

## Opinion No. 16-1904

November 29, 1916

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

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

### **Section 6, Article XI of the Constitution not self-executing in transferring duties of Superintendent of Insurance to Corporation Commission.**

#### **OPINION**

{\*447} I desire to call attention to an opinion rendered by this office to you on February 2, 1912, involving a consideration of the provisions of Section 6 of Article XI of the Constitution insofar as it affected the duties of the Superintendent of Insurance and the Commission as to matters pertaining to insurance companies. In that opinion this office attempted to point out what the duties of the superintendent and the commission were in regard to insurance matters, but the Supreme Court on February 23, 1914, in the case of State ex rel. Chaves vs. Sargent, State Auditor, 18 N.M., 627, held that the provision of the constitution heretofore referred to is not self-executing but requires legislation to make it effective. The court said in that case,

"Section 4, Article XXII, of the Constitution, brought forward such laws of the Territory as were not inconsistent with the Constitution. There is nothing inconsistent between insurance laws of the Territory and the State Constitution in regard to the regulation of insurance companies, except that the powers of regulation shall be exercised by the Corporation Commission instead of the Superintendent of Insurance. But this provision of the Constitution is not self-executing. It announces a general principle or rule which requires legislation to make it effective. This is at once apparent. Had the section provided that the chairman of the Corporation Commission or any member thereof should have and exercise until otherwise provided by law, all the powers exercised by the Superintendent of Insurance under the Territorial laws, and that each insurance company should appoint said chairman or member its attorney in fact to receive service of process as now required in regard to the Superintendent of Insurance, then the section would be self-executing and no legislation would be required to carry it into effect. Then the Corporation Commission might investigate insurance companies and might cancel permits or licenses to do business, and might receive service of process for insurance companies, and otherwise do and perform all of the functions of the office of Superintendent of Insurance, and insurance companies would be compelled to appoint said Corporation Commission, as attorney in fact to receive such service of process, and pay the two per centum to the commission. But such is not the case, and no legislation has been had in aid of the constitutional provision. Chapter 78, Laws 1912, the only act of the State legislature in this regard, refers to the procedure before the Corporation Commission {\*448} in cases involving transportation and transmission companies, and no mention is made of insurance corporations."

From this decision it would appear that the Corporation Commission is not vested with power to investigate insurance companies or to cancel permits or licenses to do business and as this question is, as I am informed, now before the Commission, I deem it advisable to call its attention to the holding of the Supreme Court, which points out that, in such matters, the Superintendent of Insurance is the only official authorized to act, and that it requires legislation to carry into effect the constitutional provision.