

Opinion No. 44-4504

April 20, 1944

BY: EDWARD P. CHASE, Attorney General

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

We are in receipt of your letter of April 19, 1944, in which you ask our opinion as to whether Section 3, Chapter 129 of the laws of 1943 should apply to corporations which were doing business during the year 1943, or whether this act applies only to corporations licensed in 1944.

I see nothing in this section to indicate an intention on the part of the Legislature to postpone the operation of this act after its effective date. This act provides, in part, that all such companies shall deposit in some bank or banks 65% of the cash receipts from premiums received of policyholders. This act then provides for the payment of losses out of this fund and for the distribution of any surplus above the amount required to pay losses "each year". It further provides that "the contributed surplus at the end of any given year shall be treated as a liability before any dividend is declared out of the policyholders' surplus for that year". It is seen that the mandate of the Legislature that 65% of the cash receipts be deposited is absolute, without any qualifications. If there was no surplus at the end of the year the other portions of the act would not operate.

In view of the foregoing it is my opinion that while this act is not retroactive, the insurance companies coming under it were bound from its effective date. The effective date of this act was 90 days after the adjournment of the Legislature, or July 11, 1943.

By ROBERT W. WARD,

Asst. Atty. General