

Opinion No. 66-94

August 2, 1966

BY: OPINION OF BOSTON E. WITT, Attorney General Myles E. Flint, Assistant Attorney General

TO: Ralph F. Apodaca, Superintendent of Insurance, Santa Fe, New Mexico

QUESTION

FACTS

A domestic life insurance company has made a General Deposit as required by Section 58-18-24, (B), N.M.S.A., 1953 Compilation (P.S.). The Superintendent of Insurance has required that an additional amount be deposited pursuant to the statute. In order to comply with the request for additional General Deposits, the insurance company proposes to make the additional deposit in the form of a Certificate of Deposit issued by a domestic bank. The Certificate of Deposit would be in excess of \$ 10,000.00 normally insured through the Federal Reinsurance Corporation. However, it would be further supported by the pledge to the Superintendent of Insurance of certain United States Government Bonds or New Mexico Municipal Securities of a face amount equal to or greater than the Certificate of Deposit. This pledge of securities would be evidenced by a receipt furnished to the New Mexico bank by one of the bank's large metropolitan correspondent banks certifying that they are holding these securities as pledged to the Superintendent of Insurance.

QUESTION

Would a deposit, in the form of the Certificate of Deposit supported by the collateral securities, conform to the requirements of Section 58-18-24, (B), N.M.S.A., 1953 Compilation (P.S.)?

CONCLUSION

Yes.

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{*128} ANALYSIS

Section 58-18-24, N.M.S.A., 1953 Compilation (P.S.), in pertinent part, provides as follows:

B. In addition no company shall be licensed to transact business in Class 1, Class 2, Class 3, Class 4, or Class 5, or any combination thereof unless it has first made a

general deposit in trust for the benefit of all its policy holders and creditors, as provided for in Schedule I herein. **The general deposit shall be in securities of one (1) of the kinds authorized as an investment for an insurance company as provided in subparagraph (b) and (c) of Section 58-4-7, N.M.S.A., 1953 Compilation**, and shall be made with the department of insurance, state treasurer, or other officer of this state or of some other state in which it is licensed to transact insurance business who is duly authorized to accept such deposit. **Provided, the superintendent of insurance may require additional general deposits, in a reasonable amount and in admitted assets of the types of securities authorized by law, whenever he deems it necessary.** (Emphasis added.)

Under the terms of the above section, the additional General Deposits must be in "admitted assets of the types of securities authorized by law". The question to be answered is whether or not by the above language it is required that the insurance company make the additional general deposit in the form of the bonds required for the initial general deposits or in other assets which it may or is authorized by law to invest in. The other types of securities in which an insurance company may invest in are specifically listed in Section 58-4-7, N.M.S.A., 1953 Compilation.

Section 58-4-7, N.M.S.A., 1953 Compilation provides in part that insurance companies may invest any of its funds in deposits in solvent state or national banks, trust companies, various types of secured loans and various bonds and obligations of the United States and the states and their various sub-divisions.

It is our understanding that the major purpose for the general deposits is to provide a means of protecting the persons insured through the insurance company in the event the company fails or ceases to operate. The requirement for the additional general deposit is to permit the Superintendent of Insurance to have on hand a sufficient amount of securities to carry on the liquidation of a company which has ceased to operate. It is not intended by requiring additional assets in the form of an additional general deposit to penalize a company or to make it difficult for such company to continue its operations.

In view of the fact that an insurance company is permitted to invest funds in the form presented to the Superintendent of Insurance by the proposal set forth in the facts above and in view of the fact that the Superintendent of Insurance is provided with sufficient funds of a substantial form against which he may proceed at times of need, it is our opinion that the proposal set forth in the fact situation above is in conformance with the law. It is our opinion that when the words "in admitted assets of the types of securities authorized by law" is used in Section 58-18-24, (B), N.M.S.A., 1953 Compilation, that reference is made to those assets and types of securities in which an insurance company is authorized by Section 58-4-7, N.M.S.A., 1953 Compilation to invest.