

Opinion No. [30-116]

April 9, 1930

BY: J. A. MILLER, Assistant Attorney General

TO: D. C. Crowell & Co., 106 South Stanton Street, El Paso, Texas.

WORKMEN'S COMPENSATION ACT -- Nature of insurance required to be filed.

RE: Filing Requirements -- Compensation Insurance -- State of New Mexico.

OPINION

Reference is made to your letter of the 3rd inst. and previous correspondence, particularly yours of the 21st of February to which we replied on the 26th of February, in the requirements of the Workmen's Compensation Act in the matter of insurance or undertaking to guaranty required payments to injured workmen.

I am not sure that I clearly understand the proposition contained in yours of the 3rd inst., that is, that you be allowed to prepare certificates of insurance stating the assured's name, policy number and term and class of operation. Such certificate to be filed with the district court of each county other than that of the domicile or principal operation. Do you by this propose to file in the county of domicile a sort of blanket insurance covering all employees of your company anywhere in this state and to file certificates in the respective counties certifying that workmen employed in such counties are covered by the one general policy?

If such is your plan it appears feasible to me but, of course, you understand from a study of the act that the opinion of this office does not govern in this matter at all. The provisions of the act are very elastic as to the nature of the security to be furnished. That is, it must be "good and sufficient undertaking in the nature of insurance or security for the payment to any and all injured workmen" and the act further provides that the judge of the district court upon a proper showing may issue a certificate to the effect that the employer is financially solvent and that the giving of security is unnecessary. No particular form of insurance or security is required except that the undertaking or bond shall be in sufficient form and be in legal effect an obligation of all parties and sureties executing the same so that judgment may issue thereupon in any proper case and must disclose the name and postoffice address of each party to such undertaking. The clerk is not to accept or file any undertaking or certificate unless and until such post office addresses are shown. "Every such undertaking or bond signed by such sureties must be approved by said judge as to form, amount and sufficiency."

Although the statute makes provision by which foreign corporations doing business generally throughout the State may satisfy the requirements by filing such undertaking in the office of the clerk of the district court of Santa Fe County or by satisfying the judge

of said court of its solvency and provides that such undertaking shall be either in the nature of a policy certificate of guaranty or insurance or mutual insurance or "secured in such other way as the court may in any special instance direct" and is silent as to the requirements of outside individuals or partnerships, I am of the opinion that the several judges of the districts might in their discretion approve similar guaranties on the part of the individuals and partnerships.

At any rate it is a question to be determined by each particular judge in his own district and it is suggested that you submit your plan or any plan you desire to the several judges whose approval it is necessary for you to obtain, it being the opinion of this office, as above expressed, that such judges are in nowise hampered by any opinion which we might express.