

Opinion No. 20-2562

April 28, 1920

BY: H. S. BOWMAN, Assistant Attorney General

TO: Hon. O. A. Larrazola, Governor, State of New Mexico, Capitol Building, Santa Fe, New Mexico.

Powers of Governor in Connection With Examination of Insurance Companies.

OPINION

In reply to your oral request for an opinion from this office covering the subject of the power of the Governor in connection with an examination of insurance companies, we beg to advise you as follows:

The authority to conduct examinations of insurance companies is contained in Section 2808, Code 1915. The section, insofar as it concerns the subject submitted to us for an examination, is as follows:

"The superintendent may, without the consent of the governor, whenever he deems it prudent, visit and examine or cause to be visited and examined by some competent person or persons he may appoint for that purpose, any insurance company applying for admission or already admitted to do business in this state. Such examination shall include a thorough inspection and examination into its affairs, especially as to financial conditions and ability of said company to fulfill its obligations to the policy-holders and whether it has complied with the laws of this state and such company shall pay the proper charges incurred in such examination, including the expenses of the superintendent or his deputies, and the expenses and compensation of his assistants employed therein. When any insurance company not admitted to do business in this state or company adjudged insolvent, or any company for any cause withdrawing from the state neglects, fails, or refuses to pay the charges for examination as approved by the superintendent, such charges shall be paid by the State Treasurer from the insurance fund upon the order of the superintendent, and the amount so paid shall be a first lien upon all the assets and property of such company, and may be rerecovered by suit by the attorney general on behalf of the State of New Mexico, and restored to the insurance fund. The superintendent may also make an examination, with the consent of the governor, of any such company upon the request of five (5) or more of the stockholders, creditors, policy-holders or persons pecuniarily interested therein, who shall make affidavit of their belief, with specifications of their reason therefor in writing that such company is in an unsound or insolvent condition: Provided, That only the United States branches of all foreign companies in this State may be examined by said superintendent. For the purpose aforesaid, the superintendent or his deputy or person making the examination shall have free access to all books and papers of any insurance company that relate to its business, and the books and papers kept by any of its agents,

and may summon and administer oaths or affirmations to witnesses, and examine the directors, officers, agents and trustees of any such company and any other person in relation to its affairs, transactions and conditions. He may require and compel the production of records, books, papers, contracts or other documents by attachment, if necessary; and shall have the right to punish for contempt by a fine or imprisonment, or both, any person failing or refusing to obey such summons or order of such superintendent."

You will note that the superintendent may, without consent of the Governor, conduct such examinations whenever he deems it prudent.

This language vests a wide discretion in the Superintendent of Insurance regarding the times in which such examinations should be made, and in the Governor so far as it concerns his permission for the holding of such examinations.

The matters of the payment of the expense of the persons conducting such examination and the conditions under which the same should be held, are fully covered in the language above quoted. Also, the powers of the person conducting the examination insofar as it relates to the submission by the company of all their books, papers and other matters pertaining to the business.

Trusting that the foregoing fully covers the inquiry submitted, I beg to remain