

Opinion No. 45-4764

July 24, 1945

BY: C. C. McCULLOH, Attorney General

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

{*113} Replying to your letter of July 21, 1945, wherein you request an opinion as to whether the following provision in an insurance policy is in conflict with Section 60-601, subsection (6), of the N.M. 1941 Compilation:

"After this Policy shall have been in force for twenty -- fifteen years from the date hereof, and after all premiums due {*114} hereon shall have been paid in full, it shall thereafter be treated as an annual dividend policy, and the Insured will thereafter receive such dividends as may be determined and apportioned to policies of like classification by the Board of Directors of the Company."

"(6) If it be a participating policy, a provision that the policy shall participate in the surplus of the company and that, beginning not later than the end of the third policy year, the company will annually determine the portion of the divisible surplus accruing on the policy, and that the owner of the policy shall have the right each year to have the correct dividend arising from such participation in the case of term policies of insurance paid in cash * * *"

Our Legislature, in enacting the above section, Section 60-601, attempted to prevent the delay of paying earnings out of surplus created on insurance policies. No doubt the Legislature had in mind that insurance companies are prone to delay payment of earnings, and thereby reward those who continue the policy for the full term at the expense of those who may cancel or die before the term of the policy.

The paragraph quoted from the policy mentioned is misleading in its title. What does it participate in after twenty years? Does it participate in dividends earned during the twenty years, or after the term of the policy?

If the dividends, or a portion thereof, mentioned were earned during the twenty year period, then it is in conflict with Section 60-601.

There is also another conflict with the above mentioned section, which provides for correct dividends, and not "as may be determined by the Board of Directors of the company."

In Words and Phrases, "Participate", Page 132, it is stated:

"Expert evidence that the word 'participate' has a technical significance or meaning in the business of life insurance, and when used in connection with a premium or policy means a sharing of any and all profits accruing to the company or class to which the individual or policy belongs, held admissible." Fry v. Provident Sav. Life Assur. Soc. of New York, Tenn., 38 S. W. 116, 126.

By THOS. C. McCARTY,

Asst. Atty. General