

Opinion No. 48-5164

August 19, 1948

BY: C. C. McCULLOH, Attorney General

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

{*158} We have your letter of August 18, 1948 in which you request the opinion of this office as to the validity {*159} of a provision in a life insurance contract, wherein it is agreed that the company may make payment to any person who has incurred expenses on behalf of the deceased insured in connection with his burial.

The question submitted is whether the provision is in violation of the exemption of Personal Property Laws of the State of New Mexico.

Section 21-503 of the 1941 Compilation, to which you refer in your letter, only concerns actions against a living insured and would not be applicable in this case.

The validity of the provision in question must be judged on the basis of its compliance with Section 21-505 of the 1941 Compilation, which provides as follows:

"The proceeds of any life insurance are not subject to the debts of the deceased, **except by special contract or arrangement, to be made in writing.**"

The above provision would, in my opinion, constitute a special contract or arrangement within the terms of the statute, and would not be in contravention of it. Such provision could therefore be legally embodied in a life insurance contract issued in New Mexico.

By W. R. KEGEL,

Asst. Atty. General