

Opinion No. 45-4797

September 29, 1945

BY: C. C. McCULLOH, Attorney General

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

{*138} Replying to your request of September 27, 1945, for an opinion as to whether the following "**Installment Premium Endorsement**" may be used in the State of New Mexico, in view of Sections 60-706 and 60-704 of the New Mexico Statutes 1941 Annotated?"

I quote from the Installment Premium Endorsement as follows:

"Except Manufacturing Risks (See Note Below), all property eligible to be insured for a term at reduced multiples of the annual rate may be written for terms of more than one year up to, but not exceeding, five years, with the premium payable in annual installments by the use of an endorsement in the exact form specified herein. In every case the number of installments shall be equal to the number of years in the term of the policy and the first installment shall be equal to the premium for a one year policy and due upon the effective date of the policy. The subsequent installments, one for each additional year of the policy, shall be 78% of the first installment and shall be due upon the first day of each additional year.

"Note: The use of machinery shall require classification as a manufacturing risk, except when machinery is used for building service only, or for auxiliary processes in connection with a mercantile occupancy.

"INSTALLMENT PREMIUM ENDORSEMENT

"(Note: As an example, this endorsement has been filled in for a policy for \$ 25,000. at a rate of 40 [cents] per \$ 100.00 per annum for a term of three years from September 1, 1945.)

"In consideration of the increase in the premium for the policy to which this endorsement is attached, the premium is made payable in annual installments, as follows:"

The last paragraph, "increase in the premium," is in fact a charge, not for insurance, but for the privilege of paying in installments.

Section 60-704 relates to "Discrimination -- Rebating -- Twisting -- Revocation of Licenses." Assuming "all property eligible" relates to "like hazard or hazards," there is "no discrimination."

The only other matter we note that might call for an opinion under the question is as to the following portion of the above section:

"* * * nor shall any such company, officer, or agent thereof make any contract of insurance other than as plainly expressed in the policy itself."

The following citation would appear to give a liberal construction, but need not bind the policy or custom you may have established:

"1 Couch on Insurance, Section 160. **'Indorsements and marginal references.** -- In most instances, matter may be added to, and become a part of, a contract of insurance by way of endorsements or marginal references made on the policy itself. This is especially true where the indorsement or reference is expressly referred to in the policy, or the indorsement itself provides that it, with the application, shall constitute the contract."

{*139} As to Section 60-706 -- "Must Not Sell Premium Notes" -- we find no conflict with the "indorsement" under this section.

The endorsement benefits, in the reduction of premium for second and third years, appears to be an inducement for continuing the insurance by the insured. The policy being obtainable by all persons requiring the type of insurance offered, I see no reason, after studying the above sections, why the superintendent of insurance may not permit the use thereof.

By THOS. C. McCARTY,

Asst. Atty. General