

Opinion No. 33-582

April 19, 1933

BY: E. K. NEUMANN, Attorney General

TO: Honorable R. L. Ormsbee, Deputy State Treasurer, Santa Fe, New Mexico.

{*39} Referring to your letter of April 18, 1933, wherein you ask the opinion of this office as to the validity of Section 71-151 of the 1929 Compiled Statutes. You also ask in what position the State Treasurer may be with respect to accepting and becoming responsible for the securities returned by various insurance companies, in compliance with an order of the State Corporation Commission, if said Section 71-151 is valid and in full force and effect. Your inquiry is based upon an order of the State Corporation Commission to various insurance companies to deposit securities which have been heretofore returned in accordance with said Section 71-151.

{*40} The act in question, as to the pertinent part thereof, is as follows after requiring deposits of securities in this state by various classes of insurance companies:

"Provided, that the superintendent of insurance is hereby authorized to return the deposits, hereinbefore provided, to any company which has engaged continuously for ten years in this state in fire and general, bond and general business, or title insurance business. Provided, said company has, for said ten-year period, complied with the laws of this state and with the rules and regulations of the insurance department thereto."

It is difficult for me to see any constitutional objection to said act, and I am of the opinion then that no such objection can be validly made.

On April 10, 1929 the then Attorney General, M. A. Otero, Jr., rendered the following opinion relative to the act in question, to-wit:

"Hon. Emerson Watts,

State Treasurer,

Santa Fe, New Mexico.

Dear Mr. Watts:

"I have your favor of recent date inclosing a copy of Senate Bill No. 104 passed by the regular session of the legislature, an act amending the insurance laws of the State. You state that you would appreciate my official opinion in regard to the legal status of this bill.

"In reply thereto will say that the Act is in all respects legal and your office may proceed, in conjunction with that of the Superintendent of Insurance, to carry out its provisions.

Very truly yours,

M. A. Otero, Jr.,

Attorney General."

At this time we see no reason for departing from Mr. Otero's ruling. Consequently, the act being valid, it is our opinion that the Corporation Commission has no authority at this time to demand the deposit of those securities withdrawn by the insurance companies under the provisions of said act.

If there is no authority for the demand to return such securities, in my opinion, there is no right or duty upon the part of the State Treasurer to accept any of these for deposit and safe keeping which might be returned upon the order of the Commission, except as any individual might accept same, upon his own personal responsibility.