

## Opinion No. 15-1590

July 20, 1915

**BY:** H. S. BOWMAN, Assistant Attorney General

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

**Authority to investigate the question of violation of insurance laws by companies is vested in Superintendent of Insurance, the penalty to be imposed by the Corporation Commission.**

### OPINION

{\*163} We have your letter of even date herewith making inquiry concerning the person or body in whom is vested the authority to investigate and determine the question of the violation of Section 22 of Chapter 5 of the Laws of 1905, compiled as Section 2820 of the codification of 1915, and what is the penalty that may be inflicted for such violation, and in whom rests the authority to impose the punishment.

The above named section is that part of the insurance law which provides that foreign insurance companies can write policies in this state only through their resident agents, and imposing a penalty for a violation of the provisions of the section, the penalty imposed being a suspension of the certificate of authority to do business in the state for a period of not less than one year. As stated in your letter, Section 24 of Chapter 5 of the Laws of 1905, which is compiled as Section 2822 of the new codification, provides for the investigation of fire insurance companies by the superintendent {\*164} of insurance in order to ascertain whether any of the provisions of Section 2820 have been violated, and Section 21 of Chapter 5 of the Laws of 1905, compiled as Section 2819 of the codification, provides that upon a violation of the chapter it shall be the duty of the superintendent of insurance to revoke the authority of the offending company to do business in the state for a period of six months. The question in your letter requires a construction of what, on the face of the sections named, appears to be a conflict therein. Section 2820, as compiled, is an amendment of Section 22 of Chapter 5 of the Laws of 1905, as passed by the legislature of 1913, and appears as Section 1 of Chapter 66 of the Laws of 1913. The original legislation upon this question applied only to fire insurance companies doing business in this state, but by the act of 1913 was amended to include all companies writing insurance in New Mexico, and while this section was made to include companies other than fire insurance companies, Section 24 of the act, or Section 2822 of the codification, was not so broadened as to give the power to the superintendent of insurance to investigate the life insurance companies to ascertain whether or not Section 2820 was being complied with.

We are of the opinion, however, that by implication the superintendent of insurance is vested with the authority to investigate and determine the question of the violation of the provisions of said Section 2820, but that the penalty must be imposed by the

corporation commission, as, by an opinion rendered to the commission on February 2, 1912, referred to in your letter, it was held that the power to revoke the right to do business should be vested in the State Corporation Commission rather than in the superintendent of insurance, because it is a general rule that the power to revoke a right to do business is always vested in the same body as the authority to grant such right to do business, and by the provisions of Section 6 of Article XI of the Constitution the authority to grant the right to do business is transferred to the commission.

In the opinion from this office above referred to, it was further held that the right to investigate fire insurance companies in regard to any violation of the provisions of the act was retained by the superintendent of insurance, and in our opinion there should be no division of the power to investigate fire insurance companies, life insurance or other companies doing insurance business, but that the authority to make such investigations should be in the same official, and, therefore, the authority to investigate such companies should remain in the superintendent of insurance.

As to the question of penalty to be imposed, Section 2820 of the codification, which as heretofore has been said, was originally Chapter 66 of the Laws of 1913, being the later legislative expression, would control over the penalty imposed in Section 2819 of the codification, which is Section 21 of Chapter 5 of the Laws of 1905, and in addition, the penalty provided for in Section 2820 is special and refers only to a violation of that one particular section and would, therefore, control over a penalty general in its nature imposed for a violation of any part of the entire act, such as the penalty provided for in Section 2819.

We, therefore, are of opinion as above stated, that the superintendent {*\*165*} of insurance is vested with the authority to investigate and determine the question of the violation of Section 2820 of the codification of 1915, matter it not whether the violation be by fire insurance companies or any other, and that the penalty should be imposed by the State Corporation Commission, and the penalty imposed should be the penalty provided for in the said Section 2820.