

## Opinion No. 63-16

March 8, 1963

**BY:** OPINION of EARL E. HARTLEY, Attorney General

**TO:** R. F. Apodaca Superintendent of Insurance Santa Fe, New Mexico

### QUESTION

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As a prerequisite to being licensed as a non-resident broker under Sec. 58-5-25, N.M.S.A., 1953, does a foreign corporation have to be admitted to do business in New Mexico?

#### CONCLUSION

No.

### OPINION

#### {\*36} ANALYSIS

The answer to your question is found by reading, in combination, various specific statutory provisions. The basic provision is Sec. 58-5-25, N.M.S.A., 1953, which says:

"58-5-25. DEFINING A NONRESIDENT BROKER. -- A nonresident broker shall be defined as a person, partnership or corporation maintaining his bona fide continuous residence and chief place of business within the continental limits of the United States, but not within the state of New Mexico, and **engage** (engaged) **in the business of insurance outside of the state of New Mexico, and in the employ of any person, partnership or corporation desiring to purchase any form of insurance** from an agent of an insurance company or {\*37} companies licensed to transact business in the state of New Mexico, and who receives his remuneration in whole or in part from the agent of the insurance company from whom the insurance is purchased. (emphasis supplied)

By definition, a non-resident broker is **not** engaged in insurance business in New Mexico. Also by definition, he is the representative of the insured or one who seeks to be insured and not of an insurer.

The requirements of licensing for a foreign corporation and the necessity of such a company filing its charter or articles with the superintendent apply to insurance companies who "transact any insurance business in this state".

See Sections 58-5-3, 58-5-5, and 58-5-6, N.M.S.A., 1953. The admission of a foreign insurance corporation is expressly excepted from the general incorporation laws, Section 51-10-4, N.M.S.A., 1953, and is governed instead by the insurance laws.

It follows that if a corporation is in fact a non-resident broker and thereby not engaged in insurance business in this state it does not have to comply with the laws relating to insurance companies engaging in business in this state. To conclude otherwise would lead to a nonsensical state of the law in the case of a corporation. If a foreign corporation brokering insurance were considered as transacting insurance business in this state and required to license accordingly it would no longer fall within the definition of a non-resident broker. There then could be no non-resident broker who is a corporation.

The non-resident broker is by no means unregulated. He must be licensed, Section 58-5-1, N.M.S.A., 1953, and application for the license is made in a manner provided by you, Section 58-5-26, N.M.S.A., 1953. If the broker does not comply with New Mexico insurance laws or the interests of the public are not served by him, the license can be revoked. Section 58-5-30, N.M.S.A., 1953. We believe the legislature has provided adequate regulation of the non-resident broker separate from regulation of admitted foreign insurance companies. By so doing, it has added weight to our conclusion that where a corporation seeks a license as a non-resident broker it need not comply with requirements relating to admission to engage in insurance business.

By: J. E. Gallegos

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