

Opinion No. 13-1106

September 15, 1913

BY: IRA L. GRIMSHAW, Assistant Attorney General

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

INSURANCE.

Ice Manufacturers Reciprocal Exchange of Kansas City, cannot do insurance business in New Mexico.

OPINION

{*280} In response to your oral request for an opinion concerning the right of the Ice Manufacturers Reciprocal Exchange of Kansas City, Mo., to do an insurance business in this state, I desire to say that after a careful examination of the law I am of the opinion that this company has no power to transact insurance business in New Mexico either directly or indirectly without first complying with the law, as other companies do. From the letter of Messrs. Holt & Sutherland to you of the 12th inst., I understand that the Ice Manufacturers Reciprocal Exchange of Kansas City, Mo., claims it is exempt from complying with our insurance laws for the reason that our laws apply only to stock companies, and not to business by private persons in the nature of so-called inter-insurance. I also understand that this company desires to effect a policy of insurance upon the property of the Las Cruces Electric Light Company, Section 4 of Chapter 48 of the Laws of 1909, which amends Section 16 of Chapter 5 of the Laws of 1905, substantially provides as follows: No company shall transact in this territory any insurance business unless it procures from the superintendent of insurance a certificate to the effect that the requirements of the law of this territory have been complied with, and it is authorized therefore to do business. Every such company is required to procure annually for the use of its agents and solicitors copies of its authority to transact business in this state, and if any person transacts insurance business in this state without such authority a penalty is invoked.

Section 1 of Chapter 66 of the Laws of 1913 provides substantially that it shall be unlawful for any foreign insurance company to make, write, place or cause to be made, written or placed in this state any insurance policy or contract of any kind to provide against any contingency which may be insured or guaranteed against unless the same shall be made, written or placed through its duly and regularly-appointed and authorized agent or agents residents of this state. Section 6 of Chapter 48 of the Laws of 1909 substantially provides that the word "company" or "insurance company" includes "all corporations, associations, partnerships or individuals engaged as principals in the insurance business" with certain exceptions not material to a discussion of this question.

The company by these acts is prohibited from engaging in the insurance business in this state either directly or indirectly unless authorized by law so to do. The business of an insurance company is negotiated "through its regularly-appointed and qualified agents residents of the state." The authority of the agents to transact business on behalf of the company is derived solely from the authority of {*281} the company to engage in the insurance business in this state. It follows, therefore, that an agent has no authority to transact insurance business in this state in those cases wherein the company he represents has not the authority by reason of the non-compliance with the law. The contention of the attorneys for the insurance company that our laws include only stock companies is entirely erroneous, for the law defines what is included within the words "company" or "insurance company."

Therefore, it is my opinion that the Ice Manufacturers Reciprocal Exchange of Kansas City, Mo., is not authorized to do business in this state, nor is any person authorized to transact an insurance business in this state in its behalf, and that any such business transacted herein subjects the person doing it to the penalties provided by our laws.