

Opinion No. 44-4533

June 20, 1944

BY: EDWARD P. CHASE, Attorney General

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

You have called our attention to the last paragraph contained in an opinion dated May 15, 1944 and numbered 4514 which states:

"It is my opinion that licensed insurance agents of a particular insurance company may enter into brokerage contracts under the above provision with other licensed insurance agents of the same company in order to take advantage of the above mentioned provision, so long as the provisions of such contract contemplate what is set out in the above quoted portion of the statute."

You ask us to review the holding made in this paragraph in connection with brokerage contracts. This ruling was based upon the following provision found in Sec. 60-417 of the New Mexico 1941 Compilation which provides:

"Provided, that any licensed agent of any insurance company may pay to any other licensed agent of any insurance company for services rendered any part of any commission received by him from any insurance company he is licensed in New Mexico to represent."

It is noted that the portion of Sec. 60-417 relied upon in Opinion No. 4514 does not in fact provide what manner of services licensed agents of insurance companies may render to each other as the basis of prorating the commission between two agents. It is further noted that this clause does not specifically limit payment of such amounts between agents of the same company. This construction, however, was originally placed upon the section in view of the first sentence in Sec. 60-417, and also other sections of the insurance law which would tend to indicate that it was contemplated that only licensed agents of a particular company may write insurance for such company or receive a commission. It was attempted by this construction to reconcile the particular clause relied upon with the theory evidenced by the other portions of the insurance law.

This provision, in our opinion, does not authorize any particular type of service and it would further appear that if a licensed insurance agent renders services for another licensed agent, he may receive a portion of the commission even though both agents are not licensed by the same company.

In view of the fact that this provision does not authorize any particular type of service that insurance agents may render each other, it does not authorize insurance agents to

enter the business of insurance brokers or perform services as brokers and not as insurance agents.

Hoping the above fully answers your questions, I remain

By C. C. McCULLOH,

First Asst. Atty. General