

**OPINION
79-171**

January 30, 1979 (OPINION)

Mr. Byron Knutson, Commissioner
North Dakota Insurance Commission
State Capitol
Bismarck, North Dakota 58505

Dear Commissioner Knutson:

This is in response to your letter of January 11, 1979, wherein you request an opinion of this office relative to Chapter 26-31 of the North Dakota Century Code, as amended, regarding qualifications of insurance companies in the issuance of automobile warranty policies. You submit the following facts and premise in your letter:

We would appreciate your opinion on an interpretation of Chapter 26-31 of the North Dakota Century Code. The question is if a foreign corporation has complied with the specific requirements and provisions of Chapter 26-31 of the North Dakota Century Code dealing with warranties, should the Commissioner further require compliance with 26-09-01(4) of the North Dakota Century Code as it relates to Section 26-08-04 of the North Dakota Century Code requiring certain capital stock and surplus requirements. An application for a Certificate of Authority pursuant to Chapter 26-31 of the North Dakota Century Code has been presented to the Insurance Commissioner by United Service Protection, Inc., a Florida corporation. The Commissioner is satisfied that the application conforms to all of the specific requirements of Chapter 26-31, however, the question has been raised as to whether or not it is necessary that the company must comply with the capital stock requirement provisions of 26-08-04 of the North Dakota Century Code as imposed on a foreign corporation by 26-09-01(4) of the North Dakota Century Code.

Initially we would note the provisions of Section 26-31-02 of the North Dakota Century Code, setting forth the requirements for a Certificate of Authority, as follows:

26-31-02. CERTIFICATE OF AUTHORITY - ISSUANCE - QUALIFICATIONS - RENEWAL. - No person, firm, corporation or association shall engage in the business of providing or writing automobile warranty insurance without first having obtained from the commissioner of insurance a certificate of authority to issue automobile warranty insurance policies. The commissioner of insurance shall not issue a certificate of authority to issue automobile warranty insurance policies unless he shall be satisfied by the submittal of evidence as he may reasonably require that such company is qualified in accordance with the laws of this state governing insurance companies, to transact business in this state under the laws thereof. Each certificate of authority issued under any provisions of this chapter shall expire on the thirtieth day of April succeeding the date of issuance, and renewal thereof may be issued by the

commissioner when he is satisfied that such company is qualified to transact business in this state under the laws thereof. (Emphasis supplied)

Inasmuch as the subject corporation appears to be a foreign insurance company, we would note the provisions of Section 26-09-01(4) of the North Dakota Century Code, which sets forth the requirements and conditions under which foreign insurance companies may transact business in this state. The same provides as follows, in part:

26-09-01. CONDITIONS TO BE COMPLIED WITH BY FOREIGN INSURANCE COMPANY BEFORE TRANSACTING BUSINESS IN STATE. - No foreign insurance company shall take any risk or transact the business of insurance in this state, either directly or indirectly, until it shall have. . . .

4. Satisfied the commissioner, if it is a stock company, that it has a fully paid-up capital stock and surplus at least equal to the stock and surplus required of domestic companies transacting the same classes of insurance. . . . (Emphasis supplied)

With regard to requirements of domestic companies, we would note that Section 26-08-04 of the North Dakota Century Code sets forth the capital stock and surplus requirements of a domestic stock insurance company. The same provides as follows:

26-08-04. CAPITAL STOCK AND SURPLUS REQUIREMENTS UPON ORGANIZATION OF DOMESTIC STOCK INSURANCE COMPANY EXCEPTIONS. - No stock insurance company shall be incorporated under this chapter unless it has an authorized capital stock of at least five hundred thousand dollars and a stock of at least five hundred thousand dollars. No domestic stock insurance company may issue any policy of insurance until at least fifty percent of the minimum capital stock required by this section and all surplus required, shall have been paid in, the residue of capital stock to be paid in within twelve months from the time of filing the articles of incorporation, but the commissioner of insurance, for good cause shown, may extend the time of payment of such residue for the further period of one year. If the minimum capital stock and surplus requirements at the time a stock insurance company incorporated under this chapter are less than the minimum requirements provided by this section, such stock insurance company shall maintain authorized capital stock and surplus which shall satisfy the capital stock and surplus requirements in effect at the time of such incorporation.

Section 26-08-01 of the North Dakota Century Code also sets forth the general powers and duties of domestic insurance companies as follows:

26-08-01. GENERAL POWERS AND DUTIES OF DOMESTIC INSURANCE COMPANY. - All insurance companies incorporated or formed by any authority of any law of this state, except when otherwise expressly provided, may exercise the powers and shall be subject to the duties and liabilities provided by this title. The general law governing profit corporations shall apply to

all incorporated domestic insurance companies so far as such provisions are pertinent and not in conflict with provisions contained in this title relating to such companies. (Emphasis supplied)

The question, then, is whether the requirements of Section 26-08-04 of the North Dakota Century Code, relating to domestic insurance companies, also applies to companies issuing automobile warranty insurance pursuant to Chapter 26-31 of the North Dakota Century Code. Noting that Section 26-08-01, in referring to general powers and duties of domestic insurance companies, specifies that it is applicable to all insurance companies, and that the same "shall be subject to the duties and liabilities provided by this title", we can only conclude that such requirements as set forth in Section 26-08-04 are applicable to companies issuing automobile warranty insurance. Likewise, noting that Section 26-31-02 of the North Dakota Century Code states that "The commissioner * * * shall not issue a certificate of authority to issue automobile warranty insurance policies unless he shall be satisfied * * * that such company is qualified * * * to transact business in this state under the laws thereof", it appears clear that the provisions of Section 26-08-04 of the North Dakota Century Code becomes the "qualification" statute by virtue of the provisions of Section 26-09-01(4) of the North Dakota Century Code.

While it is noted that Section 26-31-03 of the North Dakota Century Code, requiring a surety bond before automobile warranty insurance policies are issued or before such company is authorized to transact business within this state, it does not appear that such requirement constitutes an exception to the provision appearing in Section 26-08-01, setting forth general powers and duties of domestic insurance companies, "except when otherwise expressly provided", since such exception must be expressly provided. We do not find such express provisions in this instance.

Accordingly, we are of the opinion that the duties and liabilities of an automobile warranty company are not limited to the provisions of Section 26-31-03 of the North Dakota Century Code, but are also subject to the requirements and qualifications set forth in Section 26-08-04 of the North Dakota Century Code, pursuant to the provisions of Section 26-09-01(4) imposing equal requirements upon a foreign company as that required of a domestic company transacting the same classes of insurance.

We trust the foregoing general comments and expressions will adequately set forth the opinion of this office upon the matter and will be of interest and assistance to you.

Sincerely,

ALLEN I. OLSON

Attorney General