

Opinion No. 36-1470

November 14, 1936

BY: FRANK H. PATTON, Attorney General

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

{*33} As you of course know by our conversation, I have received a letter dated November 9th from Mr. Clinton P. Anderson of Albuquerque, New Mexico, wherein, briefly, he inquires as to the legality of conducting a business which he terms reciprocal insurance.

The plan of operation is set forth in Mr. Anderson's letter, which I herewith enclose to you for your files, and I am requested to render an opinion as to whether or not this particular type of operation is within the contemplation of our insurance laws and subject to regulation by the Superintendent of Insurance.

In this connection you have cited the following cases: 113 Atlantic 927, 110 Atlantic 813, 140 P. 742. I have read these cases and find that none of them are in point upon this question. In fact the latter case may be considered as authority for holding that this type of operation under our present New Mexico law is not subject to regulation by the Insurance Department.

In that case reciprocal insurance was under consideration and a statute provided the method for obtaining a license. The insurance department attempted to regulate and prescribe certain requirements not {*34} authorized by any statute and the court held that that was beyond the powers of that official.

In the present case we are to determine whether or not this particular type of operation is within the contemplation of our insurance laws and I am unable to convince myself that such is the case.

On the other hand, I find that whereas we have no statute authorizing this business, yet on the other hand our statutes are silent insofar as forbidding such operation is concerned and apparently the right to operate depends merely upon the matter of those interested to contract between themselves for a certain indemnity.

No doubt, from a practical standpoint the arguments which you have advanced to me are meritorious, but I have no alternative other than to interpret and construe the law as I find it and leave the practical end so far as regulation is concerned to the legislature.

It is my opinion, therefore, that the foregoing type of operation is not prohibited by our statutes and would not be subject to regulation by the Insurance Department.