**Opinion No. 35-1032**

May 9, 1935

**BY:** FRANK H. PATTON, Attorney General

**TO:** Mr. George M. Biel, Superintendent of Insurance, Santa Fe, New Mexico.

*{*67}* On May 2nd you wrote this office asking our opinion on a number of questions with respect to Chapter 114 of the Laws of 1935 amending Section 71-152 of the 1929 Code.

We will give you our opinion in this letter on certain of the questions about which you inquire.

1. The above statute provides that companies doing an accident, casualty, guaranty, surety, indemnity and liability insurance business shall deposit with the State Treasurer $ 25,000.00 in securities "for the benefit of all the holders or beneficiaries of policies issued by such insurance company." You raise the question as to whether or not this language just quoted can be construed as meaning that the $ 25,000.00 deposit is for the benefit of New Mexico policy holders only. The question is subject to interpretation and argument but we do not believe that it is necessary for us to express our opinion on it at this time. In this connection we would suggest that you have the receipts or certificates of deposit for such securities recite that the securities have been deposited in accordance with the provisions of Chapter 114 of the Laws of 1935 not reciting in such certificate for whose benefit they are deposited. Then later if a company having made such deposits becomes insolvent the question can be put up to the Courts and decided by them. At the present time we express no opinion thereon.

2. You also call our attention to the wording of a certain portion of the section as to the requirements of a company doing an accident, casualty, guaranty, surety, indemnity and liability insurance busi-company *{*68}* from being licensed in this state "unless it is possessed of a minimum paid up capital of $ 200,000.00 **or** a combined capital and surplus of at least $ 300,000.00." You suggest that the word "or" as used in this phrase was inadvertently used by the Legislature and that the word "and" was intended. In some cases it is true that the word "or" may be construed to mean "and" in a statute but there is a very strict limitation to this rule as pointed out in Black on Interpretation of Laws, 2nd Edition, Page 231, as follows:

"It must be remembered that the words "and" and "or" are in no sense interchangeable terms, but, on the contrary, they are used in the structure of language for purposes entirely different. It must be assumed that the language of a statute is chosen with due regard to grammatical propriety. And therefore the Courts are not at liberty to treat these words as interchangeable on mere conjecture or according to their own notions of expediency or policy. On the contrary, they should be taken in their strict and proper meaning when such a reading does not render the sense of the law dubious, and the

substitution of one for the other is permissible only when the context or other provisions of the statute require it, or when that is necessary to avoid an absurd or impossible consequence and to carry out the evident intention of the Legislature."

In considering the possible interchanging of these two words in the present case we do not feel that the meaning of this section is unintelligible, ridiculous or impossible with the word "or" being used. It is therefore our opinion that the statute must be interpreted strictly as it reads and a company applying for a license to do one of the kinds of insurance business there enumerated may receive such license even though it has a capital of $ 200,000.00 and no surplus whatever.

3. Your next question is: In view of the fact that this office has heretofore ruled that one provision of the above mentioned statute is so meaningless as to be unenforceable, does this affect the validity of the poll act? Our answer to this question is no. There is no constitutional question involved and we believe that the remaining provisions of the act are such that they must be given full credit and force. The provision which we have previously held to be meaningless is not connected so closely to the balance of the statute so as to destroy the law in toto.

By J. R. MODRALL,

Asst. Atty. General