

Opinion No. 43-4324

June 28, 1943

BY: EDWARD P. CHASE, Attorney General

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

We are in receipt of your letter of June 22, 1943, in which you quote from a letter of the Union Life Insurance Company of Little Rock, Arkansas, as follows:

"There are a number of ages at which we were unable to open divisions prior to the effective date of your law which prohibited the placing of policies in divisions which were not already established. In view of this situation, do you have any objection to our selling \$ 1,000 Dual Pay Policies on the lives of people residing in your state and placing them in divisions that were established in the State of Arkansas before your law went into effect?"

You ask our opinion as to whether or not the insurance company can follow the plan outlined, in view of sections 60-603 and 60-604 of the 1941 Compilation. These sections are as follows:

"No life insurance company, mutual aid association, or fraternal beneficiary society, order or association operating in this state shall hereafter be permitted to issue policies, certificates or contracts to policyholders or members (in this state) providing for the establishment of its policyholders or members into divisions and classes for the purpose of providing for the payment of benefits from special funds created for such purpose to the oldest member of the division and class whose policy has been in force the longest period of time. upon the death of a member in such division and class, except as hereinafter provided.

"Any life insurance company, mutual aid association, or fraternal benefit society, order or association, heretofore operating on this plan in this state may continue so to do upon condition that such life insurance company, fraternal benefit society, or mutual aid association shall not hereafter establish its policyholders, or members, (in this state) into divisions or classes other than the division and classes actually containing subsisting policies or certificates, (in this state) when this act shall become a law."

The bracketed language, "in this state," has been inserted by me, since it appears that it is necessary to read these words into the statute in order to arrive at the legislative intent. Certainly the legislature did not intend, by this statute, to prevent a company authorized to do business in New Mexico from issuing dual pay policies in another state, yet, if the language "in this state" were not read into the first section a literal construction of the section would purport to prohibit a company from doing this. The same is true with the second section unless the language "in this state" is read into the statute.

Certainly the Legislature did not intend to prevent a foreign company operating in New Mexico from issuing dual pay policies in new divisions or classes in other states. Here again a literal reading of the statute without the bracketed language would call for this conclusion. Thus, it appears to the writer that the same is true as to the last line of section 60-604, since the statute was enacted to protect New Mexico policyholders, who were the only ones that the Legislature could provide for, and since a failure to read this language into the statute would prevent such protection being given. A company may have had, at the effective date of this act, a great many of these plans operating in various states in the country. Thus, if any other construction were placed on the statute, such company could, from time to time, sell policies under any of these plans and thereby in effect open new classes or divisions.

In view of the foregoing, it is my opinion that the Union Life Insurance Company cannot sell dual pay policies on the lives of people residing in New Mexico and place them in divisions that were established in some other state than New Mexico.

Trusting the foregoing answers your inquiry, I am

By ROBERT W. WARD

Asst. Atty. General