

## Opinion No. 20-2546

April 15, 1920

**BY:** N. D. MEYER, Assistant Attorney General

**TO:** Remejio Mirabal, Insurance Commissioner, Santa Fe, New Mexico.

Marine Insurance Company May Write Automobile Insurance.

### OPINION

Referring to the letter which you left in our office addressed to your Department by the United States Lloyds, Inc., and the oral questions which you asked in connection therewith, we beg to advise:

According to the charter of the United States Lloyds, Inc. Insurance Company, the same is a marine insurance company and a marine insurance company is defined as being an insurance company which covers all kinds of hazards of transportation. The question presents itself as to whether Lloyds can write insurance upon automobiles when the same are not in transit or in motion under their own power. It is our opinion that this question should be answered in the affirmative. An automobile is a thing which is in its nature movable and used for the purpose of transportation just the same as a vessel. To be stationary or not in motion, is the exception just the same as is the case with vessels. Moreover, Article 3 of the charter of the company under consideration specifically provides that they shall have authority to place insurance upon automobiles whether stationary or being operated under their own power, which shall include all or any of the hazards of fire, explosion, transportation, collision, loss by legal liability for damage to property resulting from the maintenance and use of automobiles, and there does not appear to be any statutory law in our state which would prevent this company from placing insurance upon automobiles in accordance with the authority given them by their charter. Therefore, automobile insurance is marine insurance and a marine insurance company can insure automobiles under the specific provision of our law contained in the first sub-division of Chapter 61 of the Laws of 1917, and said company would not be required to make a deposit of \$ 10,000 as required by Section 2860 of the Code of 1915, because said Section is applicable only to fire insurance companies.

Fire insurance companies are also given authority to cover automobiles by insurance by the provisions of Chapter 61 above cited. However, in their case, they would be required to comply with the provisions of Section 2868 of the Code.

You state that the American Automobile Insurance Company is a company which places insurance exclusively upon automobiles, including loss resulting from injury to persons, and you ask whether or not this company would be required to comply with the provisions of our law requiring a deposit of \$ 10,000, and whether they can write the kind of policy under the laws of our state which they are authorized to write under their

charter. As heretofore stated, insurance upon automobiles, which includes all hazards, is marine and not fire insurance, and since the American Automobile Insurance Company engages in nothing else but writing insurance upon automobiles, they would be considered as a marine insurance company, and not a fire insurance company, and, therefore, would not be required to make a deposit.

In regard to their regular form of policy covering automobile insurance, I advise that under the first sub-division of Chapter 61 of the Session Laws of 1917, they can write insurance upon automobiles including every kind of risk, except that of injury to a person. The reason for this is that under our laws insurance is divided into three classes, and these classes are specified in sub-divisions first, second and third of Chapter 61 of the laws of 1917, and insurance companies are prohibited from issuing policies of insurance for more than the purposes mentioned in each sub-division, and further, that no company that shall have been organized for one of said purposes, shall insure for any other. Insurance covering injury to a person is placed in the third sub-division, and, therefore, any insurance company writing insurance covering automobiles under the first subdivision of Chapter 61, in which sub-division they are given authority to write automobile insurance, could not include liability for injury to persons.

I believe that the foregoing will answer your questions.

20-2546

April 13, 1920

**BY:** HARRY S. BOWMAN, Assistant Attorney General

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

Building and Loan Associations May Amend Articles of Incorporation And Reduce Capital Stock.

### **OPINION**

We have your oral request accompanying a letter from Messrs. Morrow, Merriau & Sadler, of Raton, for an opinion regarding the right of a Building and Loan Association incorporated under the provisions of Chapter 72 of the Laws of 1899, as amended by Chapter 68 of the Laws of 1903, to amend its articles of incorporation by reducing the capital stock and divide such stock into common and preferred in equal proportions.

We find nothing in the statutes which would prevent the filing of such an amendment, but on the contrary, believe that the incorporation laws specifically authorize such action upon the part of the Building and Loan Associations. Section 1014 of the Code, 1915, being a part of the general incorporation act of 1905, in the second subdivision, provides that the provisions of the general incorporation act shall be held to be applicable to corporations incorporated under the provisions of an act for the

incorporation of building and loan associations, approved February 14, 1887, and all acts amendatory and supplementary thereto. The law providing for the incorporation of building and loan associations appears as Sections 522 to 543 of the Code. Section 902 of the Code provides that corporations organized under the article should have power to create one or more kinds of stock, of such classes, with such designations, preferences, voting powers, restrictions or qualifications as shall be stated and expressed in the certificate of incorporation "or in any certificate or amendment thereof, and the power to increase or decrease the stock as in this chapter elsewhere provided shall apply to all or any of the classes of stock."

Section 914 of the Code provides that

"Every corporation organized under this article may change the nature of its business, change its name, increase its capital stock, decrease its capital stock, change the location of its principal office in this State, and make such other amendment, change or alteration as may be desired."

From the foregoing it is apparent that the general incorporation act was extended in its application to corporations created under the provisions of the building and loan association act, and that the general incorporation act provides for the amendment of the articles of incorporation of the corporation wherein the capital is increased or reduced, and the classes of stock are changed.

We, therefore, hold that the amendment suggested by your correspondents is proper and should be approved by you.