

Opinion No. 62-57

April 10, 1962

BY: OPINION OF EARL E. HARTLEY, Attorney General Oliver E Payne, Assistant Attorney General

TO: Mr. Clay Buchanan, Director, New Mexico Legislative Council, Santa Fe, New Mexico

QUESTION

QUESTIONS

1. Is it necessary that a securities dealer and his securities salesman, both of whom are registered in New Mexico, be additionally licensed under the "Sale of insurance Securities Act" to handle the sale of:
 2. "issue securities" of an company?
 - b. "secondary stock" of an insurance company?
2. Is it necessary that a person licensed under the "Sale of Insurance Securities Act" be registered under other provisions of law relating to the sale of corporate securities if he wishes to sell insurance company securities?
3. If a security dealer, through his security salesman in New Mexico, neither of whom is licensed under the "Sale of Insurance Securities Act," received from a resident of the state (1) an unsolicited offer, or (2) a solicited offer to buy insurance securities, and consummates the sale in New Mexico, are they or either of them in violation of the "Sale of Insurance Securities Act or the Securities Act of New Mexico"?
4. Would they be in violation if the sale were consummated outside of the State?
5. Does a securities dealer or his salesman have to be licensed by the Superintendent of Insurance in order to sell secondary insurance company stock?

CONCLUSIONS

1. Yes.
2. No.
3. Yes, constitutes a violation of the "Sale of Insurance Securities Act".
4. Yes.

5. Yes.

OPINION

ANALYSIS

The answer to your first question requires an examination of Section 58-22-2, N.M.S.A., 1953 Compilation (P.S.) which provides as follows:

"No person, firm, association or corporation shall, except as provided in the Sale of Insurance Securities Act, sell or propose to sell to the public in this state, any note, stock, treasury stock, share, bond, debenture, evidence of indebtedness, certificate of interest or participation, voting trust certificate, certificate of deposit for a security, reorganization certificate of subscription, investment contract (whether or not included as a provision in the policy of insurance), **or other security of any insurance company**, whether or not authorized to do business in this state, **unless licensed so to do pursuant to the provisions of the Sale of Insurance Securities Act**. No person, firm, association or corporation shall, except as provided in the Sale of Insurance Securities Act, issue, circulate or distribute any advertisement, circular, letter or other public announcement in this state in connection with the sale or proposed sale of any such securities of any insurance company unless a copy of such announcement has been filed with the superintendent of insurance and approved by him. Failure by the superintendent to approve or disapprove any such public announcement, within thirty days after the filing thereof with him, shall constitute approval." (Emphasis added)

Since this statute obviously covers all types of insurance company stocks and securities, the answer to your first question is Yes, the dealer and salesmen who sell insurance securities must be licensed by the Superintendent of Insurance.

Your next question is somewhat troublesome, but we conclude that a person licensed to sell insurance securities under the Sale of Insurance Securities Act does not have to be registered under the Securities Act in order to sell this particular type of securities.

Section 48-18-20.5, N.M.S.A., 1953 Compilation (P.S.), a part of the Securities Act, provides as follows:

"No salesman shall offer for sale or sell **any** securities within or from this state unless he is registered as a salesman under Sections 48 - 18 - 20.6 through 48-18-20.8." (Emphasis added)

However, Section 58-22-7, N.M.S.A., 1953 Compilation (P.S.), also enacted in 1959 and a part of the Sale of Insurance Securities Act, provides that

"The superintendent of insurance may make official regulations to effectuate the purpose of the Sale of Insurance Securities Act, and shall have **exclusive jurisdiction** to regulate the sales described in this section." (Emphasis added)

Insofar as the sale of securities of insurance companies is involved, there is a conflict between the two above-quoted provisions.

The specific provision vesting exclusive jurisdiction in the Superintendent of Insurance, when the sale of insurance securities is involved, controls over the more **general** provision in the Securities Act to the extent of the conflict between them. **State v. Spahr**, 64 N.M. 396, 328 P. 2d 1093; **Varney v. City of Albuquerque**, 40 N.M. 90, 55 P. 2d 40; **Levers v. Houston** 49 N.M. 169, 195 P. 2d 761.

Your third question deals with sales of insurance securities by persons not licensed under the Sales of Insurance Securities Act. Whether the offer is solicited or unsolicited, the seller is in violation of the Sales of Insurance Securities Act. Where solicited, the salesman has "proposed to sell" insurance securities. Where unsolicited, he has nonetheless "sold" the insurance securities. Each such action violates Section 58-22-2, supra, if the person is not licensed under the Sale of Insurance Securities Act.

As to sales consummated outside the State, the governing language is that portion of Section 58-22-2, supra, which provides that no unlicensed person shall "sell or propose to sell to the public in this state" any insurance securities. The question is whether the phrase "in this state" is used in a geographical sense or in the sense of a sale to our New Mexico residents no matter where consummated. It seems to us that if a salesman could use the simple expedient of having title pass in El Paso, Texas, for example, the licensing provisions of our Sale of Insurance Securities Act could easily be circumvented. For this reason, we conclude that the legislative intention was to preclude the sale of insurance securities to New Mexico residents by persons not licensed by the New Mexico Superintendent of Insurance where any portion of the negotiation took place in New Mexico.

As was pointed out in the answer to Question 1, Section 58-22-2, supra, is very all inclusive in scope prohibits the sale of any security of any insurance company by one not licensed so to do under the Sale of Insurance Securities Act. The licensing provisions of the Act also make it clear that any and all types of insurance securities are covered. Section 58-22-3 through Section 58-22-6, N.M.S.A., 1953 Compilation (P.S.).