

Opinion No. 62-44

March 16, 1962

BY: OPINION OF EARL E. HARTLEY, Attorney General Oliver E Payne, Assistant Attorney General

TO: Mr. Keith E. Moore, State Bank Examiner, State Banking Department, Santa Fe, New Mexico

QUESTION

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May a licensee under the Small Loan Act sell life, accident, and health insurance after a loan has been fully processed and closed?

CONCLUSION

Yes, under the facts as related.

OPINION

ANALYSIS

The legislative enactment which must be examined in order to answer your inquiry is Section 48-17-43 (E), N.M.S.A., 1953 Compilation. The sub-section in question provides as follows:

"The licensee shall not require the purchasing of insurance from the licensee as a condition precedent to the making of the loan and shall not decline adequate existing insurance where such existing insurance is provided by an insurance company duly licensed by this state. If a borrower procures insurance by or through a licensee, the licensee shall deliver to the borrower or if there are two or more borrowers to one of them within fifteen days after the making of the loan, an executed copy of the insurance policy or certificate of insurance. The provisions of subsections D and E of this section shall not be construed to amend the statutes of this state relating to insurance."

Under the facts as related, the small loan licensee (who is also licensed by the State Insurance Commissioners) proposes to sell the life, accident and health insurance after the loan has been fully processed and closed. The insurance would be added to the account and would be paid at the end of the account period. No interest would be charged as a result of the add-on, and there would be no increase in the monthly payment of the customer. See Section 48-17-43 (D), N.M.S.A., 1953 Compilation (P.S.).

The primary purpose of the above-quoted statutory provision is obviously to prevent a small loan licensee from making the purchase of insurance from it a condition precedent to the approval of a requested loan. Since the loan will be processed and closed prior to any sale of insurance, it cannot be said that the licensee is making approval of the loan contingent upon the purchase of insurance.

Section 48-17-43, supra, does contemplate that if the conditions set forth therein are complied with that some small loan licensees may sell insurance. So long as the method of operation is as outlined in your opinion request, there is no prohibition against the licensee selling life, health and accident insurance provided he is also properly licensed by the State Insurance Commissioner.