

**Opinion No. 44-4569**

August 31, 1944

**BY:** C. C. McCULLOH, Attorney General

**TO:** Mr. Ralph Apodaca, Superintendent of Insurance, Santa Fe, New Mexico

You have called our attention, in a letter of August 17, 1944, to Section 60-604 of the New Mexico 1941 Compilation which forms certain exceptions to types of policies prohibited by Section 60-603 of the New Mexico 1941 Compilation and provides as follows:

"Any life insurance company, \* \* \*, heretofore operating on this plan in this state may continue so to do upon condition that such life insurance company, \* \* \* shall not hereafter establish its policyholders, or members, into divisions or classes other than the division and classes actually containing subsisting policies, or certificates, when this act (Sections 60-603 -- 60-604) shall become a law."

You state that a certain insurance company had established its policyholders into certain divisions and had policies in effect on such divisions when Section 60-604 became effective, but that since such period certain divisions were allowed to completely lapse and for an interval of time no policies in such divisions were outstanding although the company is now attempting to sell policies to cover such divisions. In view of the foregoing, you request an opinion of this office concerning whether or not the company may now start selling those divisions which lapsed subsequent to the effective date of the above cited section, but were in effect on such effective date.

In view of the specific wording of the section, it is my opinion that the only test concerning whether a company may establish divisions is that set forth in Section 60-604 concerning the effective date of the act and, therefore, it is immaterial that subsequent to such date there was a period during which the particular insurance company did not have policies outstanding in certain divisions.

Sections 60-603 and 60-604 of the New Mexico 1941 Compilation are obviously derived from Sections 36-223 and 36-224 of the 1941 Oklahoma Statutes since our sections are practically identical to the Oklahoma laws. The Oklahoma statute was considered in the case of *Read vs. National Equity Life Insurance Company* 114 Fed. 2d 977. While this case did not determine the exact problem now presented, it is interesting to note that the opinion apparently assumed the construction which is given in this opinion.

Hoping that the above fully answers your questions, I remain

By HARRY L. BIGBEE,

Asst. Atty. General