

August 17, 1950

Re: File No. 50-302

Mr. N. F. Morris,
Actuary Insurance Division
Arizona Corporation Commission
Capitol Annex
Phoenix, Arizona

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ARIZONA ATTORNEY GENERAL

Re: National Reserve Insurance Co.
and Sec. 61-1009 (c) ACA 1939

Dear Mr. Morris:

We have your request for an opinion stated as follows:

"We would like an immediate ruling, if possible, in connection with the above company, and Section 61-1009, Sub-Section 'C'.

It is the department's opinion that from the current year's income a mortuary fund is set aside. From this current year's mortuary fund, all death claims for the current year are paid and from the remaining mortuary fund for the current year the company can declare a dividend up to 50% of such remaining fund. The remaining portion of the mortuary fund then is to remain intact with any other mortuary fund and no part thereof can be used for the payment of dividends current or future."

The subsection which provides for payment of dividends reads as follows:

"During any calendar year should the contributions to the mortuary fund exceed the amount required to pay all benefit claims arising during the same calendar year, the company may, in accordance with a provision in the certificate, make a refund to the certificate holders not to exceed fifty (50) per cent of the amount contributed by the certificate holder to the fund. (Laws 1943, ch. 95, § 9, p. 232.)"

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This subsection is clearly limited to that portion of the mortuary fund which is from contributions of the current year so that, under no circumstances, could any dividend be paid from the remaining portion. Apparently the legislature thought this was sufficient safeguard for future claims for it states clearly that the company may make a refund not to exceed 50% of the amount contributed.

It is true that, in certain instances, such a refund would completely deplete the contributions for the current year and may further have the effect of allowing the permanent balance of the mortuary fund to go below safe limits. However, the Court will not read into a statute a provision which it does not contain, no matter how wise such a provision may have been.

That the legislature intended no further limitation on this "refund" is even more apparent when we consider the provision it made for assessments in case of an "unexpected number of deaths". The mortuary fund was provided for the protection of policy-holders and the Corporation Commission has the power to direct that assessments be made in the event an "unexpected number of deaths" forces the fund below a safe minimum. Sections 61-1017 (a) 7 and 61-1032 ACA 1939.

It is therefore our opinion that a Benefit Corporation may make refunds of the contributions to its mortuary fund for the current year up to 50% of such contributions; that this is true even though such refunds would entirely deplete such contributions; that in no event may such refunds be made of any but the contributions for the current year.

Trusting the foregoing will aid you in solving this problem, we are

Very truly yours,

FRED O. WILSON
Attorney General

WILBERT E. DOLPH, JR.
Assistant Attorney General

WED:hw