

**Opinion No. 42-4173**

October 23, 1942

**BY:** EDWARD P. CHASE, Attorney General

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

{\*267} We are in receipt of your letter of October 22, and the enclosed Articles of Incorporation and By Laws of the Mutual Benefit Health and Accident Association of Omaha, Nebraska, which letter is a further inquiry as to whether or not membership fees, as well as premiums, paid to this association are taxable under Chapter 23, Laws of 1939.

In my letter dated October 10, I expressed the opinion that the membership fees in question were premiums and taxable as such under Chapter 23, Laws of 1939 if they were paid as a part of the consideration for a contract of insurance; but, at that time I was unable to determine whether or not these membership fees were paid for that purpose without the further information contained in the Articles of Incorporation and By Laws.

I have now examined the Articles of Incorporation and By Laws of this association, and while neither the Articles of Incorporation or By Laws provide for the collection of membership fees, Article III of the Articles of Incorporation, setting up the powers of this corporation, is as follows:

"The general nature of the business to be transacted by this Association shall be to insure its members against bodily injury or death by accident and against disability resulting from sickness and every insurance pertaining thereto, including quarantine and identification."

Article I of the By Laws provides in part:

"Membership shall begin upon the taking effect of the insurance and shall end on the cancellation or other termination of the insurance."

Thus, as the only power of this {\*268} association is to conduct an insurance business, and as membership in this association is absolutely dependent upon the holding of a contract of insurance, the only purpose for which membership fees could be paid is as part of the consideration for a contract of insurance.

It is, therefore, my opinion that membership fees paid to the Mutual Benefit Health and Accident Association will be deemed premiums within the contemplation of Chapter 23, Laws of 1939, and taxable thereunder as such.

By ROBERT W. WARD,

Asst. Atty. General