

Opinion No. 46-4896

May 2, 1946

BY: C. C. McCULLOH, Attorney General

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

{*224} We are in receipt of your letter of May 1, 1946, in which you ask our opinion as to whether insurance companies are authorized by Section 60-401 of the 1941 Compilation to deduct reinsurance assumed solely {*225} from insurance companies authorized to do business in New Mexico.

Section 60-401, as amended by Chapter 107 of the Laws of 1945, is, in part, as follows:

"Every insurance company licensed to transact an insurance business in the State of New Mexico shall also pay annually on or before the first day of March each year, two (2) per centum of the gross premiums, membership and policy fees received by it on insurance **covering risks within the state** during the preceding calendar year, less all return premiums including dividends paid or credited to policyholders and premiums received for reinsurance on **New Mexico risks.**"

You state that under this section one insurance company asserts that since the statute provides that they may deduct "premiums received for reinsurance on New Mexico risks", that this includes all New Mexico risks, assumed from a company not authorized to do business in New Mexico, so that no premiums tax has been paid, as well as on risks assumed from companies authorized to do business in New Mexico.

It is observed that this clause authorizing the deduction of reinsurance on New Mexico risks is a part of the paragraph and sentence assessing the 2% gross premiums tax. This paragraph levies the 2% gross premiums tax on policies "covering risks within the state." It would thus appear that the words "New Mexico risks" refers back to and means the same thing as "risks within the state" which are risks upon which the gross premiums tax is levied. This being so, the only reinsurance that would be deductible is reinsurance upon "risks within the state" and upon which 2% gross premiums tax is levied.

It is therefore my opinion that you may refuse to allow an insurance company to deduct any reinsurance assumed, except that reinsurance assumed from an insurance company authorized to do business in New Mexico.

By ROBERT W. WARD,

Asst. Atty. General