

## Opinion No. 16-1713

January 14, 1916

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

**TO:** Mr. B. Frank Weisenborn, Las Cruces, New Mexico.

**Insurance of public buildings belonging to the state or counties.**

### OPINION

{\*286} I have received your letter of the 12th instant in which you ask some questions as to insurance of public buildings under the provisions of Sections 1 and 2 of Chapter 26 of the Laws of 1899. You will find, however, that this act was amended by Chapter 107 of the Laws of 1901, the amendment appearing in Section 2871 of the recent codification of the statutes.

That section relates to the insurance of public buildings belonging to the state and to the counties, and after declaring that it is the duty of officers to keep such buildings insured, proceeds as follows:

"said insurance in each case, to be taken out with companies or agencies, in the county where such building may be located, if possible, and shall be given to the company or agent offering the lowest premium and rate of insurance: Provided, however, that such insurance shall be taken out with, and given only to such company or companies, as have fully complied with the laws of the state with reference to carrying on business therein."

The language above quoted covers all matters about which you ask in your letter.

You ask whether it would be lawful to place insurance on a state building with a local agent within the county where the building is located, who has not paid in full the county license to which such agents are subject. This question must have reference to what is contained in the proviso above quoted, and my opinion is that that proviso requires only that the company shall have fully complied with the law, with reference to carrying on business in the state. The requirements as to what companies must do will be found in the chapter of the codification which begins with Section 2801, and of which Section 2871 is a part, and there is no reference therein to the payment of the license to which you refer, which is provided in Section 3301 of the codification. That is a license to the individual who acts as an insurance agent, and is entirely aside from any requirements of law with which the company must comply. You will see, by reference to Section 3306, that the agent who does not pay the license is subject to double the amount for the time that he does business without a license, and if, after having been notified by the assessor, he neglects to take out a license for thirty days, he may be prosecuted

criminally and fined not less than fifty nor more than one hundred dollars, or by imprisonment not more than six months.

You further ask if it is lawful to place insurance on such property with an agent otherwise in good standing, who is not a resident of, and doing business as local agent in, the county where the property {\*287} is situated, and has his office in some other part of the state. I believe that the intention of the legislature was to limit the business to companies or agencies in the county where the building is located, but I incline to the opinion that this does not necessarily require that the agent must be a resident of the county, although there is some room for argument that this is what the law requires by implication. However this may be, I do not see any practical way of compelling a board or officer to conform to such a requirement. The contract of insurance would undoubtedly be valid even if made with an agency outside of the county, although this might be considered an act of such official misconduct as to justify the removal of the officer who is guilty of it. Any insurance agent who thinks he is not fairly treated by any such officer who places insurance in disregard of this statutory regulation, would better first take the matter up with the officer who has the giving of the insurance, as the probabilities are that there is no intentional violation of the law, and when the matter is brought before the officer he probably would take steps to correct any mistake which might have been made.