

Opinion No. 58-199

September 30, 1958

BY: OPINION OF FRED M. STANDLEY, Attorney General Joel B. Burr, Jr., Assistant Attorney General

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

QUESTION

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1. Shall the Superintendent authorize a domestic corporation to act as an agent for an insurance company when the stockholders of such corporation are not residents of the State of New Mexico?
2. Shall the Superintendent authorize a domestic partnership organized under the laws of New Mexico to be licensed as an agent when not all the partners are residents of the State of New Mexico?

CONCLUSIONS

1. Yes.
2. Yes, but see opinion.

OPINION

ANALYSIS

Section 58-5-23, N.M.S.A., 1953 Compilation, defines an "agent" as follows:

"An agent shall be defined as a person, partnership or corporation appointed by an insurance company licensed to transact business in this state to act as its representative in any given locality for the purpose of soliciting and writing insurance or bonds, and such other duties in connection therewith as may be authorized."

Thus, we note that a corporation or partnership may be licensed as an agent provided other requirements of the Code are met.

Section 58-5-22.1, N.M.S.A., 1953 Compilation, 1957 Pocket Supplement, provides that application for an agent's license must be made to the Superintendent of Insurance. The application must be accompanied by a certificate of an official or representative of the

company who desires to appoint the applicant as their agent certifying in part the following:

". . . (1) That the applicant is personally known to them and is a bona fide resident of the State of New Mexico . . ."

On February 9, 1943, this office, in Attorney General's Opinion No. 4227, held that a domestic corporation could be licensed as an insurance agent. With this conclusion, we are in accord. However, we are now called upon to determine whether a domestic corporation may be licensed as an insurance agent if the stockholders of such corporation are not residents of the State of New Mexico. We likewise answer this question in the affirmative.

A corporation is defined in Black's Law Dictionary, 3rd ed., p. 438, as follows:

"CORPORATION. An artificial person or legal entity created by or under the authority of the laws of a state or nation, composed, in some rare instances, of a single person and his successors, being the incumbents of a particular office, but ordinarily consisting of an association of numerous individuals, who subsist as a body politic under a special denomination, which is regarded in law as having a personality and existence distinct from that of its several members, and which is, by the same authority, vested with the capacity of continuous succession, irrespective of changes in its membership, either in perpetuity or for a limited term of years, and of acting as a unit or single individual in matters relating to the common purpose of the association, within the scope of the powers and authorities conferred upon such bodies by law. (Citations omitted)."

From the above definition, it is apparent that a corporation, being a distinct and separate legal entity, may have a residence separate and apart from that of its stockholders. As such, we conclude that a corporation organized and chartered under the laws of this state, and whose principal place of business is located within the state, meets all the residence requirements found in § 58-5-22.1, *supra*, and may, therefore, be licensed to conduct the business of an insurance agent provided other applicable requirements of the act are met.

In the case of a partnership, the question becomes more difficult. The authorities are in conflict as to whether a partnership is a legal entity separate and distinct from the individuals who compose it. In perhaps the greater number of jurisdictions, the courts have held that a partnership is not a legal entity distinct from the individuals composing it while in some jurisdictions a partnership is regarded as an entity separate and apart from its members. See 68 C.J.S., Partnership, § 67, for citation of authority to this effect.

Thus, in accordance with the view that a partnership is not an entity distinct from the members composing it, it has been held that a partnership can acquire no domicile or residence separate and distinct from that of the partners composing it. In accord with this statement is the following language found in the case of **in Re Morrison's Estate**, 343 Pa. 157, 22 A. 2d 729 (1941):

". . . We deem it to be the law in Pennsylvania and the approved opinion in most other jurisdictions that a partnership is not recognized as an entity like a corporation, that it is not a legal entity having as such a domicile or residence separate and distinct from that of the individuals who compose it"

See also **Byers v. Schlupe, et al.**, 51 Ohio 300, 38 N.E. 117 (1894); **McElhiney v. Belsky**, 165 Pa. Super. 546, 69 A. 2d 178 (1949); and **MacKenzie v. Climax Industries**, 73 N.Y.S. 2d 504 (1947).

The Uniform Partnership Act, which has been adopted in New Mexico and is compiled as §§ 66-1-1 through 66-1-43, N.M.S.A., 1953 Compilation, has adopted the theory that a partnership is not a legal entity separate and distinct from its membership except for such purposes as keeping partnership accounts, marshalling assets, and conveyancing. **Thomas v. Industrial Commission**, 243 Wisc. 231, 10 N.W. 2d 206 (1943); **In Re Morrison's Estate**, supra; **McElhinney v. Belsky**, supra; and Partners and Partnerships, Law and Taxation, Barrett and Seago, Chapter 3, § 1.2.

We are thus of the opinion that under New Mexico law, a partnership may not have a residence separate and distinct from that of its partners. It follows that if all the partners of a partnership organized under New Mexico law and doing business within this state, reside without the state, such partnership cannot qualify for an agent's license to conduct an insurance business in New Mexico. If, however, one or more of the partners reside within the state then it is our belief, and you are so advised, that such a partnership meets all the residence requirements found in § 58-5-22.1 supra. In reaching such a conclusion, this office can only analogize to those cases in which for venue purposes, the residence of one or more of the partners of a partnership was held to be the residence of the partnership. See **MacKenzie v. Climax Industries**, supra, wherein are cited numerous authorities to this effect. This analogy must be made in view of the apparent absence of any court decision on this precise question. However, we feel the analogy made is a proper one. A contrary holding would in some instances lead to a ridiculous result. For example, it would make it impossible for a partnership whose membership did not all reside within the same state to ever acquire a residence. In the opinion of this office, such is not and cannot be the law.