

Opinion No. 44-4525

June 1, 1944

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 May 25, 1944, in which you state that a company already authorized to do Class 2, Casualty, Fidelity and Surety business, has requested that it be licensed to write Class 3, Fire and Marine insurance as well. You state that this company has already on file its Articles of Incorporation and Power of Attorney. In view of these facts, you ask our opinion as to what fee should be charged this company.

Section 60-401 of the N.M. 1941 Compilation, as amended by Chapter 110 of the Laws of 1943, requires the payment of the following fees:

"For filing Articles of Incorporation with the Corporation Commission \$ 100.00

For filing copy of By-Laws \$ 50.00

For filing Amendment to Articles of Incorporation or changing amount of Capital Stock or par value of same \$ 5.00

Every insurance company licensed to transact an insurance business in the State of New Mexico shall pay to the Superintendent the following fees:

For filing Power of Attorney preliminary to admission \$ 50.00

For filing certified copy of Articles of Incorporation and by-laws preliminary to admission \$ 50.00

For filing Annual State-
ment \$ 50.00

For Annual license to transact
business \$ 50.00

At the outset it should be noted that the Legislature has not made special provision to cover this situation. Thus it is necessary to look at the act as a whole to determine whether separate fees should be charged for each class of business, or whether the payment of the fees once would suffice.

The Legislature has, by Section 60-501 of the N.M. 1941 Compilation, established four classes of insurance, and provided that:

"All companies now or hereafter authorized to transact business in this state shall be classified according to their functions into four classes corresponding to the classes of insurance enumerated in this section.

"No company shall be authorized to transact any kind or kinds of business other than those enumerated in those respective classes."

In the light of this provision, this office, has by Opinion No. 3299, ruled that a company licensed to transact one class of business cannot transact another class of business under the same license. This does not mean that an insurance company licensed to do one class of business cannot, in addition, be licensed to do another class of business. By Opinion No. 3498, and letter dated October 17, 1944, addressed to you, this office has held that an insurance company can obtain licenses to do two classes of business if it meets cumulative requirements established by Section 60-405 of the N.M. 1941 Compilation for each of those classes. It therefore follows that since the two classes of business must be kept separate, and two licenses issued, that two license fees of \$ 50.00 should be charged.

Turning now to Section 60-416, it is seen that as a prerequisite to the issuance of a renewal of its license, each company must file a financial statement.

Section 60-502 provides, in part, that:

"Every company licensed to transact more than one form of insurance as defined in the preceding section, shall maintain separate and distinct reserves for insurance so transacted, and shall keep a separate account of all receipts in respect to each form of insurance as defined in the preceding section, and of all disbursements in respect to each form of insurance."

Inasmuch as it would take separate financial statements to carry out the provisions of Section 60-502 with respect to each class of business done, it is my opinion that a separate fee of \$ 50.00 should be charged for filing each of these statements.

As to the fee to be charged for filing Articles of Incorporation with the Corporation Commission, By-Laws and Power of Attorney preliminary to admission to do business, it will be observed that each of these pertain to the corporation structure of the insurance company; that no useful purpose would be served by having duplicates, and that the payment of these fees is made a condition to the right to do any business whatsoever, as distinguished from doing a particular class of business.

It is therefore my opinion that these fees of \$ 100.00, \$ 50.00 and \$ 50.00 respectively should only be charged once, no matter whether the company does one class of business, or is licensed to do all four classes of business. See Section 60-407 as to the Articles of Incorporation, and 60-409 as to the Power of Attorney.

Trusting that the foregoing sufficiently answers your inquiry, I am

By ROBERT W. WARD,

Asst. Atty. General