

Opinion No. 21-3038

July 13, 1921

BY: HARRY S. BOWMAN, Attorney General

TO: Mr. Frank W. Graham, 207 West Gold Avenue, Albuquerque, New Mexico.

Writing and Placing of Insurance Business by Local Agent.

OPINION

{*75} Referring to your verbal request for an opinion regarding the construction of Section 1, Chapter 195, Laws 1921, the act regulating the writing of insurance passed by the last session of the legislature, I would say:

Your question involves the right of a company to employ an agent at a small commission, (less than that received by ordinary agents), for the counter-signing of insurance policies covering business written on property in this state.

The section of the law above mentioned reads as follows:

"It shall be unlawful for any insurance company authorized to do business in New Mexico, its representative, manager, {*76} general agent, special agent, local agent, broker or solicitor to pay or promise to pay either directly or indirectly any fee, brokerage or other emolument of any nature to any person firm or corporation not a resident of the State of New Mexico, for the obtaining, placing or writing any policy or policies of insurance covering risks in New Mexico."

A reading of the quotation above would indicate that if the contract to pay a small commission was made for the purpose of evading the act, that it might be construed to be doing indirectly what the law prohibits being done directly.

If the act is to be strictly construed, it is possible that it may be held to be in violation of the equal rights clause of the Constitution of the United States as discriminating in favor of the citizens of this state as against the citizens of other states.

The act in question is evidently taken from the law of Arkansas which contains a provision in identically the same language, but I am unable to find a construction of such provision by any of the courts of that state.

In view of the uncertainty of the matter, I am rather disinclined to state definitely whether or not the act may be construed so as to permit such a contract as that mentioned by you. Similar acts have been held to be valid in other states and have been construed to prohibit a contract such as that which you mention.

I should be glad to assist in expediting a decision by our courts upon the question involved, and if you will take the proper steps to institute such a proceeding, I shall lend the aid of this office to a prompt disposition of the case.

My subsequent investigation has lead me to modify as above indicated, the verbal opinion I rendered to you when you were here.