

**OPINION  
50-153**

July 13, 1950           (OPINION)

SECURITIES

RE: Mutual Life Insurance Companies

I have your letter of July 11 asking for an opinion on subdivision 9 of section 10-0403 of the North Dakota Revised Code of 1943 relating to exemption to the securities and which provides, "Any security issued by any corporation, cooperative, company or association, whose earnings are distributed to its members, stockholders, or patrons according to patronage."

Your inquiry is particularly as to whether the language quoted is sufficient to exempt securities issued by a mutual life insurance company, subject to regulation by the Insurance Department of the State of North Dakota.

We do not believe that section 10-0403 has any application at all to securities issued by a mutual life insurance company. The securities which a mutual life insurance company may issue are authorized by section 26-1101 which reads as follows:

"TEMPORARY CAPITAL ON ORGANIZATION OF MUTUAL LIFE INSURANCE COMPANY; RETIREMENT. A mutual life insurance company may be organized with, and an existing mutual life insurance company may establish, a temporary capital of not less than one hundred thousand dollars which shall be invested in the manner provided for the investment of its other funds. Out of the net surplus of the company, the holders of the temporary capital stock may receive a dividend of not more than eight percent per annum, and such dividend may be cumulative. Such capital stock shall not be a liability of the company except that it shall be retired as soon as, but not before, the surplus of the company remaining after its retirement shall be equal at least to the amount of the temporary capital so established. At the time for the retirement of such capital stock, the holders shall be entitled to receive from the company the par value thereof and any dividends thereon due and unpaid, and thereupon, the stock shall be surrendered and canceled, and the right to vote thereon shall cease."

As you will observe, the section quoted above authorizes a mutual life insurance company to issue temporary capital of not less than one hundred thousand dollars which shall be invested in the manner provided for the investment of its other funds. The authority thus given to a mutual life insurance company is certainly for the benefit of the policy holders who are members of the company. The temporary capital stock may be retired after a surplus equal to the amount of such capital stock has been created and such surplus will, of course, inure to the benefit of the stockholders.

It is the opinion of this office, therefore, that where a mutual life

insurance company has been granted a charter which has been approved by the State Department of Insurance it may issue temporary stock or surplus notes under the provisions of section 26 -1101 without approval by the Securities Commission.

WALLACE E. WARNER

Attorney General