

## Opinion No. 18-2094

April 4, 1918

**BY:** HARRY L. PATTON, Attorney General

**TO:** Honorable A. B. McMillen, Attorney at Law, Albuquerque, New Mexico.

Construction of Section 2852, Code of 1915, Relative to the Value of Land in Which Investments may be Made by Insurance Companies.

### OPINION

I have your letter asking for a construction of a provision found in Section 2852 of the Codification of 1915, relative to insurance. The provision referred to is as follows:

"It shall be unlawful for any insurance company \* \* \* to invest its capital stock or other funds accumulated in the course of its business other than \* \* \* in bonds and mortgages or unincumbered and improved real estate, worth inclusive of fire insurance on any building thereon double the sum loaned."

In your letter you say:

"It has been suggested on the one hand that the clause in question means that the value of the improved real estate, plus the fire insurance, should be double the sum loaned, and on the other hand, it has been contended that the value of the real estate, without the improvements, plus the amount of fire insurance, should be equivalent to double the sum loaned."

You further say that you do not agree with either contention, and that it has been the custom of your clients, the Occidental Life Insurance Company, to treat this section as if it read as follows:

"Mortgages on unincumbered and improved real estate worth exclusive of fire insurance on any building thereon, double the sum loaned."

The construction of this provision calls for a determination of the intent of the legislature enacting the statute. This is a delicate task, for in most instances the determination of legislative intent is no more than a mere conjecture. Evidently the legislature, by the use of the words "fire insurance," attached some importance to the insurance of improvements upon real estate, upon which insurance companies were to take mortgages. It is probable that the legislature considered improvements upon real estate, upon which there was no insurance, as hazardous security for a loan. In case of loss by fire upon uninsured property, the security might be considerably impaired. The legislature evidently intended that the value of the improvements should be measured by the amount of insurance carried thereon; or, in other words, that the amount of

insurance should stand in lieu of the value of the improvements. I agree with you that the adding of the fire insurance to the value of the real estate and the improvements, would not in any manner represent the value of the property, and would not be a fair basis upon which a double valuation could be determined. On the other hand, adding the amount of insurance to the value of the real estate, exclusive of improvements, would accomplish what the legislature, in my opinion, contemplated. This would be an incentive to insuring the property, and would ordinarily be a guarantee that the property was worth the value of the real estate, less improvements, plus the amount of insurance. I note your comment that such construction does violence to the language of the statute, but I do not think that it does as much violence to the language of the statute as substituting the word "exclusive" for the word "inclusive."

I will admit that this question is difficult of solution, and that it is hard to determine what the legislature intended, and I may be wrong in the conclusion reached, but such is my judgment and I believe that such construction does less violence to the language of the statute than any which has been suggested.