

Opinion No. 39-3299

October 13, 1939

BY: FILO M. SEDILLO, Attorney General

TO: Mr. R. F. Apodaca, Superintendent of Insurance, State Corporation Commission, Santa Fe, New Mexico.

{*113} In response to your letter of October 10, please be informed as follows:

1. An insurance company licensed and classified under Class 2, as a casualty company (Section 7, Chapter 138, New Mexico Session Laws of 1937) may not transact a title guaranty insurance business in this state **under the same license**.

Title guaranty insurance, under our statute is classified as a separate and distinct class of insurance, to-wit: Class 4. See Section 7, Chapter 138, Laws of 1937.

The same section 7 of the statute specifically provides as follows:

"No company shall be authorized to transact any kind or kinds of business other than those enumerated in its respective class."

2. Further, answering your letter, may I state that I find nothing in our statutes prohibiting the same company from qualifying and being licensed to sell both Class 2 and Class 4 insurance.

As a matter of fact, the law contemplates that this be permissible. Section 71-153, New Mexico Statutes, Annotated, 1929 Compilation, referring to Section 71-152 as amended by Section 7 of Chapter 138, {*114} Laws of 1937, expressly provides as follows:

"Separating reserves to companies writing more than one form of insurance. Every company licensed to transact **more than one form of insurance**, as defined in the preceding section, shall maintain separate and distinct reserves for insurance so transacted, and shall keep a separate account of all receipts in respect to each form of insurance, as defined in the preceding section, and of all disbursements in respect to each form of insurance; Provided, however, that nothing in this section shall require the investments of the company applicable to such separate and distinct reserves to be kept separate from any other investments; and further provided, that nothing in this section shall be construed as preventing the company from declaring dividends out of profits of any particular form of insurance, or allocating such profits either in part or in whole to its general surplus."

If, therefore, the same company fully qualifies under both the third and fourth paragraphs of Section 6 of Chapter 138, Laws of 1937, and complies with Section 71-

153, supra, that company may be classified and licensed to transact both forms of insurance, to-wit: Class 2 and Class 4.

FRED J. FEDERICI,

Asst. Atty. Gen.