

Opinion No. 43-4309

June 4, 1943

BY: EDWARD P. CHASE, Attorney General

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

We have your letter of May 21, 1943 wherein you enclosed a copy of an opinion given by an Attorney Jas. S. McNamara of Clovis wherein it is contended that the State Benevolent Society, a corporation organized under Chapter 54, Article 13 of the New Mexico 1941 Compilation is exempt from the insurance laws State of New Mexico. Mr. McNamara based his contention that the State Benevolent Society is exempt specifically under Section 60-930 of the New Mexico 1941 Compilation. In view of this situation you have requested us to give an opinion on the matters therein considered.

Section 60-930 is Section 29 of Chapter 105 of the Laws of 1931. The title of which reads as follows:

"An Act for the Regulation and Control of Fraternal Benefit Societies."

Section 1, 2 and 3 of such act defines Fraternal Benevolent Societies and matters pertaining thereto. I have examined the articles of incorporation of the State Benevolent Societies and the by-laws of such Society and it clearly appears that the State Benevolent Society is not a Fraternal Benefit Society under Chapter 105, Laws of 1931. It is further noted that Mr. McNamara does not contend that such Society is a Fraternal Benevolent Society and admits it is a Benevolent Association. It is now noted that the title of Chapter 105 above quoted does not in any way pertain to Benevolent Associations, but only to Fraternal Benefit Societies as defined in such act.

Article 4, Section 16, Constitution of the State of New Mexico provides:

"The subject of every bill shall be clearly expressed in its title, * * *, but if any subject is embraced in any act which is not expressed in its title, only so much of the act as is not so expressed shall be void. * * *"

Therefore, since the title to the act does not even indirectly pertain to Benevolent Associations all portions of such Chapter pertaining to Benevolent Associations is void under the Constitution.

In view of the above it is unnecessary to consider the specific wording of Section 60-930 since such part of such Section that pertains to Benevolent Associations is clearly unconstitutional and void.

Hoping that the above fully answers your questions, I remain

By HARRY L. BIGBEE

Asst. Atty. General