

Opinion No. 13-1075

July 7, 1913

BY: FRANK W. CLANCY, Attorney General

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

INSURANCE.

The law does not prohibit the soliciting of insurance business by nonresident agents.

OPINION

{*246} I have just received your letter of even date herewith enclosing another from the general solicitor of the Mutual Life Insurance Company of New York, on the subject of the amendment in Chapter 66 of the Laws of 1913 of Section 22 of Chapter 5 of the Laws of 1905. You desire to be informed as to whether the statements in that letter relative to my attitude are correct.

In that letter the general solicitor of the insurance company says that your chairman as well as the attorney general have recommended that a friendly suit be instituted to procure a construction of this section and to determine whether or not the section does apply to cases such as theirs. I had some talk with Mr. Watson the general manager of this insurance company at Pueblo, and I agreed with him as to the annoyance and inconvenience which the first clause of the amendatory section might cause him and his company, and expressed my regret that the statute should be so framed. What I recommended to him was that he should have the matter submitted to the counsel of the company with a view to seeing whether any reason could be discovered which would justify the bringing of a suit to obtain a construction favorable to the company, but I did not exactly recommend that such a suit should be brought, nor did I express any opinion that a favorable result could be hoped from such a suit. I did say that I would cooperate in any possible way to expedite the hearing if such a suit were brought with a view to saving time and expense.

The general solicitor for the insurance company further asks as to the status of non-resident soliciting agents, and says that if the construction of the statute is to be determined as suggested above, he takes it for granted that no question will be raised as to the status of any of their soliciting agents, and that they will be permitted to continue to do business until such time as the matter shall be fully determined.

If the statute appeared to forbid the soliciting of business by nonresident agents, it would not be within your power or mine to suspend the operation of the statute while awaiting a judicial determination of its meaning. I do not think the statute has such meaning, however as you will see by the following quotation from my letter to you of May 15, 1913:

"The act in question does not go quite so far as to prevent non-residents from soliciting insurance for their companies, but merely makes it unlawful to issue any insurance policy unless it is made through a regular resident agent."

I also call your attention to the following quotation from my letter to you of May 22, 1913:

{*247} "It may be possible, notwithstanding the provisions of chapter 66 of the laws of 1913, that an insurance company might send a non-resident agent into the state to solicit business for the company, but no contract secured through his efforts could be 'made, written or placed,' except through an agent resident of the state, nor could he lawfully receive any compensation for the obtaining, placing or writing of any policy covering property in New Mexico."

That portion of the statute referring to insurance upon property, of course, has no application to life insurance.

I call your attention also to my letter of July 5, 1913, a copy of which I suggest you might send to Mr. Allen, as the views expressed may be of interest to him.

I return Mr. Allen's letter herewith.