

September 7, 1950

Op. No. 50-330

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

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ARIZONA ATTORNEY GENERAL

Dear Mr. Morris:

In your letter of August 29, 1950, and our conversation of that date you asked our opinion as to whether Section 61-704 ACA 1939 requires a domestic insurance company to have the Corporation Commission's approval of policy forms issued in other states, but not issued, delivered or used in Arizona.

The section to which you refer was originally enacted into law as Section 62 of Chapter 94, Laws 1913, Third Special Session, which reads as follows:

"On and after January first, nineteen hundred and fourteen, no policy of life or endowment insurance shall be issued or delivered in this state until a copy of the form thereof has been filed at least thirty days with the corporation commission unless before the expiration of the said thirty days the corporation commission shall have approved the same in writing, nor if the corporation commission notifies the company that in its opinion the form of the said policy does not comply with the requirements of the laws of this state, specifying the reasons for its opinion; provided, that upon petition of the company the opinion of the corporation commission shall be subject to review by any court of competent jurisdiction." (Section 3452, Laws 1913)
(Emphasis supplied)

As you will note from the underlined portion, this section was clearly intended to apply only to policies "issued or delivered in this state." This section was revised in 1928 to read as follows:

"Form of life policies to be filed and approved. No policy of life or endowment insurance shall be issued or delivered until a copy of the form thereof has been filed at least thirty days with the commission unless before the expiration of the said thirty days the commission shall have approved the same in writing, nor if the commission notifies the company that the

form of the said policy does not comply with the laws, specifying the reasons for its opinion; upon petition of the company the opinion of the commission may be reviewed by any court having jurisdiction. (§ 62, Ch. 94, L. '13, 3rd S.S.; 3452, R.S. '13, rev.)" (Section 1846, R.C. 1928)

In this revision there was a slight rewording, and the phrase "in this state" was dropped. Our Supreme Court has repeatedly announced that there is a presumption that any change in wording found in the 1928 Revised Code was intended merely to "reduce in language" and not to change in substance.

In re Sullivan's Estate, 38 Ariz. 387, 300 Pac. 193
Castaneda v. National Cash Register Co., 43 Ariz.
119, 29 P. 2d 730.

With the aid of such presumption we find that Section 1846 R.C. 1928 extends only to policies issued or delivered in this state, just as did the original enactment. Any change which would extend this requirement to policies which are not issued or delivered in Arizona must have been brought about by an amendment which displayed a legislative intent to render such a change. In 1949 this section was amended to read, in part, as follows:

"Approval of forms.--(a) No insurance company shall issue, deliver or use any: 1. policy of life or endowment insurance; 2. policy of insurance against loss or damage from disease, bodily injury or accident; 3. application form where written application for such insurance is required and is to be attached to the policy, or 4. printed life or disability rider or endorsement, unless the form thereof has been filed with and approved by the commission. The commission may also require that all advertising matter for use in the sale of any such policy of insurance shall be filed with and approved by the commission. Within thirty (30) days after the filing thereof the commission shall approve or reject any such form, and advertising matter. In the event approval of a form is granted prior to the termination of the thirty (30) day period, the commission may waive the unexpired portion thereof. Failure of the commission to act within the period prescribed by this section shall be deemed approval of the form. * * * " (Laws 1949, Ch. 116, Sec. 16) (Sec. 61-704 Supp. ACA 1939)

While this amendment makes a more all-inclusive enumeration of the types of document which must be filed, it does not contain anything which shows a legislative intent to extend the requirement to forms which are not issued, delivered or used in the state of Arizona. It follows that Section 61-704 (Laws 1949 Ch. 116, Sec. 16) has not been changed from its original enactment insofar as its limitation to documents within the state.

It is therefore our opinion that Section 61-704, supra, does not require a domestic insurance company to file with the Corporation Commission forms of policies which are issued in another state but which are not issued, delivered or used in Arizona.

We feel that it should be pointed out that, in spite of the fact that Section 61-704 does not require Corporation Commission approval of such forms, the Commission has the power to make such reasonable regulations regarding such a situation as are necessary to the protection of the insuring public.

Trusting the foregoing will serve to answer your inquiry, we are

Very truly yours,

FRED O. WILSON
Attorney General

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Assistant Attorney General

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