

**Opinion No. 43-4373**

August 25, 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 August 18, 1943, and the enclosed form of "Mutual Aid" arrangement submitted by the headquarters of the Albuquerque Sub Depot. You ask our opinion as to whether or not this plan comes within the purview of the insurance laws of the State of New Mexico. This plan is as follows:

Civil Service employees may or may not, at their option, sign a card signifying their desire to become a member of Mutual Aid. On the death of any person signing such a card, the other persons who have signed such cards are requested to contribute fifty cents to the beneficiary of the deceased member. The members are not bound to pay anything, and may withdraw from membership at any time, the only penalty being that once refusing to pay, or withdrawing from membership, their name is removed from the membership list and may never be placed upon it again.

Insurance is defined as being mere contract of indemnity against loss. Brock v. Hardy, 154 So. 690, 114 Fla. 670.

In defining insurance, the Court in Saltzman v. Fairbank Realty Company, 257 N. Y. Supp., 144 Misc. 243, said:

"That a promise to pay money or its equivalent or to do some act valuable to the insured is indispensable in an insurance contract."

In view of the foregoing, it is my opinion that Mutual Aid plan is not a type of insurance, since there is no contract in that the members are in no way legally bound, and since there is no binding promise to pay any sum of money by any person, thus it follows that since it is not insurance, it does not come within the purview of the Laws of the State of New Mexico.

Hoping that the foregoing fully answers your inquiry, I am

By ROBERT W. WARD,

Assistant Attorney General