

Opinion No. 23-3743

December 1, 1923

BY: JOHN W. ARMSTRONG, Assistant Attorney General

TO: Requested by: Hon. W. B. Wagner, Insurance Department, Santa Fe, New Mexico.

No Law Exists Authorizing Admission of Title Insurance Company to do Business in this State.

OPINION

{*109} An answer to your inquiry as to whether or not Title Insurance Companies may be admitted to do business in this State has been delayed partly on account of congestion of business in this office and partly because we wanted to examine the authorities fully before announcing our conclusion. We have no doubt as to the good faith and high financial standing of the company under immediate consideration, but we have been unable to construe the law of this State favorable to its admission.

Sec. 1, Chap. 61, S. L. 1917 provides that

"It shall be lawful for any insurance company authorized to do business in this state to do the following:"

{*110} Following the foregoing quotation, that section of the statute enumerates various lines of business that are permissible. It does not include "Title Insurance." We have found no other legal statute specifically authorizing such line of insurance.

"Where a statute enumerates the persons or things to be affected by its provisions, there is an implied exclusion of others.

"The expression of one thing is the exclusion of another."

"But it is a well settled rule of construction, that specific provisions relating to a particular subject must govern in respect to that subject, as against general provisions in other parts of the law, which might otherwise be broad enough to include it."

From an application of the foregoing principles of law, it would appear that Title Insurance Companies may not be admitted to do business, as such, in this State under our statutes as they now exist.

Our statutes appear to follow rather a process of elimination in so far as they affect title insurance companies. Section 2824 of the Code of 1915 defines companies guaranteeing titles to land to be insurance companies; and Section 2847 of said Code

seems to indicate that the Legislature has intended not to make our insurance Acts applicable to such companies. That Section provides:

"When any number of persons associate themselves for the purpose of forming an insurance company for any other purpose than the insuring of titles to real-estate, they shall publish a notice," etc;

and this Section immediately follows said Section 1 of Chap 61, S. L. 1917, which latter Section is the amendatory act of Section 2846 of the Code of 1915.

It is not unlikely that when such companies are authorized by the Legislature to do business in this state that the law on the subject will be rather comprehensive and calculate to fully protect the public.