

Opinion No. 44-4505

April 26, 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 22, 1944, and the enclosed instruments relating to The Planters Mutual Insurance Company. You ask our opinion on three questions, which are as follows:

1. Is a corporation of this type (organized under Chapter 93 of the Laws of 1923) governed solely by the provisions of Chapter 101 of the Laws of 1931, or does it also come under the corporation laws of this state?
2. Is it your opinion that the Charter of this company can remain dormant until new license is issued after the "duration", in spite of the fact that this company does not have any insurance in force at the present time, and with claims pending for losses suffered during the year 1941?
3. If there are no members or policyholders of record since the last meeting of the company, who, in your opinion, should act as custodian for the property of the company?

In answer to your first question, it is my opinion that, as this insurance company is a corporation, it, like any other corporation, is subject to the corporate laws of this state, except where special and conflicting provision is made in the insurance law under which it was incorporated.

In answer to your second question your attention is called to Paragraph 5 of the Articles of Incorporation of that company, which is as follows:

"The corporation shall continue from year to year as licensed by the State Corporation Commission **and as long as it has insurance in force**, but not more than 99 years."

By virtue of this provision if the company does not have insurance in force its existence will terminate by virtue of its own Articles of Incorporation.

In answer to your third question it is noted that no provision is made in Chapter 101 of the Laws of 1931 for the termination or dissolution of this type of an insurance company, so that the general corporation laws must govern. Section 54-504 of the 1941 Compilation provides that upon the dissolution in any manner, of any corporation, the directors shall be trustees thereof. These directors would necessarily be the last Board of Directors of the company. By Section 54-506 provision is made that whenever a

corporation is dissolved, in any manner whatever, the District Court, on application of any creditor or stockholder, at any time, may either continue the directors as trustees or appoint a receiver to manage the affairs of the company.

I have examined several of the reports and financial statements of this company, from which it appears that the company may be insolvent. If this be the case, then a detailed procedure is set forth starting with Section 54-601 of the 1941 Compilation. If insolvency exists it is the duty of the directors to take the steps provided therein to wind up the affairs of the corporation. However, by Section 54-603, any creditor or stockholder may file a complaint in the District Court setting up the facts and have a receiver appointed.

As there are no stockholders, strictly speaking, in this type of a corporation, it is my opinion that the members of such corporation would have the same rights and privileges as stockholders.

Nowhere under Chapter 101 of the Laws of 1931 do I find that the Superintendent of Insurance has any duties to perform in connection with the dissolution or insolvency or an insurance company of this character, except that by Section 60-822 he is authorized to examine into the affairs of such corporation whenever he deems it advisable in the interests of the policyholders and for the public good. Since, however, he is not given authority to take any further steps, if he made such examination all he could do would be to submit it to the members, policyholders and creditors.

Your attention is called to the fact that while this corporation was organized under Chapter 93 of the Session Laws of 1923, this law was superseded by Chapter 101 of the Laws of 1931, which has been amended from time to time.

Trusting the foregoing sufficiently answers your inquiry, I remain,

By ROBERT W. WARD,

Asst. Atty. General