

Opinion No. 22-3569

August 30, 1922

BY: HARRY S. BOWMAN, Attorney General

TO: State Bank Examiner, Insurance Department, Santa Fe, New Mexico.

Check Alteration Policy Subject to Insurance Laws.

OPINION

{*174} In reply to your letter of the 24th instant, inclosing a check alteration policy issued by the Fidelity and Casualty Company of New York, and a copy of the United States Fidelity and Guaranty Company Bankers Blanket Forgery and Alteration Policy, and asking whether the form of the policy is a bond or a policy of insurance, I wish to say:

The nature of this policy partakes both of a bond and of an insurance policy. It has elements of both.

In the case of *People ex rel. Kasson v. Rose*, 174 Ill., 310, 51 N.E. 246, 44 L.R.A., 124, it was held that a bond guaranteeing fidelity of persons holding places of trust and the performance of contracts and undertakings, is a kind of insurance; and in the case of *the American Surety Company of New York v. Folk*, 124 Tenn., 139, 135 S.W., 778 and Ann. Cases, 1912 D, 1024, a contract of insurance was defined as "an agreement by which one party for a consideration promises to pay or to do some act of value for insured on the destruction or injury, loss or damage of something in which the insured party has a negotiable interest."

In my opinion the copy of the policy submitted by the Fidelity and Casualty Company of New York is an insurance policy as well as a bond and therefore the company would not be required to comply with the section of the statutes requiring the depositing of securities by surety companies.

The enclosures which accompanied your letter are returned herewith.