

Opinion No. 12-930

August 2, 1912

BY: FRANK W. CLANCY, Attorney General

TO: State Corporation Commission, Santa Fe, N. M.

INSURANCE.

No incorporation fees to be collected from domestic insurance companies.

OPINION

{*73} I have received your letter of yesterday referring to the letter of this office of the 30th ultimo on the subject of fees to be collected from domestic insurance companies. You say that you are not entirely satisfied as to the construction of the law which this office has placed upon the matter and feel that the law does not contemplate the incorporating of any company without a reasonable fee or charge for the franchise to do business in this state. You then say that you have looked farther into the insurance laws and wish to refer me to Section 27 of Chapter 48 of the Laws of 1909 which reads as follows:

When the said certificate of the said company shall have received the approval of the superintendent of insurance, the said company shall cause the same to be recorded as now required by law for recording articles of incorporation, and said persons when incorporated and having in all respects complied with the provisions of this act are hereby authorized to carry on the business of insurance as named in such certificate.

After this you further refer me to the language in Section 2 of the same act, reading as follows:

There shall be paid by every insurance company doing business in this territory to the superintendent of insurance the following fees, namely:

For filing the certified copy of articles of incorporation required {*74} by this act of the organization of each company, \$ 50.00.

For filing annual statements, \$ 20.00.

For certificate of authority to transact business in this territory, \$ 2.00, and for each copy of certificate of authority for use of agents, \$ 2.00, etc.

After these quotations you say that it is your conclusion that the particular language used in Section 27 above quoted, requires the filing of articles of incorporation of domestic insurance companies the same as in other cases of incorporation under the

general incorporation law, and the fees for such filing would be such as are prescribed in Section 119 of Chapter 79 of the Laws of 1905.

The opinion and conclusion expressed in your letter are such as might be naturally expected from a superficial examination of the statutes, but a little investigation will, I think, convince you that you are in error.

In the first place, the general law of 1905 has no reference whatever to insurance companies, and the Section 119 to which you refer which fixes the fees to be paid, cannot be construed as requiring any payment by any insurance company. You will see by Section 5 of the act of 1905 that corporations may be created under the provisions of that act with certain exceptions, and insurance companies are included in those exceptions. It also provides that the act shall apply to corporations for such purposes, including insurance companies, only to the extent provided by Section 133 of the act, but Section 133 has no reference whatever to insurance companies. Moreover, Section 131 specially declares that the provisions of the act are to be held applicable to corporations incorporated under four acts which are specified, which provide for irrigation companies, building and loan associations, banks, and trust companies. The enumeration of these classes of corporations as subject to the provisions of the act would, by a well-known rule of construction, exclude all others not included in the general language of Section 5. In other words, the provisions of that act have no reference whatever to insurance companies, the subject of insurance companies being at that time fully covered by the statute of 1882 and amendments, which are to be found in the Compiled Laws of 1897 beginning with Section 2095, taken together with the insurance act of 1905 which appears as Chapter 5 of the laws of that year.

That Chapter 5, which creates the insurance department, contains nothing on the subject of the formation of domestic insurance companies, leaving the statutory provisions on that subject in the Compiled Laws undisturbed. Those provisions remained unchanged until 1909, when they were repealed by Chapter 48 of the laws of that year, which is the statute to which you specially referred in your letter. That act, however, as far as the subject we are now considering is concerned makes no substantial change from what the law had been before. Section 27, which you quoted in your letter, is almost exactly the same as Section 2096 of the Compiled Laws, the only substantial difference being the substitution of the superintendent of insurance in the later act for the territorial auditor in the earlier act.

You do not point out exactly why you think that Section 27 of the act of 1909 has any bearing on the subject of fees to be charged, { *75 } but I assume that your idea is that because the certificate is to be recorded that therefore insurance companies are put on the same footing as other corporations. You will find, however, that the only mention of recording of articles of incorporation is that contained in Section 8 of the general corporation law of 1905, and has reference only to the recording of a certified copy of the certificate of incorporation in a book kept for that purpose in the office of the recorder of the county where the principal office of the corporation shall be established. The fees for such recording are to be paid, of course, to the county recorder, and refers

in no way to the filing of the certificate of incorporation with the superintendent of insurance as provided in the act of 1909 or in your office in consequence of the effect of the constitution. The statutes did not provide for any recording in the office of the superintendent or in your office. The incorporators make the certificate, and under the act of 1909 submitted it to the superintendent of insurance, and now would submit it to you, and after having received your approval the certificate is to be recorded in the office of the recorder of the county in which the company has its principal place of business, and thereupon the persons incorporated are authorized to carry on the business of insurance. It is true that those persons must also comply with all the provisions of the act, but there are no provisions in that act, or in any other act, applicable to domestic insurance companies, providing for the payment of fees to anyone, or at least for any fees connected with the creation of the corporation. You make reference to Section 2 of the Act of 1909 as though that had some bearing on the question, although you do not point out how it could have any such bearing, and you then reach the conclusion that the fees to be paid are prescribed in Section 119 of Chapter 79 of the Laws of 1905. Said Section 2, which is a mere amendment of Section 11 of Chapter 5 of the Laws of 1905, provides for the payment of fees by every insurance company doing business in the state, but it is to be borne in mind that the act of 1905 has no reference to domestic corporations at all, and the language of the amended Section 11 indicates that the fifty dollar fee for filing can only have reference to foreign corporations. The language is "For filing the certified copy of the articles of incorporation required by this act of the organization of each company, \$ 50.00." When a domestic insurance company is created there is no filing of any certified copy, but the original certificate of incorporation is to be filed, and clearly the language above quoted, speaking as it does of what is "required by this act" has reference to Section 17 of Chapter 5 of the Laws of 1905, which is the only section in that act on this subject, and which requires the filing in the office of the superintendent of a duly certified copy of its charter or articles of incorporation, and relates only to insurance companies not organized under the laws of this territory. Nowhere can there be found any statutory provision for the filing in the office of the superintendent or in your office of a certified copy of the certificates or articles of incorporation of a domestic insurance company. There is a requirement that such a certified copy shall be filed and recorded in the office of a county recorder, and that is all that there is on that subject. There is no word to be found in the statutes evincing an intent that domestic {*76} insurance companies shall pay any fees to the superintendent or to the corporation commission. This may have been an accidental omission or it may have been an intent on the part of the legislature to encourage the formation of domestic companies and to discriminate in their favor. However that may be, the exaction of fees from corporations or persons must be a matter of statutory enactment and cannot be created by implication or by any consideration of what the general policy of the legislature may have been.

I must therefore adhere to the opinion of this office, more briefly expressed in the letter of July 30th.