addressed an inquiry to this office concerning whether or not the sale of insurance in a small loan office can be regulated by the Bank Examiner.

Section 50-1646, N.M.S.A., 1941 Comp., as amended, 1953 New Mexico Session Laws provides as follows:

"MORE THAN ONE INSURANCE POLICY ON BORROWER ILLEGAL -- CANCELLATION. -- It shall be unlawful for any person, partnership, firm or corporation making a loan of five hundred dollars (\$ 500.00) or less, or for any licensee licensed under the provision of chapter 174, Session Laws of 1947 (§§ 50-1620 -- 50-1645), or any of its employees, to write or cause to be written or to have in force more than one life and/or disability insurance policy on any one individual borrower at any one time. All such life and/or disability policies shall be subject to cancellation by the insured upon payment of the loan note. In the event for cancellation of such a life and/or disability insurance policy, the unearned portion of the premium calculated upon a basis approved by the superintendent of insurance shall be refunded to the insured. Provided, however, that in case of death of the insured the life {\*378} premium shall be considered fully earned."

The section above quoted clearly provides that the small loan operators may write or cause to be written one insurance policy. This statute does not set a limit upon that insurance policy, but clearly deals with the business of small loan licensees, which small loan licensees and their authority to make loans are subject to other statutes pertinent to small loan operators and to regulations and rules promulgated by the Bank Examiner pursuant to (§ 11, a), N.M.S.A., 1941 Comp., as amended, 1947 Session Laws.

Section 50-1632 reads as follows:

"BUSINESS CONFINED TO LICENSED OFFICER -- OTHER BUSINESS IN SAME OFFICE. -- (a) Business Confined to Licensed Office. No licensee shall conduct the business of making loans provided for by this act (§§ 50-1620 -- 50-1645) under any name, or at any place of business within this state, other than that stated in the license.

"(b) Other Business in Same Place. No licensee shall conduct the business of making loans under this act (§§ 50-1620 -- 50-1645) within any office, room or place of business in which any other business is solicited or engaged, or in association or conjunction therewith, if the examiner shall find that the other business is of such nature that such

conduct tends to conceal evasion of this act or of the rules and regulations made hereunder and shall order such licensee in writing to desist from such conduct."

You will note that sub-section (b) thereof provides that no licensee shall conduct the business of making loans under this act within any office or other place of business where any **other business is solicited**, or engaged, if the Bank Examiner finds that the conduct or solicitation of such other business tends to conceal evasions of the Small Loan Act.

The two sections quoted would be in conflict and the statute bearing the later date would repeal the former unless the two can be reconciled. We believe that the two statutes are not in conflict and can be reconciled quite easily. The Bank Examiner may, therefore, by regulation, find and declare that the conduct of an insurance business in the same office with a small loan business, or in conjunction or association with, tends to conceal evasions of the Small Loan Act, unless such insurance business is conducted within limits and in conformity with standards prescribed by the Bank Examiner by regulation. Thus the Bank Examiner's regulation might declare any insurance sold in excess of an amount sufficient to cover the loan to be an evasion of this act and in violation of § 50-1632 (b), N.M.S.A., supra. We believe that the effect of such an order or regulation would not be a violation of any of the insurance laws of this State, but would be a regulation of small loan licensees and would be valid, as having to do with the continuance of the small loan business by the licensee. The regulation quite properly could contain a statement to the effect that any person engaged in, associated with, or in conjunction with the small loans operation could not sell insurance in excess of a sufficient amount to cover the face value of the loan, and we believe that such a regulation would be valid. The regulation would necessarily be required to find that the operation of such an insurance business and the sale of policies not in conformance {\*379} with the standards set up in the regulation would tend to conceal evasion of the Small Loan Act, and if such a finding were made, any person in violation of that regulation would be subject to revocation of their small loans license.

By: Fred M. Standley

Assist. Attorney General