Opinion No. 60-107

June 13, 1960

BY: OPINION of HILTON A. DICKSON, JR., Attorney General

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

QUESTION

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Does the Superintendent of Insurance have the authority to investigate, examine and entertain a proceeding in which a mortgagee who is also an insurance company is charged with engaging in unfair methods of competition and unfair or deceptive acts or practices in the business of fire insurance by its refusal to honor and place in effect a home owner's policy tendered to it by a home owner to replace one already in existence?

CONCLUSION

See analysis.

OPINION

*{*479}* **ANALYSIS**

The Superintendent of Insurance is given authority by the **Trade Practice Regulation Act,** Laws of 1947, Chapter 127 (§§ 58-9-9 through 58-9-19, N.M.S.A., 1953 Compilation) to intercede in and stop unfair trade practices in the insurance business. This Act defines unfair trade practices in the insurance business and provides the means for control of such practices.

Persons included in the Act are set out in the section on definitions, § 58-9-10 (d), N.M.S.A., 1953 Compilation, as follows:

"'Person' shall mean any individual, corporations, associations, partnerships, reciprocal exchanges, inter-insurers, Lloyds insurers, fraternal benefit societies, and any other legal entity engaged in the business of insurance, including agents, brokers and adjusters."

By the plain wording of the statute, the entities enumerated must be engaged in the business of insurance in order to be a "person" within the meaning of the Act. It follows that an insurance company or agency as such is subject to the sanctions provided in the Act. It becomes immaterial whether an insurance company or agency is also a

mortgagee or operates a mortgage house or business as that part of the company engaging in the business of insurance comes within the controls set up in the Act.

By: Patricio S. Sanchez

Assistant Attorney General