

Opinion No. 45-4640

January 16, 1945

BY: C. C. McCULLOH, Attorney General

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

{*6} We are in receipt of your request for an opinion dated January 8, 1945. In your letter you state that the Colorado Insurance Department advises you that "under the Law, a non-resident broker's license is the only license under which a nonresident can operate in this State. Such a license qualifies the holder to solicit all kinds of insurance."

In view of this statement, you ask our opinion as to whether you may issue a non-resident broker's license to a resident of Colorado to solicit business in this state for an authorized life insurance company.

In your letter you refer to both Section 60-403 of the 1941 Compilation, as amended, and Section 60-417 of the 1941 Compilation. As Colorado grants licenses to non-resident brokers, the retaliatory provisions of Section 60-403 do not apply, nor do the limitations and conditions imposed by Section 60-417, under which a non-resident broker may operate {*7} and do business in New Mexico, apply since this section specifically excludes life insurance companies and their agents and brokers dealing with them by the clause "provided that this section shall not apply to life insurance companies."

However, your primary question is whether your department can issue a non-resident broker's license to a resident of the State of Colorado to solicit business in **this** state for an authorized life insurance company.

Your attention is directed to Section 60-422 of the 1941 Compilation which is as follows:

"A non-resident broker shall be defined as a person, partnership or corporation maintaining his bona fide continuous residence and chief place of business within the continental limits of the United States, but not within the state of New Mexico, and engaged in the business of insurance outside of the state of New Mexico, and in the employ of any person, partnership or corporation desiring to purchase any form of insurance from an agent of any insurance company or companies licensed to transact business in the state of New Mexico, and who receives his remuneration in whole or in part from the agent of the insurance company from whom the insurance is purchased."

You will observe, upon reading this definition, that a non-resident broker is one in the employ of a person desiring to purchase insurance from an agent. In view of the foregoing, it is my opinion that you cannot issue a non-resident broker's license to one

seeking to solicit business for an insurance company, since he would then be acting as an agent or as a solicitor for an agent.

By ROBERT W. WARD,

Asst. Atty. General