

Opinion No. 54-5990

July 15, 1954

BY: RICHARD H. ROBINSON, Attorney General

TO: Honorable R. F. Apodaca Superintendent of Insurance State Capitol Building Santa Fe, New Mexico

{*446} You have requested the opinion of this office upon the question of whether a person or corporation "offering ambulance service for the entire family for the small consideration of \$ 1.00 a year" would be doing insurance business subject to compliance with the laws of the State of New Mexico upon insurance companies.

Section 60-101, N.M.S.A., 1941 Comp., defines insurance as follows:

"The word 'insurance' shall be held to mean any form of insurance, bond or indemnity contract the issuance of which is legal in the state of New Mexico."

Further definition and clarification of what the Legislature intended to mean by insurance appears under the heading of "Classification of forms of insurance" in Section 60-501, N.M.S.A., 1941 Comp. It is apparent from the reading of the different classifications that the contract of indemnity offered in the ambulance program would come either within the specific provisions of class 2 or the omnibus clauses thereunder.

In the comprehensive opinion of this office numbered 4884, Opinions of the Attorney General 1945-46, this office reviewed the common law definition of the word "insurance". In that opinion, it is apparent that the particular type of business under consideration was found not to be a specific peril arising from an unknown or contingent event and that the program under consideration in that case was clearly not an indemnification contract to compensate for a loss.

It is apparent that this is not the same factual situation involved in the ambulance service indemnification contract described in your letter. It seems almost too evident that one would not be accorded any privilege under the ambulance service contract if one had not suffered a loss which might require indemnification. It has been held that burial associations which issue a contract to pay burial expenses are insurance companies. **Capitol Hill Burial Association v. Oliver**, 91 P. 2d 673, 185 Okla. 261. It is generally held that companies within the regulatory authority are either stock, mutual or other types of companies if they come within the description of doing business as appears in the statute, (in this case § 60-501). See also 119 ALR 1241, also Opinion No. 569, Opinions of the Attorney General 1933-34.

It is, therefore, the opinion of this office that a person or corporation setting up a contract with the public to indemnify the public for any loss they may suffer by reason of

the necessity to utilize ambulance services would come within the intent and purpose of the insurance laws of the State of New Mexico.

By: William J. Torrington

Assist. Attorney General