

Opinion No. 68-43

April 26, 1968

BY: OPINION OF BOSTON E. WITT, Attorney General

TO: Mr. R. F. Apodaca Superintendent of Insurance Department of Insurance State Capitol Santa Fe, New Mexico

QUESTIONS

Under changes in the laws of this state pertaining to Corporations, Laws 1967, Chapters 81 and 87, is it now possible for foreign insurance companies to invest moneys in this state without being required to obtain licenses?

CONCLUSION

Yes.

OPINION

{*75} ANALYSIS

Prior to the enactment of the Laws of 1967, Chapters 81 and 87, our statutes contained the following provision as Section 51-10-4(B):

"Exception to Admission Requirements. Any foreign corporation or foreign bank, without being admitted to do business in this state, may loan money in this state, only on real estate mortgages, trust deeds and notes in connection therewith, and take, acquire, hold and enforce such notes, mortgages or trust deeds given to represent or secure money so loaned or for other lawful consideration, and all such notes, mortgages or trust deeds which shall be taken, acquired or held by any such foreign corporation or foreign bank shall be as enforceable as though it were an individual, including the right to acquire the mortgaged property upon foreclosure, or in virtue of the provisions of the mortgage or trust deed, and to dispose of the same; Provided, that such activity by such corporation or bank shall not constitute "doing business" under subsection (a). above; and further Provided, that any such corporation or bank shall first file with the secretary of state a statement signed by its president, secretary, treasurer or general manager that it constitutes the secretary of state its attorney for the service of process, including herein the address of its principal place of business; it shall be the duty of the secretary of state upon such service of process to forthwith forward all such documents by registered mail to the principal place of business of said corporation or bank; Provided, that nothing herein contained shall be construed as authorizing any such foreign corporation or bank to transact the business of a bank or trust company in this state."

Under this provision foreign insurance corporations were permitted to loan money for certain purposes in this state without being required to meet the requirements of the insurance laws of the state, Section 58-1-1, et seq. N.M.S.A., 1953 Compilation, or qualifying to do business in the state under the general corporation laws so long as they did not engage in the insurance business. The question is now asked whether they may continue to so act under our new laws.

Large portions of our general corporations law were repealed by enactment of our Business Corporations {*76} Act in the 1967 legislative session. Laws 1967, Chapter 81. The provisions of the Business Corporations Act clearly have no application to foreign insurance corporations. Sections 51-24-2(B) and 51-24-3, N.M.S.A., 1953 Compilation (P.S.). Therefore, there is no authority within this act to continue as in the past, without licensing.

In that same session of the legislature, Laws 1967, Chapter 87 was passed in which there was enacted a new Section 48-23-1, N.M.S.A., 1953 Compilation (P.S.) which provides as follows:

"Any foreign corporation or foreign bank, without being admitted to do business in this state, may loan money in this state only on real estate mortgages, deeds of trust and notes and enforce the notes, mortgages or deeds of trust given to represent or secure money so loaned or for other lawful consideration. All such notes, mortgages or deeds of trust taken, acquired or held are enforceable as though the foreign corporation or foreign bank were an individual, including the right to acquire the mortgaged property upon foreclosure or under other provisions of the mortgage or deed of trust and to dispose of the same. Any such corporation or bank except national banks shall first file with the secretary of state a statement signed by its president, secretary, treasurer or general manager that it constitutes the secretary of state its agent for the service of process for cases limited to, and arising out of, such financial transactions, including therein the address of its principal place of business. Upon such service of process, the secretary of state shall forthwith forward all documents by registered or certified mail to the principal place of business of the corporation or bank. Nothing in this section authorizes any such corporation or bank to transact the business of a bank or trust company in this state."

It is our opinion that the provisions of this act contain the authority for all foreign corporations, which would include foreign insurance corporations, to do business of the nature described without being licensed under the laws of this state. Foreign insurance corporations acting as described there need not comply with the provisions of our insurance laws requiring licensing.

By: Miles E. Flint

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