

Opinion No. 56-6544

November 9, 1956

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. F. Gordon Shermack, Commissioner of Securities, State Banking Department, Santa Fe, New Mexico

Reference is here made to your letter of September 21, 1956, referring to the applicability of the Securities Act of 1955 to offerings of stock by insurance companies in this State.

We are here listing the three questions which we believe your letter raises:

1. Does Chapter 221 of the Laws of 1955, subject securities of insurance companies, domestic or foreign, to regulation by the Superintendent of Insurance and hence, exempt such securities from registration under the Securities Act when offered for sale to the public?
2. Does the Securities Commissioner have jurisdiction over the sale of such securities by reason of the language contained in subsection (b) of Section 14 of the Securities Act?
3. Is the dealer or salesman offering such securities of an insurance company for sale to the public required to register under the Securities Act?

Section 10 of Chapter 221, Laws of 1955 includes the following statement in subsection (b):

"The superintendent may issue a special license to a named person, firm, association or corporation to sell and propose to sell to the public in this state the specified securities of a specified insurance company. . . ."

In addition to the above, in the same section, the Superintendent of Insurance would elsewhere appear to be authorized to permit the sale to the public of insurance securities. The authority of the Superintendent of Insurance, by the same section, is subject to several limitations contained therein, but the basic authority would appear to be definite. Subsection (c) of Section 6 of Chapter 131 of the Laws of 1955 recognizes the authority of the Superintendent of Insurance in the following:

"Securities issued by a building and loan association or an insurance company subject to supervision by an agency of this State."

and is one of the categories of exempt securities from Securities Act registration, Section 4. Hence, in our opinion, securities of insurance companies need only be registered in accordance with the Insurance Act, with the Superintendent of Insurance.

There is nothing contained in Chapter 131 or Chapter 221 of the Laws of 1955 in which insurance securities are exempt from the provisions of subsection (b) of Section 14 of Chapter 131, Laws of 1955. On the contrary the above subsection specifically includes securities otherwise exempted from Section 4, including insurance securities. Hence it is the opinion of this office that the Commissioner of Securities has jurisdiction over insurance securities insofar as Section 14 of Chapter 131, Laws of 1955 are concerned.

Regarding the third question, the only transactions, in which dealers and salesman are exempt from registration would be those named in Section 7 of Chapter 131, Laws of 1955, and inasmuch as insurance companies' securities are not named in said Section 7, it is our opinion that dealers and salesmen dealing in insurance securities, exempt from registration under the Insurance Act, are still subject to registration with the Commissioner of Securities.

By: Howard M. Rosenthal

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