

Opinion No. 57-35

February 28, 1957

BY: OPINION OF FRED M. STANDLEY, Attorney General Fred M. Calkins, Jr.,
Assistant Attorney General

TO: Superintendent of Insurance, State Corporation Commission, Santa Fe, New
Mexico

QUESTIONS

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Must an agent of a fraternal benefit society, who wishes to solicit life insurance business from the general public, be examined and qualified by the Superintendent of Insurance under the State's general insurance code?

CONCLUSION

No.

OPINION

ANALYSIS

Chapter 290 and 291, pages 847 and 849, 1955 Session Laws of New Mexico, which become § 58-5-22, N.M.S.A., 1953 Compilation (P.S.), of the Insurance Code, state that before a new license is issued to any person to transact life insurance business in the State, the said person shall first file with the Superintendent of Insurance an application for an agent's license. The Act also provides that such an applicant shall submit to a personal written examination to determine his competence regarding insurance contracts and the insurance laws of this State. The Acts define who is covered and provide a definition of companies covered by the Act as follows:

"'Company' means an insurance or surety company and shall be deemed to include a corporation, company, partnership, association, society, order, individual or aggregation of individuals engaging in or proposing or attempting to engage in any kind of insurance or surety business, including the exchanging of reciprocal or inter-insurance contracts between individuals, partnerships and corporations;"

Following the enactment of the above legislation, the Superintendent placed into operation a procedure to examine and qualify all persons seeking a license to act as an insurance agent in the State. An organization chartered as a fraternal benefit society now maintains that the Commissioner has no authority to examine and qualify persons

seeking to act as their agents who will solicit life insurance business from the general public.

It is our opinion that § 58-5-22 does not confer authority on the Superintendent of Insurance to license and examine agents of fraternal benefit societies. It should be pointed out that our Courts have held that fraternal benefit societies have been designated a special status apart from the general insurance laws by our State Legislature. In *State ex rel. Biel v. Royal Neighbors of America*, 44 N.M. 8, 96 P 2d 705, the Court held although fraternal societies do business similar to insurance companies, they cannot be collaterally attacked as being, in fact, an insurance company and thus subject to the general insurance laws.

The Fraternal Code, enacted in 1921, has a further provision exempting such societies therein, defined to be fraternal benefit societies from all provisions of the insurance laws of the State and is as follows:

"Except as herein provided such societies shall be governed by this act, and shall be exempt from all provisions of the insurance laws of this state, not only in governmental relations with the state, but for every other purpose, and no law hereafter enacted shall apply to them, unless they be expressly designated therein." § 58-14-4, N.M.S.A., 1953 Compilation.

If fraternal benefit societies are to be regulated by § 5 of the Insurance Code, it would appear that the Acts passed by the Legislature intended and did in fact include fraternal benefit societies in its definition of those covered under the Act. Apparently now-where in the body of the Acts or in the titles are fraternal benefit societies specifically mentioned therein. We feel that the exclusion of the express term "fraternal benefit societies" in the title and the body of the Act indicates lack of legislative intent to include fraternal benefit societies under the regulatory restrictions imposed by the Legislature on insurance companies. Assuming that it is not necessary to name "fraternal benefit societies" in the Act directly, the language in the Act is still so vague that it may not apply to fraternal benefit societies. The definition of "company", as used in the above section, includes the words "society" and "order". The word "society" standing alone is a very generic term. There are endless types of societies, and the word "society", given a concrete definition, is considered "any voluntary unincorporated association of persons for a common purpose." One of the largest live insurance companies (a mutual old line company) is the Equitable Life Assurance **Society** of U.S.A. The word "order" cannot be given a legal description so that it could be said that when it is so used in the statute that means "fraternal benefit societies."

Since our Courts have recognized fraternal benefit societies as being separate institutions apart from insurance companies generally, it would not appear that § 58-5-22 will amend § 58-14-4 by implication.

In *Walton v. City of Portales, et al.*, 42 N.M. 433, 81 P. 2d 58, and other cases, it is stated:

"A general statute will not be regarded as repealing by implication a statute of limited scope dealing with a particular matter."

In addition to the above, there is a large amount of authority in New Mexico stating that repeals by implication are not favored.

In conclusion, it would appear to us that Chapters 290 and 291 were not intended to and did not in fact include fraternal benefit societies, when it authorized the Superintendent of Insurance to examine and qualify insurance agents engaged in the procurement of life insurance business. Since our courts have held that the status of fraternal benefit societies cannot be collaterally attacked, even though they use many of the methods and do a similar business to life insurance companies, it is impossible to infer that the Legislature intended that they be covered due to the very nature of their business. We feel that specific legislative action is necessary before the Commissioner can examine and qualify agents employed by fraternal benefit societies regardless of the merits of such action.