

## **Opinion No. 69-97**

August 15, 1969

**BY:** OPINION OF JAMES A. MALONEY, Attorney General Mark B. Thompson, III,  
Assistant Attorney General

**TO:** Mr. R. F. Apodaca, Superintendent of Insurance, State Corporation Commission,  
P.E.R.A. Building, Santa Fe, New Mexico 87501

### **QUESTIONS**

#### QUESTIONS

Are persons selling securities of insurance companies subject to the licensing and exclusive regulation of the Superintendent of Insurance in view of the repeal of Laws 1963, ch. 105, § 1?

#### CONCLUSION

Yes.

### **OPINION**

#### {\*154} ANALYSIS

Laws 1963, ch. 105, § 1, codified as Section 48-18-35, N.M.S.A., 1953 Comp., provided:

"The provisions of Sections 48-18-16 through 48-18-34, New Mexico Statutes Annotated, 1953 Compilation, shall not apply to securities or the sale of securities presently or previously licensed by the Superintendent of Insurance."

The reference to Sections 48-18-16, etc., was to the securities act of New Mexico, administered by the Commissioner of Securities.

The above quoted law was repealed by N.M. Laws 1969, ch. 261, § 8 and the following provision inserted as a new Section 48-18-35, N.M.S.A., 1953 Comp.:

"Any person selling securities is under the jurisdiction and supervision of the securities administrator."

The term "securities administrator" is not defined but is probably intended as a reference to the Commissioner of Securities. See Section 48-18-17 (A), N.M.S.A., 1953 Comp., as amended by Laws 1969, ch. 261, § 1. The term "securities" is defined in Section 48-18-17 (H) as:

"H. 'security' means any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation, certificate of interest in oil, gas or other mineral rights, collateral trust certificate, preorganization certificate or subscription, transferable shares, investment contract, voting-trust certificate or beneficial interest in title to property, profits or earnings, or any other instrument commonly known as a security, including any guarantee of, temporary or interim certificate of interest or participation in, or warrant or right to subscribe to, convert into or purchase any of these. "Certificate of interest in oil, gas or other mineral rights" does not mean oil royalties."

The Securities Act provided that it is a felony to sell any securities in this State, except exempt securities, which are not registered. Section 48-18-19, N.M.S.A., 1953 Compilation. Included among the securities exempted from registration are:

"Any security issued by and representing an interest in, or a debt of, or guaranteed by: . . . any insurance company organized under the laws of this state or authorized to do business in this state. . . ."

Section 48-18-21 C (3), N.M.S.A., 1953 Comp., Laws 1969, ch. 261, § 3. It is clear, therefore that a person selling exempt securities is not actually selling securities within the meaning of the New Section 48-18-35 which provides {*\*155*} that a person selling securities is under the jurisdiction of the Securities Commissioner.

The Securities Act also provides for the registration of salesmen and states that:

"No salesman shall offer for sale or sell any securities within or from this state unless he is registered as a salesman under Sections 48-18-20.6 through 48-18-20.8."

Section 48-18-20.5, N.M.S.A., 1953 Compilation.

The term "salesman" as defined in the Securities Act "does not include an individual who represents an issuer in effecting a transaction in securities exempted . . ." Section 48-18-17 (G), N.M.S.A., 1953 Comp., Laws 1969, ch. 261, § 1. Therefore, the Securities Act does not require the registration of persons who sell exempt securities.

Turning to the statutes administered by the Superintendent of Insurance we find that:

"No person, firm, association, or corporation shall, except as provided in the Sale of Insurance Securities Act, sell or propose to sell to the public in this state, any note, stock, treasury stock, share, bond, debenture, evidence of indebtedness, certificate of interest or participation, voting trust certificate, certificate of deposit for a security, reorganization certificate of subscription, investment contract (whether or not included as a provision in the policy of insurance), or other security of any insurance company, whether or not authorized to do business in this state, unless licensed so to do pursuant to the provisions of the Sale of Insurance Securities Act."

Section 58-22-2, N.M.S.A., 1953 Compilation.

If one compares the items enumerated in Section 58-22-2 with the definition of security from Section 48-18-17 (h), supra, it can be readily seen that the legislature had in mind that the Superintendent of Insurance would be regulating the sale of a special type of security. The legislature went further and stated that:

"The Superintendent of Insurance may make official regulations to effectuate the purpose of the Sale of Insurance Securities Act, and shall have exclusive jurisdiction to regulate the sales described in this section."

Sections 58-22-7, N.M.S.A., 1953 Compilation.

We conclude, therefore, that an analysis of the Securities Act, Sections 48-18-17, et seq., N.M.S.A., 1953 Compilation, and the Sale of Insurance Securities Act, Sections 58-22-1, et seq., must lead one to the conclusion that the legislature intended for the Superintendent of Insurance to have complete regulation over the sale of insurance company securities. The Sale of Insurance Security Act covers more than just securities exempt under the Securities Act because it covers securities of all insurance companies whether or not authorized to do any business of insurance in this state. Compare § 58-22-3, N.M.S.A., 1953 Comp. and § 48-18-21 (C) (3).

This conclusion was reached by the Attorney General in 1962 prior to the enactment of Laws 1963, ch. 105, § 1. Opinion of the Attorney General, No. 62-57, dated April 10, 1962 held that it was not necessary for persons licensed under the Sale of Insurance Securities Act to be registered under the securities law if he wishes to sell insurance company securities based on the fact that the insurance securities law was a specific law which prevails over the general securities law. As noted, the Opinion reached its conclusion without the benefit of Laws 1963, ch. 105, § 1. That law was apparently enacted by the legislature to {\*156} solidify the position taken by the Attorney General, but we fail to see how its subsequent repeal in any way alters the Opinion of 1962 or the obvious intent of the legislature expressed in both the Securities Act and Sale of Insurance Securities Act.