

Opinion No. 46-4831

January 7, 1946

BY: C. C. McCULLOH, Attorney General

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

{*168} Replying to your request for an opinion as to which of the following classes or companies should pay the 2% premium tax, as provided by Chapter 107 of the Session Laws of 1945, also an opinion as to the proper fees applicable to each class in view of the requirements stated in Chapter 107 of the Session Laws of 1945:

"1. Life, Fire, Casualty and Title. ([parallel] [parallel] 60-401 -- 427)

2. Mutual Fire, Hail and Tornado. ([parallel] [parallel] 60-801 -- 825)

{*169} 3. Fraternal Benefit Societies. ([parallel] [parallel] 60-901 -- 928)

4. Non-profit Hospital Service Plan. ([parallel] [parallel] 60-1001 -- 1011)

5. Mutual Employers' Liability & Compensation Insurance. ([parallel] [parallel] 60-1101 -- 1118)"

Chapter 107, Laws of 1945, is, in part, as follows:

PREAMBLE

"WHEREAS, the United States Supreme Court has declared in recent decisions that the business of insurance is interstate commerce, it is therefore declared to be the legislative intent of this Act to revise the taxing statutes of New Mexico applicable to such business so as to provide equal and non-discriminatory taxation of domestic and foreign insurance companies alike, and to fully comply with the requirements of the Commerce Clause of the Federal Constitution: * * *"

"Every insurance company licensed to transact an insurance business in the State of New Mexico shall also pay annually on or before the first day of March each year, two (2%) per centum of the gross premiums, membership and policy fees received by it on insurance covering risks within the state during the preceding calendar year, less all return premiums, including dividends paid or credited to policyholders and premiums received for reinsurance on New Mexico risks. * * *"

Section 60-405, N.M. S. A., 1941, is, in part, as follows:

"* * * Provided, further, that the provisions of this section shall not apply to fraternal, religious or benevolent societies or to labor organizations which issue benefit certificates and operate strictly not for profit."

By reason of the Preamble for the above amendment, it is my opinion that it was not intended that Chapter 107 of the Laws of 1945 should apply to "Fraternal Benefit Societies" and "Non-profit Hospital Service Plan." Therefore, the tax or fee structure under these subjects was not changed by Chapter 107 of the Laws of 1945.

It is my further opinion that "Life, Fire, Casualty and Title; Mutual Fire, Hail and Tornado; and Mutual Employers' Liability and Compensation Insurance" are subject to the provisions of Chapter 107 of the Laws of 1945, both as to the premium tax and fees.

By THOS. C. McCARTY,

Asst. Atty. General

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