

Opinion No. 18-2083

February 3, 1918

BY: C. A. HATCH, Assistant Attorney General

TO: Honorable Cleofes Romero, Supt. of Insurance, Santa Fe, New Mexico.

Requirements of Mutual Insurance Associations.

OPINION

In reply to your oral request for an opinion as to whether persons may associate themselves together for the purpose of insuring the lives or property of the members of the association, we advise as follows:

Section 2864 of the 1915 Codification provides:

"Nothing in this chapter shall be so construed as to prevent any number of persons, not exceeding two hundred, from making mutual pledges and giving valid obligations to each other for their own insurance from loss by fire or death; but such associations or persons shall in no case insure any property not owned and specified by one of their own number; nor shall the provisions of this chapter be applicable to such associations or companies: **Provided**, Such associations or companies shall in no case pay any salary or compensation to officers, agents or other employes, and shall receive no premiums nor make any divisions."

From the above statute it is seen that special authority is given for such associations. The only condition imposed are that no association shall have more than two hundred members, nor shall they pay any salaries to officers, agents or employes, neither shall they receive any premiums.

If the association you have in mind does not come within the above statute, it would probably be governed by the provisions of Section 2823, which provides that fraternal, religious and benevolent societies may be formed for the purpose of issuing indemnity to its members. This statute also provides that such associations shall not be governed by the provisions of the Insurance Act, except that the fee for filing the annual statement must be paid. They are also required to take out certificates of authority, and must designate the Superintendent of Insurance as its attorney, upon whom process may be served. The provisions of this section are not altogether clear; but it seems it must have been the intention of the legislature to exempt such societies from the control of the Insurance Commissioner, except as to the matters expressly required. This being true, such society would not be required to have the actual paid-up guaranty fund of not less than one hundred thousand dollars, mentioned in Section 2817.

It is our opinion that if the company you inquire about has less than two hundred members, it would come within the provisions of the section first quoted herein; if it has more than two hundred members, but is of a benevolent or fraternal nature, as mentioned in Section 2823, we think it is governed by the provisions of that section.

This, we think, gives you the desired information, and you may take what steps you deem best in view of the law, as herein given you.