

Opinion No. 12-973

December 30, 1912

BY: FRANK W. CLANCY, Attorney General

TO: State Corporation Commission, Santa Fe, New Mexico.

FRATERNAL, RELIGIOUS OR BENEVOLENT ASSOCIATIONS.

Business Men's Accident & Health Association of St. Louis is not a fraternal, religious or benevolent association.

OPINION

{*134} I have received your letter of even date herewith submitting for my opinion and advice a communication from the Business Men's Accident and Health Association of Saint Louis, which desires to be licensed to do business in New Mexico upon an assessment or mutual plan.

In that communication it is stated that the superintendent of insurance has written, under date of December 6th, that as this association is upon the assessment or mutual plan it would be necessary for it to have a paid up cash guaranty fund of not less than \$ 100,000.00 as one of the requisites for admission to this state. The writer of the letter from Saint Louis urges that this is a wrong construction and calls attention to Section 25 of Chapter 5 of the Laws of 1905 and Section 41 of Chapter 48 of the Laws of 1909 as evidencing the wrongfulness of this requirement, contending that these sections show that there is a difference in the requirements made of mutual associations and stock companies and, in substance, urging that as his association is not a stock company it should be exempted from the requirement stated by the Superintendent of Insurance.

Section 25 of the Act of 1905 does not, as I view it, sustain the contention thus made. It provides that the provisions of the act shall not be construed to prevent any fraternal, religious or benevolent association {*135} from issuing indemnity against loss by death or accident of its members, but there is no suggestion that this Saint Louis association is fraternal, religious or benevolent. The same section provides that life and accident associations organized under the laws of New Mexico to operate on the mutual assessment plan shall comply with the provisions of the act and be under the full supervision of the Superintendent of Insurance, and foreign companies are not admitted to do business on any more favorable terms than domestic companies, as will be apparent by reference to Section 19 of the same act as amended by Section 5 of the act of 1909, which amendment must have been overlooked by the officer of the Saint Louis association, who wrote to you.

Section 41 of that act of 1909, to which he refers, has no relation to the matter under consideration any more than Section 25 of the act of 1905, to which it makes an

addition. Section 5 of that act of 1909, which amends Section 19 of the Act of 1905, is the one which must control and to which the Superintendent of Insurance undoubtedly referred. It provides that "no mutual insurance company shall be permitted to do, or to continue to do, any business in this territory unless possessed of an actual paid up cash guaranty fund of not less than one hundred thousand dollars." It seems clear that this Saint Louis association is, in effect, a mutual insurance company doing business in different parts of the country and, whether we call such corporations companies or associations, they are, in substance, of the same character.

I am unable to see any error in the statement said to have been made by the Superintendent of Insurance.

I return herewith the letter which you sent me.