

## Opinion No. 47-5073

August 28, 1947

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

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

{\*84} This is in response to your letter and is supplementary to Opinion No. 4851 heretofore written by Thomas C. McCarty, Assistant Attorney General, on February 6, 1946.

It has been requested that the above opinion be supplemented by clarifying what was meant by "discrimination" when Mr. McCarty stated that "If ante-dating or post-dating causes a discrimination under the provisions of Section 60-704, such dating would be unlawful." After considering the memorandums submitted by American Life Convention, and upon further research, I feel that the former opinion No. 4851 should be clarified.

Before proceeding to a ruling I will set forth the provisions of our own law with reference to antedating and discrimination among persons insured.

Section 6-601, 14 b, N.M. Stat. 1941 Compilation, makes it unlawful for any life insurance company doing business in this State to incorporate a provision in a policy by which the policy purports to be issued or take effect more than six months prior to or six months after the date when the policy was actually executed by the company.

Section 60-704, N.M. Stats., 1941 Compilation, prohibits insurance companies doing business in this state from making or permitting any discrimination in favor of any insured in the amount of premiums, etc. against a like hazard or hazards.

{\*85} In 44 C.J.S., page 1310, sec. 342 the following statement appears reference to this matter:

**"Charging life insurance premium for age other than true age.** Ordinarily issuing a life insurance policy at a premium rate for an age lower than that insured has attained when the policy is issued constitutes a discrimination violative of governing statutes of the character under discussion. **It has been held, however, that it is not an unlawful discrimination to charge insured a premium of a lower age where this is done through the device of predating the policy and collecting premiums as from the earlier date and at the rate for the age which insured then was, even though his insurable age had advanced by the time the policy was actually issued."**

See also the following cases: First National Bank vs. N. Y. Life Ins. Co., 192 Minn. 609, 255 N. W. 831; McQueeney v. National Fidelity Life Ins. Co., 350 Mo. 469, 156 S.W. 2d 461, 80 A.L.R. 950; Baker v. Equitable Life Assur. Soc., 288 N. Y. 87, 41 N.E. 2d 471.

In view of the above, I am of the opinion that back dating within the permissible statutory limit of six months is not discriminatory where the premium is paid for the period back-dated during which no insurance protection is received and where the privilege of back-dating is available to all policy applicants alike.

Opinion No. 4851 is hereby modified to the extent that it conflicts with this opinion.

In order to bring this matter up to date, I call your attention to Chapter 127, Laws of 1947, relative to unfair practices in the insurance business. Section 3 (7) a and b thereof prohibits discrimination between individuals of the same class in rates charged, etc.

By: WM. R. FEDERICI

Asst. Atty. General