

Opinion No. 13-1042

May 15, 1913

BY: FRANK W. CLANCY, Attorney General

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

INSURANCE.

Insurance policies must be made, written or placed through an agent resident of New Mexico.

OPINION

{*207} I have had on my desk for some time your letter of April 23 relative to the construction of Chapter 66 of the Laws of 1913, and I have also your letter of the sixth instant on the same subject, but presenting a somewhat different question in connection therewith.

Your first letter is on the subject of the effect upon certain railroad insurance and re-insurance, as to which you enclose a letter from Mr. F. G. White, General Agent of the Fireman's Fund Insurance Company, with another addressed to him by the vice-president of the same company. The letter from the vice-president desires to ascertain what effect this statute will have on their railroad and syndicate operations, stating that there is no question that Frank & Du Bois, the New York managers of the railroad syndicate to which his company belongs, occasionally accept insurance under schedule for large railroads running through New Mexico, and he states correctly, as I believe, that under this new law if a Fireman's Fund policy were issued direct to the assured it would have to be countersigned by a New Mexico agent, and further that the local agent could not pay a commission to Frank & Du Bois or to anyone else. The statute appears to be quite clear in its declaration that it shall be unlawful for any insurance company authorized to do business in New Mexico or any agent or representative of such company, to pay directly or indirectly, any fee or other emolument to any person, firm or corporation {*208} not a resident of New Mexico for obtaining, placing or writing of any policy of insurance covering property in New Mexico, and any such company may be punished for a violation by suspension of its certificate of authority to do business in the state for not less than one year. Of course, the legislature could have no control over insurance companies except those authorized to do business here, and it may be that other insurance companies might by contract insure property in New Mexico notwithstanding the prohibition in the first sentence of the section referred to, which makes it unlawful for any foreign insurance company to make, write or place any insurance policy in this state unless it is made, written or placed through its agent or agents residents of the state. It would seem, however, that if a foreign insurance company did insure lives or property in New Mexico by contracts made outside of the

state, the state courts would not be open either to the company or to the insured, if the contract were made in disregard of this statute.

It seems clear, however, that the legislative intent was as to insurance covering property, at least to compel the doing of business only through local agents, and to prevent any agent or other person not a resident of New Mexico from any participation in the fees or commissions for obtaining the insurance.

In your second letter above referred to you enclose another from Mr. E. MacMillen, General Agent at Phoenix, Arizona, of the Columbian National Life Insurance Company, in which he says that a local agent who sometimes does work in New Mexico, has been notified by his home office that our legislature has passed a law forbidding insurance agents who are not residents of the state soliciting therein. The act in question does not go quite so far as to prevent non-residents from soliciting insurance for their companies, but merely makes it unlawful to issue any insurance policy unless it is made through a regular resident agent.

In your letter, however, you call attention to a matter which is not mentioned by Mr. MacMillen and as to which there appears to be some inconsistency in the act itself, sufficient to raise a doubt as to whether as drawn the statute fully expresses what was probably the intention of the legislature. The first sentence of the section is as follows:

"It shall be unlawful for any foreign insurance company to make, write or place or cause to be made, written or placed in this state any insurance policy or contract of any kind to provide against any contingency which may be insured or guaranteed against, unless the same shall be made, written or placed through its duly and regularly-appointed and authorized agent or agents, residents of this state."

The foregoing language clearly and strongly covers all kinds of foreign insurance companies, whether their business be that of life insurance, fire insurance or any other possible form of insurance which may be devised, but it merely makes it unlawful in effect to do business in New Mexico except through local agents. It does not, however, like the next sentence, make it unlawful for such insurance company or its agents to pay any fee or commission to persons who are not residents. The next sentence of the statute is as follows:

"It shall be unlawful for any insurance company authorized {*209} to do business in New Mexico, its representative, manager, general agent, special agent, local agent, broker or solicitor, to pay or promise to pay, either directly or indirectly, any fee, brokerage or other emolument of any nature to any person, firm or corporation not a resident of the state of New Mexico, for the obtaining, placing or writing of any policy or policies of insurance covering property in New Mexico."

It will be noticed that this second sentence is limited to "policies of insurance covering property in New Mexico," while the first sentence would extend to life insurance as well as property insurance. It seems, therefore, that all kinds of insurance business must be

done through local agents, and that it is unlawful as to property insurance only to pay any compensation on account of such business done in New Mexico to persons who are not residents, thus leaving life insurance companies unaffected by this latter prohibition.

I can see no escape from the conclusion that the language of the statute creates a clear distinction as to the payment of compensation between life and property insurance companies, although both kinds are put on the same footing as to the necessity of doing business through local agents.

I return herewith the letters which you enclosed with your letters to me.