

## Opinion No. 44-4614

November 15, 1944

**BY:** C. C. McCULLOH, Attorney General

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

In your letter dated November 13, 1944, you state that an insurance company has been authorized to write insurance as provided by Section 60-501 of the N.M. 1941 Compilation, under Class 2, Casualty, Fidelity and Surety. You further state that the company authorized to do this class of business is issuing a rider with its accident and health policy containing the following language:

"In consideration of the payment of the additional monthly premium of \$ --- which is to be paid in the same manner and at the same time as is the premium for the policy to which this rider is attached, it is hereby agreed that if sickness for which Monthly Sickness Indemnity is payable under the terms and provisions of said policy is of such a serious character that it results fatally within the period for which such sickness indemnity is payable, the Company will thereafter pay to the Insured's beneficiary a sickness indemnity at the rate of \$ 100.00 per month; provided, however, the total amount payable under this rider shall not exceed the sum of \$ 500.00."

You inquire whether the benefit thus afforded by the rider is, in substance, life insurance, and whether the company is exceeding its license by issuing the rider above quoted.

Section 60-501 of the N.M. 1941 Compilation, Class 2, Subsection (a), under Casualty, Fidelity and Surety classification of insurance, and under the subheading of Accident and Health, provides as follows:

"Insurance against bodily injury, disablement and death by accident, and against disablement resulting from sickness or old age, and every insurance appertaining thereto."

It is noted that in connection with accident insurance the word "death" is mentioned, but in connection with health insurance "disablement" only is covered, and for that reason death benefits could not be contracted for legally under this subsection.

The rider attached to the accident and health policy quoted above obligates the company to pay to the insured's beneficiary, upon the death of the insured resulting from sickness, a "sickness indemnity." However, regardless of the terminology used, the rider, in substance, constitutes a form of life insurance, in view of the fact that the amount is to be paid to the beneficiary only in case of the death of the insured.

There are many cases pertaining to burial and funeral benefits, holding that such contracts constitute a form of life insurance, since they are determinable upon the cessation of human life, and dependent upon that contingency.

State ex rel Fishback v. Globe Casket and Undertaking Co., 82 Wash. 124, 143 P. 878, L. R. A. 1915 B 976; Renschler v. State ex rel Hogan, 90 Ohio St. 363, 107 N. E. 758, L. R. A. 1915 D 501; State ex rel Reece v. Stout, 65 S. W. 2d 827, 17 Tenn. App. 10.

In view of the above authority, I am of the opinion that the insurance company must qualify under Class 1, before it can legally issue the rider to its accident and health policy, otherwise it will be exceeding its license issued to Class 2.