

Opinion No. 37-1538

February 22, 1937

BY: FRANK H. PATTON, Attorney General

TO: Mr. George M. Biel Superintendent of Insurance State Corporation Commission
Santa Fe, New Mexico

{*54} Your letter of February 20th calls for an opinion upon whether proceeds received by life insurance companies for annuity contracts shall be subjected to the 2% premium tax imposed upon insurance companies by Section 71-127 of the 1929 Compilation.

The pertinent part of said section reads as follows:

"Every foreign insurance company licensed to transact an insurance business in the State of New Mexico shall also pay annually, on or before the first day of March of each year, two per centum of the gross premiums collected by it in New Mexico during the preceding calendar year . . ."

An annuity contract differs from one for life insurance in that a life insurance contract provides for the payment of a lump sum conditionally in consideration of periodic payments by the insured, while an annuity contract contemplates periodic payments of an annual amount purchased by the annuitant for a stated sum.

It has consequently been held that the rules applicable to life insurance do not govern an annuity contract. 3 C. J. 202, Sec. 4; People vs. Security Life Insurance Company, 78 N. Y. 144, 7 Abb. N. Cas. 198; Cuthbert vs. North American Life Association, 24 Ont. 511; In re: National Protective Life Assurance Society, L. R. 9 Equity 306.

"A contract for an annuity is not a contract for insurance and the price paid for annuities is not a premium paid for an insurance policy." People ex rel Metropolitan Life Insurance Company vs. Knapp, 193 Appellate Division 413, 184 N. Y. Supp. 345.

The State of Pennsylvania had a statute similar to the New Mexico statute imposing a premium tax upon foreign insurance companies and in Commonwealth vs. Metropolitan Life, 254 Penn. 510; 98 Atl. 1072, it was held that this tax did not apply to the amounts paid upon annuity contracts and the court in its opinion distinguished such contracts from insurance contracts.

In view of the foregoing, it is therefore my opinion that your question should be answered in the negative and that payments made for and {*55} upon annuity contracts are not subject to the 2% premium tax.

Supplemental Annotation

In connection with the foregoing opinion, see also **Rishel vs. Pacific Mutual Life Ins. Co. of California** (C. C. A. 10th Circuit,) 78 Fed. (2d) 881; and **Daniel vs. Life Ins. Co. of Virginia** (C. C. A. Texas), 102 S. W. (2d) 256.

Contra: **Northwestern Mutual Life Ins. Co. vs. Murphy**, (Iowa), 271 N. W. 899; and **New York Life Ins. Co. vs. Sullivan** (N. Hamp.), 192 Atl. 297.

Although reaching a different conclusion, the last two mentioned cases are distinguishable from and not necessarily inconsistent with this opinion.

Dated July 12, 1938.

FRED J. FEDERICI,

Asst. Atty. Gen.