

Opinion No. 26-3888

May 13, 1926

BY: ROBERT C. DOW, Asst. Attorney General

TO: Honorable Walter B. Wagner, Superintendent of Insurance, Santa Fe, New Mexico.

This office is in receipt of your request for an opinion as to whether or not, under the laws of New Mexico, the Occidental Life Insurance Company of California should be authorized to do business in New Mexico, when another company, namely, the "Occidental Life Insurance Company" of Albuquerque, New Mexico, is already incorporated and doing business in the State.

Section 25, of Chapter 135, Session Laws of 1925, reads as follows:

"No insurance company organized under the laws of the State of New Mexico shall adopt the name of any existing company transacting a similar business in this State, or any name so similar as to be calculated to mislead the public; nor shall any foreign insurance company be licensed in this state which bears the name of any company already licensed in this State or any name so similar as to be calculated to mislead the public."

The only question is whether or not the names of these two companies are so similar as to be calculated to mislead the public. It is true that the corporate name of the Occidental Life Insurance Company includes the name of the State of California, and the corporate name of our local company is "Occidental Life Insurance Company" and it does not carry the name of the State of New Mexico; the latter company would necessarily have to use in connection with its corporate name, its address, which is Albuquerque, New Mexico; the principal place of business of the California Company might also be located at Albuquerque. It would necessarily have to be located at some place in New Mexico and would necessarily have to carry its address with the corporation name, and under such circumstances, I believe that it would be in contravention of our statute and would be likely to mislead the public.

The Legislature of New Mexico can impose any conditions which it thinks proper to impose as conditions precedent to the right of foreign corporations to do business in this State, and at the time of the passage of this Act it evidently had in mind the protection of local corporations and the two names in this case are so similar that one would be an infringement upon the other.

I have read quite a number of cases involving this question, many of them having names which are not so similar as the names in controversy, and the courts have held that one would be an infringement upon the other under a statute similar to ours. Comity between States requires that one State should do everything possible to encourage the licensing of corporations from sister States, and however much I would like to arrive at a

different conclusion, I feel that it would be calculated to mislead the public and permit to be done the very thing which our Legislature intended to prohibit.