

Opinion No. 46-4851

February 6, 1946

BY: C. C. McCULLOH, Attorney General

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

{*184} Replying to your letter requesting an opinion on the matter of dating life insurance policies prior to or after the date of actual execution.

The following statutory provisions and text citations are pertinent to the issue.

Section 60-601 of the 1941 Compilation:

"(14) It shall be unlawful for any life insurance company licensed to transact business in the state of New Mexico to issue any life insurance policy other than industrial insurance, annuities, or pure endowments, {*185} if it contains substantially any of the following provisions:

"(b) A provision by which the policy purports to be issued to take effect more than six (6) months prior to or six (6) months after the date when the policy was actually executed by the company."

Section 60-704 of the 1941 Compilation, "Discrimination, Rebating" (in substance) no variation in premiums, no variation from rates, of forms filed -- any inducement, favor, advantage, not designated in the policy -- et seq.

Cooley's Briefs on Insurance, Vol. II, page 1664:

"The statute is, of course, violated if the rate charged the insured is greater or less than the regular rate charged insurants of the same age and class."

Am. Jur. 29, Insurance, Section 382, page 329:

"Within the purview of a statute which expressly or in effect prohibits discrimination between insurants in relation to premiums, dividends, etc., there is discrimination where a life insurance is charged at a rate less than others of the same age, as where the policy is dated back to give the benefit of a more favorable age rate or is issued at a premium rate for persons of younger age."

Section 60-704 and Sec. 60-601 were enacted under Chapter 135, Laws of 1925. The former is mandatory and the latter is "permissive", that is Section 60-601 permits ante or post dating not to exceed six months.

In State v. York, 24 N.M. 643, 175 P. 769, the New Mexico Supreme Court has stated the rule of construction applicable:

"In the construction of a statute, in order to determine the true intention of the legislature, the particular clauses and phrases should not be studied as detached and isolated expressions, but the whole and every part of the statute must be considered in fixing the meaning of any of its parts."

It being a cardinal rule of statutory construction that a "mandatory" provision prevails over a "permissive" provision, it is my opinion that if ante dating or post dating causes a discrimination under the provisions of Section 60-704, such dating would be unlawful.

By THOS. C. McCARTY,

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