

## Opinion No. 12-870

February 2, 1912

**BY:** FRANK W. CLANCY, Attorney General

**TO:** State Corporation Commission, Santa Fe, New Mexico.

### **INSURANCE.**

As to duties of Superintendent of Insurance and State Corporation Commission.

### **OPINION**

{\*10} Your letter of the 31st ult. was duly received and I have given careful consideration to the effect of the provisions of Section 6 of Article XI of the Constitution upon the Department of Insurance and the respective duties of the Superintendent and the Commission as to matters heretofore under the control of the Superintendent of Insurance. It is a rather perplexing and complicated matter to discuss, and I will endeavor, as briefly as possible, to state my conclusions as to the various portions of the general insurance law which may be in any way affected by the said provisions of the Constitution. For this purpose, I will use and refer to the compilation of insurance laws, in pamphlet form, made by the Superintendent of Insurance in 1909.

Sections 1 to 7, both inclusive, of the act of 1905, beginning on page 4 of the pamphlet, require no consideration in this connection.

Section 8 contains some matters which are left with the Superintendent, and others which are transferred to the commission. That portion making it the duty of the Superintendent to issue certificates of authority to insurance companies, and such other certificates as are required by law in the organization of insurance companies, and the transaction of the business of insurance, and that portion which requires him to furnish blanks to comply with the law, must be taken {\*11} as prescribing the present duty of the commission. The remainder of this section is not affected by the constitutional provision.

Section 9 of this act was amended in 1909 and appears on pages 18 to 20 of the pamphlet. The duties and powers given to the superintendent by this section do not appear to be affected by the constitutional provision and remain with that officer, but attention should be called to the proviso beginning near the end of page 19 as to the license of a company having been revoked by the superintendent, as I am of opinion that the revocation of licenses must be considered as vested in the commission which has the power to grant licenses. It would be an absurdity to hold that the power to issue should be vested in the commission and the power to revoke in the superintendent, although it is undoubtedly true that the inspection and examination of companies by the superintendent, and the result thereof, would form the proper foundation for a revocation of the license by the commission.

Section 10, which appears on page 6 of the pamphlet, authorizes the superintendent, when he deems it to the interest of the public, to publish the result of any examination or investigation, and this power remains with him. The remainder of the section which authorizes him to revoke authority granted to a company is transferred to the commission for the reasons stated in the last paragraph relating to Section 9.

Section 11 of the Act was also amended in 1909, and appears on page 20 of the pamphlet. That portion of this section requiring payments of fees to the superintendent of insurance, with the exception of a fee for a copy of any paper filed in his office and for affixing the seal of his office and certifying any paper, must be considered as now requiring such payments to be made to the corporation commission. The remainder of the section as to the annual payment of two per centum on the gross amount of premiums received is not affected by the constitutional provision, and such payments are to be made to the Superintendent of Insurance.

Sections 12 and 13, appearing on pages 6 and 7, are in no way affected by the constitutional provision.

Section 14, also amended in 1909, will be found on page 20 of the pamphlet, and relates to matters entirely under control of the commission.

Section 15, on page 7, is not affected by the constitutional provision, except so far as it refers to persons being licensed by the Superintendent of Insurance, and in this particular must now be considered as though the person to be licensed must be licensed by the corporation commission.

Section 16, also amended in 1909, begins on page 20 of the pamphlet. All of the first paragraph of this section relates to matters transferred to the charge of the commission. The two other paragraphs, on pages 21 and 22, are not affected by the constitutional provision.

Section 17 of the act relates entirely to proceedings to be had with the commission.

Section 18, on page 8, relates to matters entirely under the control of the commission.

Section 19 was also amended in 1909 and appears on page 22 of the pamphlet. It remains unaffected, but must be observed by <sup>{\*12}</sup> the commission as a guide on the subject of permitting insurance companies to do business in New Mexico.

The first sentence of section 20, beginning on page 8, imposes a duty on the Superintendent of Insurance as to examination of the form of policies, and this duty still remains with him. The remainder of the section as to the Superintendent's refusal to authorize companies to do business when the form of the policy is not satisfactory, imposes a duty which must be considered as transferred to the corporation commission, although the commission can properly call upon the Superintendent of Insurance for a statement as to form of policies as a basis for its action.

Section 21, on page 9, is the general section making it the duty of the Superintendent to revoke the authority of a company in case of any violation of the act, and for reasons heretofore stated, this must be considered as now the duty of the corporation commission.

Sections 22, 23 and 24, on pages 9 and 10, do not appear to be affected by the provision in the constitution.

Section 25, on page 10, is not changed, except so far as it is implied that annual statements must be made, and the fee for filing the same paid, to the Superintendent, as those reports must be made to the Corporation Commission and the fee must be paid to the Commission.

This brings us to the close of all of the act of 1905, and its amendments in 1909, which required consideration, but there are some other provisions in the act of 1909 which require attention.

The power of suspending a certificate of authority, specified in Section 11 on page 24 of the pamphlet, must be considered as transferred to the Commission.

The last paragraph of Section 19 of this act, which begins on page 27 and ends on page 28, imposes a duty on the Superintendent as to revoking a certificate of authority, and this must be considered as transferred to the Commission.

Section 20, on page 28, is in no way affected, except as to the duty imposed on the Superintendent in the last sentence thereof, which is transferred to the Commission.

Section 22, on page 29, refers to matter which may be required by the Superintendent of Insurance in annual reports of companies, and as the matter of reports is entirely in the hands of the Commission, this requirement is hereafter to be by the Commission instead of the Superintendent.

Sections 26, 27 and 29, on pages 32 and 33, may be considered together. They relate practically to the incorporation of domestic companies, and the State Commission is the authority "through which shall be issued all charters for domestic corporations." Therefore, the matters contained in these sections are transferred to the Commission.

The first part of Section 32, which requires the Superintendent to make an examination of companies for certain purposes, is not affected by the constitution, but it is still his duty to make such examinations; but the latter part of the act, which authorizes him to give permission for companies to commence business, declares a duty which now belongs to the Corporation Commission.

{\*13} Section 35 on page 35, relates to matters falling within the power of the Corporation Commission.

Sections 39, 40, 42 and 43, on pages 36 to 38, relate to matters now belonging to the Commission, while Section 41 is not affected by the constitutional provision.

I suggest as a matter of convenience on your part, that you take copies of the pamphlet referred to and on the margin make annotations to correspond with what I have hereinbefore stated as briefly as I possibly could. If I had attempted to repeat the substance of each of the sections considered, you would have had something equivalent to a fair sized book to read without being more intelligible than I believe I have made it.