

Opinion No. 43-4276

April 28, 1943

BY: EDWARD P. CHASE, Attorney General

TO: Mr. Ralph Apodaca, Superintendent of Insurance, State Corporation Commission, Santa Fe, New Mexico

In your letter of April 20, 1943, you ask an opinion of this office as to whether or not Sections 60-701 and 60-702 of the 1941 Compilation prohibit foreign insurance companies not licensed to transact business in this state from advertising in a newspaper published in this state, or by local broadcast. You attached to your letter a copy of the Postal Life and Casualty Insurance Company's advertisement carried in the Albuquerque Journal.

Insofar as applicable these sections provide:

Section 60-701. "Any person, partnership, or corporation transacting any business of insurance in the state of New Mexico without having first received a license to transact such business, shall be guilty of a misdemeanor, * * *"

Section 60-702. "Any person writing or attempting to write, solicit, or procure insurance within the state of New Mexico without a license properly issued in accordance with the requirements of this act * * * shall be guilty of a misdemeanor, * * *"

Upon the reading of these two sections it appears to the writer that the Postal Life and Casualty Insurance Company could not be considered to be transacting insurance by the mere placing of an advertisement in a newspaper in New Mexico, since these steps were merely introductory and the policy would be issued, if at all, in Kansas City, Mo., upon further action of the parties. See *People v. International Broadcasting Corporation*. (Infra.)

It does not appear that the words "writing or attempting to write or procure" insurance found in Sec. 60-702 could be made applicable to this situation. Thus the only language of this statute remaining is the word "solicit" and so our whole question will resolve itself to whether or not the advertisement amounts to solicitation.

The same question propounded by you was raised in the case of *People*, on complaint of Wood, against the International Broadcasting Corporation. 255 N.Y.S. 349; 143 Misc. 122. This is the only case, to the knowledge of the writer, touching this question. There the local broadcasting company broadcast transcribed announcements that the insurance company

"* * * issued policies of life insurance which were somewhat cheaper than a similar form of insurance in other companies; that if the hearer was interested in obtaining a policy of

insurance in this company he should send a letter addressed to the company, either to the home office of the company at Des Moines, Iowa, or to the broadcasting station WOV, 16 East 42nd Street. That the voice quoted a comparison of rates and made some reference to sending in for literature at the home office of the company. It further requested the age of the hearer's nearest birthday in order that a sample policy which might be sent for would show the cost of the policy."

Action was brought under two sections of the New York Insurance Code which are very similar in wording to those of the New Mexico statutes set forth above. The first of these sections provided that:

"Any person acting for himself or others who solicits or procures or aids in the solicitation or procurement of policies or certificates of insurance from, or adjusts losses or in any manner aids the transaction of any business for any foreign insurance corporation who has not executed and filed in the office of the Superintendent of Insurance a written appointment of the superintendent to be the true and lawful attorney of such corporation in and for this state * * * is guilty of a misdemeanor."

The other section read that no person or corporation should act as an agent for a foreign insurance company, or insurers or insurer, in the transaction of any business of insurance within the state, or negotiate for or place a risk for such corporation or insurer, or in any way or manner aid such corporation or insurer in effecting insurance, unless such corporation or insurer had fully complied with the New York insurance code. There the court said, in holding that the broadcasting was not the transaction of insurance business or the solicitation of insurance:

"In order for one to act as agent in the transaction of any business, one must procure insurance, write policies, settle claims, or solicit insurance. Did the defendant corporation do any of these acts? The mere placing of a disc so that a comparison of rates can be given or the request for a person's age, cannot be construed as the procurement of insurance. It cannot be construed as the writing of policies, settling of claims, or soliciting insurance. Solicitation requires the asking to buy.

"There is not a scintilla of proof that there was any solicitation for insurance. 'The Voice' merely gave information, the same as any newspaper advertisement does. Surely, an advertisement in the newspapers cannot be construed as an agency wherein the newspaper is the agent for the advertiser.

"The dictionary defines 'solicitation' as 'asking for earnestly, seeking to obtain by persuasion or entreaty.' The testimony of Wood does not indicate any entreaty on the part of 'The Voice' to seek by persuasion, or obtain by entreaty, insurance. It merely compared rates and asked for the hearer's nearest birthday.

"The defendant corporation in no manner placed a risk for the contract, specifically provided that the station shall in no manner undertake to sell policies of insurance, nor

solicit applications, nor to accept moneys for premiums, nor to answer any inquiries regarding insurance."

The report of this case, in the headnote, states that the decision of the court as to the first statute above quoted was based on another ground, but upon a careful reading of the last paragraph in this case it is seen that the court places his decision squarely on the question as to whether or not the defendant solicited insurance.

Turning now to the advertisement of the Postal Life and Casualty Insurance Company carried in the Albuquerque Journal, it is seen that in framing this advertisement the insurance company has carefully brought itself within the rule laid down by this case. The insurance company merely states that it has issued a new policy, the amount of the benefits, what it covers, that there is no waiting period and that it has other features which the insured will see for himself if he sends for the policy on free inspection. The advertisement then states that no money should be sent and asks the public to write, sending full name, address, age and occupation.

In view of the foregoing it is my opinion that the above mentioned advertisement does not amount to solicitation and that a radio broadcast couched in language such as carried in this advertisement would not amount to solicitation; however, the writer does not mean to indicate that no advertisement, either on the radio or in the newspaper, could amount to solicitation, as it appears to the writer that an advertisement could be framed in such language as to amount to the soliciting of insurance.

Trusting that the foregoing sufficiently answers your inquiry, I am

By ROBERT W. WARD,

Asst. Atty. General