

August 3, 1932

Mr. M. C. Hankins, Secretary
Arizona State Highway Commission
Phoenix, Arizona

In Re: Insurance on Ehrenburg bridge.

Dear Sir:

In reply to the request of the Commission to be advised as to whether or not the department may pay the premiums on a policy of insurance on the Ehrenburg bridge when such insurance is placed in a foreign or alien company if there be a proper budget item therefor, I give you herewith my opinion.

In this regard, I respectfully call your attention to my letter of June 7, 1932, relative to this matter. I quote again, however, the pertinent provisions of the law of this State bearing upon the right of insurance companies to do business in this State without first having been qualified. Sections 1783, 1785 and 1813 respectively provide in part as follows:

"Sec. 1783. Before the corporation commission issues a certificate of authority to an insurance company to issue policies or make contracts of insurance in this state, it shall be satisfied by examination that such company is duly qualified under the laws of this state to do business herein.* * *"

"Sec. 1785. No person shall transact business of insurance within this state without the certificate or license of the commission, which shall be renewed annually on the first day of April, certifying that such person has complied with the law and is authorized to transact the business of insurance specified therein in this state. No person shall transact any insurance business not specified in such certificate or license.* * *"

"Sec. 1813. No foreign company shall make, write, place or cause to be made, written or placed in this state any insurance policy or contract unless through its duly authorized agents, residents of

August 3, 1932

this state. An insurance company violating this section shall have its certificate of authority to do business suspended for not less than one year, to be renewed only upon a written pledge from the directors or executive body in authority over the officers that this section will be fully observed.* * *"

From the foregoing, it is apparent that non-admitted or alien insurance companies may not transact the business of insurance in this State, unless and until they shall have been qualified and have been licensed by the Arizona Corporation Commission. Severe penalties are imposed under the law of this State upon companies doing business when they have not qualified, and upon agents who solicit business for such companies. Should the Arizona Highway Commission place insurance with a non-admitted company, it would be procuring a violation of the laws of this State, and furthermore, knowingly procuring a violation of such laws.

That Lloyds of London is not qualified in this State is, I believe, admitted. I do not know, either, that such company is qualified anywhere within the United States to do an insurance business. In this regard, I quote from Best's Insurance Reports, 1932:

"According to latest advices, the Lloyds underwriters, with exception of a few in the State of Illinois, are not entered in the various states of the United States, and where not entered, in case of necessity to bring suit, action would have to be brought in the English courts."

I have examined the letter of Mr. Arthur M. Brown, of Edward Brown & Sons, of San Francisco, to the Security Title Insurance & Trust Company, at Kingman, relative to this matter. In answer thereto, it suffices to say that the laws of this State in respect to the placing of insurance with non-admitted companies is not the same as the laws of California in such regard. There is no provision of law in this State that permits the writing of insurance with non-admitted companies after the business has first been offered to admitted companies and refused.

I must conclude that the Arizona State Highway Commission may not expend highway funds for the purpose of paying premiums on insurance on the Ehrenburg bridge when the contract

M. C. Hankins

- 3 -

August 3, 1932

of insurance is to be placed with an alien or non-admitted company. I have arrived at this conclusion fully aware of the urgency of the situation, and the desire of the Commission to adequately protect the property of the State.

As to the responsibility of the State to the underwriters for the earned premium in the instant case, it is my opinion that no action may be successfully maintained to collect the same inasmuch as the company in which the insurance was placed was not admitted in this State.

Very truly yours,

Attorney General

By

RBS:S

Assistant Attorney General