

## Opinion No. 12-904

June 18, 1912

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

**TO:** State Corporation Commission, Santa Fe, N. M.

### **INSURANCE.**

Insurance Company organized under Ch. 48, Laws of 1909, need not specify agent upon whom process may be served.

### **OPINION**

{\*42} I have your letter of even date herewith enclosing the articles of incorporation of the Interstate Casualty Company and calling attention to the fact that these articles do not recite the name and address of the statutory agent, as required by Section 49, Chapter 79, of the Laws of 1905. You say that while it is true that these articles are drawn under Section 26 of Chapter 48 of the Laws of 1909, there does not seem to be any exception as to class of corporations in the law first above referred to, and therefore you are of opinion that the articles should specify the agent upon whom process may be served.

If it could be held that the corporation act of 1905 covered the formation of insurance companies, which is doubtful to say the least, the later act of 1909, fully covering all that must be done to incorporate an insurance company, so far as it departed from the requirements of the statute of 1905, abrogated and superseded that general statute. It is the last expression of the legislative will and fully covering the subject of the incorporation of insurance companies, operated to repeal any other legislation on the subject. If the certificate of incorporation which you send with your letter, in other respects fully complies with the requirements of the act of 1909, I am of opinion that a failure to comply with Section 49 of the act of 1905 is immaterial, and that the certificate should be approved by you, the Corporation Commission having been substituted by the Constitution for the Superintendent of Insurance.

In view of the facts above stated about the statutes, it seems immaterial to consider whether the act of 1905 had any effect upon the formation of insurance companies which was provided for by sections 2095 to 2116 of the Compiled Laws of 1897, but I am of opinion that it had no such effect. Those sections of the Compiled Laws should be considered as in the nature of a special statute referring to insurance companies alone, prescribing the method of creating such corporations. No distinct mention is made in the act of 1905 of insurance companies, nor is there any express repeal of the sections of the Compiled Laws above referred to; and in addition to this, by section 131 of that act, its provisions are declared to be applicable to corporations formed under four different acts, neither of which extends {\*43} to insurance companies. This may well be

considered as an intention on the part of the legislature not to have the provisions of the new act extend to insurance companies, nor in any way to affect their incorporation, control or management.

Another indication of the correctness of my view is to be found in section 29 of chapter 5 of the laws of 1905, enacted at the same session as the general corporation law, which section provides that insurance companies shall within thirty days after the completion of their organization file a certified copy of their articles of incorporation with the Superintendent of Insurance, leaving undisturbed the earlier method of incorporation and organization.

I return the certificate of incorporation, as requested.