Opinion No. 43-4326

June 30, 1943

BY: EDWARD P. CHASE, Attorney General

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

We are in receipt of your letter of June 21, 1943, and copy of the letter dated June 10, 1943, from the Interstate Commerce Commission, Bureau of Motor Carriers.

In the copy of the letter the writer states that the Hawkeye Casualty Company, which is authorized to write motor vehicle casualty insurance, under sub-section (b) of class 2 of section 60-501 of the 1941 Compilation, asserts that it is authorized to write inland marine or automobile cargo insurance.

You ask our opinion as to whether or not the interpretation placed by the Hawkeye Casualty Company on this sub-section is correct. This sub-section is as follows:

"60-501. **Classification of forms of insurance and insurance companies** * * *

"Class 2. Casualty, Fidelity and Surety.

"(b) Vehicle. Insurance against any loss or liability resulting from or incident to the ownership, maintenance or use of any vehicle (motor or otherwise), draft animal or aircraft."

If this sub-section were taken alone a literal interpretation thereof would authorize the writing of insurance covering any loss or liability incident to the use of a motor vehicle. Since damage to a cargo carried in a motor vehicle might be a loss incident to the use of such vehicle it would appear that cargo insurance covering such damage could be written. However, this sub-section cannot be construed by itself, but must be read in the light of the rest of the section. First, it will be seen that marine insurance is provided for in detail as sub-section (d), class 3, of section 60-501. It is also noted that the sub-section set forth above is placed under the heading "Casualty," so that it would appear to be the legislative intent to limit the writing of such insurance to casualty risks, that is, accidents incident to the use of a motor vehicle. That this is the legislative intent is made apparent by sub-section (i) of class 2, since, under this sub-section, the legislature assumes that only casualty risks are covered, as it provided therein for "any other casualty risk not otherwise specified."

In Farmers' Coop. Society No. 1 v. Maryland Casualty Company, Tex. Civ. App. 135 SW (2d) 1033, the Court said:

"'Accident' has been said to be a synonym of 'casualty' and its use in connection with insurance is generally held to import a casualty or misfortune resulting in injury or damage."

In U.S. v. Rogers, 120 Fed. (2d) 244, the Court held that:

"'Casualty' means inevitable accident; unforeseen circumstances not to be guarded against by human agency and in which man takes no part."

In view of the foregoing, it is my opinion that, while there is some over-lapping between the type of insurance authorized by subsection (b), class 2, and the marine insurance authorized under class 3, sub-section (d), at most, the Hawkeye Insurance Company would be authorized to write only insurance covering damage to cargoes carried in a motor vehicle when such loss arises out of an accident incident to the ownership or use of such motor vehicle.

In conclusion, I might state that inasmuch as our Supreme Court has never passed on this question, and as it does not appear that a similar question has ever been passed on by any of the courts in the United States, it is impossible to say, with certainty, just what the courts would hold if such question were presented to them.

Trusting the foregoing sufficiently answers your question, I am

By ROBERT W. WARD

Asst. Atty. General