

November 19, 1948

SUBJECT: INSURANCE

WITHDRAWN

TO: ALL INSURERS AUTHORIZED TO WRITE GROUP INSURANCE

Gentlemen:

In order to acquaint you with the views of this Department relating to the eligibility of directors of a corporation for group insurance, I am quoting below from an opinion dated October 7, 1948, written by the undersigned, wherein the conclusion was reached that directors of a corporation who receive no compensation other than directors' fees are not "officers" and, therefore, do not come within the class of eligible persons who may be insured under a group policy issued pursuant to paragraph (a) of subsection 1 of Section 204 of the New York Insurance Law defining group life insurance, viz:

"In construing paragraph (a) it must be remembered that the fundamental purpose of group life insurance was to provide such protection where the relationship of employee and employer exists. This relationship is considered to be a necessary underwriting safeguard in the writing of group life insurance. Any exceptions are specifically enumerated in the paragraph.

"Therefore, the question to be resolved is whether directors are included within the meaning of the term 'Officers'. Having in mind the objective of group life insurance, which is to provide protection to employees or those who have equivalent status, it is our opinion that the word 'Officers' should be given the meaning recognized by common usage. In other words, there is a distinction between the duties of directors and those of officers. This difference is emphasized by the fact that directors are elected by the stockholders and officers are elected by the directors.

"It is true that there are decisions holding that a director is an officer of a corporation. The decisions in those cases depended on the special circumstances involved or a particular statute. I do not consider that such decisions are in point."

I would be of the same opinion in case the director who receives a salary or compensation other than fees, does not perform substantial services in behalf of the corporation of such character that he may be considered to be an officer or employee.

The same construction should be given, in my opinion, to the term "employee" as used in other subsections of Section 204 and in Section 221.

Very truly yours,

[SIGNATURE]

Deputy Superintendent and Counsel.