

Opinion No. 19-2355

September 16, 1919

BY: HARRY S. BOWMAN, Assistant Attorney General

TO: Hon. Remigio Mirabal, Superintendent of Insurance, Santa Fe, New Mexico.

Contract Bonds Must Be Written By Resident Agents.

OPINION

Referring to your oral inquiries and to message of H. C. Willcox, General Counsel for the American Surety Company, to F. E. Brisbane in regard to contract bonds written by non-resident agents for contract work within this State we desire to advise you as follows:

Section 2820 of the Code of 1915 by its clear language specifically prohibits the making, writing, placing, or causing to be made, written or placed in this State of 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 a regularly appointed and authorized agent, a resident of this State.

We are certain that this section requires no interpretation or construction as its language is plain and leaves no opportunity for any other construction than that which has been placed upon it by this office at various times.

Former Attorney General Frank W. Clancy, in an opinion rendered July 5, 1913, to the State Corporation Commission, held that it is not necessary that the policy or contract be signed in the State or by an agent resident within this State but that it would suffice if the contract was made, written, or placed through such agent. So far as I know there has been no opinion from this office which in any way modifies the opinion mentioned. It is the opinion of the writer that bonds and contracts of insurance must be either made, written or placed by a resident agent but it is not necessary that the contract be signed by such agent.

It would appear from the language used in the telegram above mentioned that Mr. Willcox does not understand the facts in the cases which you have submitted to us or that he misinterprets Mr. Clancy's opinion in this connection.

There is no alternative left to this office, in view of the section of the law above mentioned, but to reject any bond which the office has knowledge has not either been written, made or placed by or with a resident agent of the State.

In regard to the inquiry concerning the procedure to be adopted by your office in connection with agents or companies who do not comply with the law regarding the

formal authorization of such agents or companies to solicit business in this State we would refer you to Sec. 2814, Code 1915, wherein it is provided that every company transacting business in this state shall be required to procure annually for the use of its agents and solicitors copies of the certificate of authority authorizing it to do such business and that any person soliciting business and any company authorized to transact business in this State without first procuring such certificate shall be penalized as provided for in the Act.

Under this provision both the individual soliciting the insurance and the company for whom he solicits the business are liable and may be punished.

The inquiries from your office, we understand, had arisen by reason of a bond written by the Crowell Agency of El Paso in the name of the American Surety Company of New York for the Lee-Moor Contracting Company. The first bond that was submitted to this office bore the signature of the Crowell Agency and was also signed by Francis C. Wilson of this city as Agent. It was apparent that this bond was neither made, written, or placed with a resident agent of the above named company, and for this and other reasons the bond was not approved by this office.

In our opinion there is much doubt regarding the validity of such a bond written, made or placed by or through a non-resident agent, and it is our opinion that the person in the Crowell Agency who wrote the bond and the American Surety Company are liable to the penalty prescribed in section 2814.

We are quite certain that if Mr. Wilcox, General Counsel for the American Surety Company, were conversant with the facts in this case he would agree with us upon the construction of the law and that we are not departing in any respect from the views expressed by Mr. Clancy in his opinion of July 5, 1913.