

## Opinion No. 13-1107

September 19, 1913

**BY:** FRANK W. CLANCY, Attorney General

**TO:** Mr. E. P. Greenwood, Vice-Pres., Wichita Southern Life Insurance Co., Wichita Falls, Texas.

### **INSURANCE.**

Non-residents agents may solicit insurance in New Mexico.

### **OPINION**

{\*281} I have had your letter of the 11th inst. on my desk for several days, but have not been able sooner to find time to answer it.

Your letter is practically an exposition of the embarrassment and lack of fairness in the enforcement of the provisions of Chapter 66 of our Laws of 1913 as applied to your company having agents living along the border line of Texas and New Mexico, and naturally you feel that your agents should be so licensed that they might operate in that part of our state without being forced to become residents of New Mexico, as that statute indicates they must. I agree fully with you in all that you say about the difficulties and lack of equity and fairness in this procedure, but that is a criticism of the statute and of the action of the legislature. I think it was an unfortunate piece of legislation, and while it was intended, as you say, to keep out irresponsible insurance companies, it appears also to be intended to protect resident insurance agents from competition by outsiders. I am unable to see any way by which our insurance department can say officially that it is not bound by the terms of the statute and that a disregard of the statute would be recognized as no violation of it.

I do not understand that as to life insurance, the act prohibits the soliciting of business by non-residents, but it is only required that policies "shall be made, written or placed through" agents resident in the state. Can you not practically meet this requirement by having one or two local agents at convenient points in the eastern part of our state through whom the policies shall be "made, written or placed," {\*282} although your soliciting agents who procure the business may not be residents? The second sentence of the amended Section 22 is a prohibition as to paying non-residents any part of the compensation for policies of insurance covering property in New Mexico, but there is no such prohibition as to life insurance.

I regret I cannot see that it is within my power or that of any other state officer to waive the requirements of an act of the legislature, but if we once entered upon that course I do not know where we could set any limit, and the statute would be entirely nullified.

I have re-read the copy of your letter to the State Corporation Commission which you enclosed with the one to me in which you suggest that the statute refers only to fire insurance companies or companies that write insurance on property, and you quote the second sentence of the statute to which I have above referred, but apparently have overlooked the language of the first sentence which is carefully worded so as to cover every possible kind of insurance, as it speaks of any policy or contract "to provide against any contingency which may be insured or guaranteed against."