Surety Companies, Foreign, Filing Annual Statements Of.

Foreign Surety Companies, after filing copy of articles of incorporation with the Secretary of State, and appointing agents and depositing securities, as provided by Chap. 109. Laws 1903, must make proof thereof to the State Auditor. And thereafter such companies are under the jurisdiction of the State Auditor and must file statements with him as required of foreign insurance companies, but need not file annual statements with the Secretary of State as required of foreign corporations other than foreign insurance companies.

Helena, Montana, April 10, 1907.

Hon. H. R. Cunningham,
State Auditor,
Helena, Montana.

Dear Sir:—

Your letter of the 5th inst. received in which you request an opinion upon the following proposition:

Are surety companies required to comply with the laws of this State relating to foreign corporations, in the matter of filing statements with the Secretary of State, or is a compliance with the laws covering insurance companies sufficient?

Section I. of the Act of 1899, as amended by Chap. 129 of the Laws of 1903, is a special law defining what must be done by foreign surety

companies that desire to engage in business in this State. Said Section provides that foreign surety companies "may transact such surety business in this State, upon complying with the provisions of this Act., and not otherwise." Such Section further provides that a surety company must, before commencing to do business within this State, comply with the laws regulating foreign corporations, except that it need not file copy of its charter, statements or reports in counties other than the one in which is located its office or principal place of business within this State. But must file a certificate of appointment of an agent or attorney in fact in the office of the County Clerk of each county in which it transacts business. It must also deposit with the Insurance Commission of the State in which it is incorporated, or has its principal place of business, stocks, bonds or other securities of the par value of one Hundred Thousand Dollars in trust for the benefit of the holders of the obligations of such corporation. And in addition to such deposits of securities, it must also deposit with the Treasurer of this State Fifty Thousand Dollars of like securities in trust for the benefit of the resident holders of the obligations of such corporation.

When it has done all of these things the surety company must then present to the State Auditor satisfactory proof that it has so complied with the provision of this Act. Upon presenting satisfactory proof to the State Auditor and paying to him "the license fee required of general insurance companies by the laws of this State he shall issue it a license authorizing it to transact business within this State."

You will notice that this special law clearly provides that surety companies must comply with the law regulating foreign corporations and not with the law regulating foreign insurance corporations.

The case of the State vs. Rotwitt, 17 Mont. 41, is not in point. In that case the court held that the law regulating foreign corporations did not apply to foreign insurance companies, for the reason that the special law relating to foreign insurance companies expressly provides that they shall file certified copies of their articles of incorporation, statements, etc, with the State Auditor. But the law now under consideration is a special law and expressely provides that surety companies must comply with the law regulating foreign corporations, with certain exceptions specifically mentioned in such special law.

Therefore, before a surety company can lawfully transact business within this State it must file copy of its charter in the office of the Secretary of State, and in the county in which is located its office or principal place of business, and appoint agents in each county in which it transacts business, and make the deposits of securities as stated above. After all this has been done, and satisfactory proof made to the State Auditor, it then seems to be the intention of the law to put such companies under the jurisdiction of the State Auditor and subject to the laws relating to foreign insurance companies, for the act provides that upon payment to the State Auditor of the license fee required of general insurance companies that he shall issue a license authorizing it to transact business within this State.

Sections 1770 to 1787, inclusive, of the Political Code, were amended by the Laws of 1897 at page 136. Section 1778, as amended by such Act, provided that:

> "The voting must be by ballot, without reference to the general election laws in regard to nominations, form of ballot, or manner of voting in districts of the second and third class. * * *
>
> In districts of the first class no person shall be voted for or elected as trustee unless he or she has been nominated therefor by bona fide public meeting held in the district at least ten days before the election * * * and the certificate of such nomination * * * filed with the county clerk at least eight days before the date of election."

And such section further provides that the County Commissioners shall not count any votes cast for any person unless he or she has been so nominated and a certificate thereof filed as required by such section.

It will be noticed that by this amendment of Section 1778 no nominations were required of trustees in districts of the second and third class, and that therefore any elector of the district could on election day vote for any resident of such district possessing the necessary qualifications to hold the office, as Section 1772, as amended by that Act, contained no provision for the nomination of candidates in second and third class districts. But, as stated above, two years later, by the laws of 1899, page 56, Section 1772 was again amended by adding the following provisions:

> "In the districts of the second and third classes, having fifty or more children of school age, the names of all the candidates for membership on the School Board must be received and filed by the clerk and posted at each polling place at least five days next preceding the election.
>
> Any five qualified electors of the districts may file with the clerk the nominations of as many persons as are to be elected to the School Board at the ensuing election."

This amendment to Section 1772 is in conflict with the provisions of Section 1778 in so far as they relate to second and third class districts. And the purpose of such amendment of Section 1772 was to compel all persons desiring to be candidates for the office of trustee in second and third class districts having fifty or more children of school age to have their names as such candidates filed with the clerk and posted at least five days next preceding the election, and that any five qualified electors could so nominate them.

The plain attempt and purpose of this amendment was to compel all candidates to have their names go before the electors of the district at least five days before the election in order that the electors of the district would know on election day just who the candidates would be from whom they could make their choice in voting.

To hold that in the face of this amendment the electors of the district on election day could go to the polls and vote for any resident

Section 4272 says:

> "Notice of the election clearly stating the amount to be raised and the object of the loan must be given."

Section 4274 provides that:

> "If a majority of the votes cast are in favor of the loan, then the board may make the loan, issue bonds or otherwise, as may seem best for the interest of the county."

It is apparent from the reading of these sections that all that is to be stated in the proclamation calling such special election is the amount of the loan that the commissioners may be authorized to make, and the purpose for which such loan is to be made. After such authority is given to them by majority vote cast in favor of such proposition, it then becomes the duty of the commissioners to determine in what manner they will make the loan, and they are then governed by the provisions of section 4240 of the Political Code, as amended by Chapter 41, laws of 1905. By resolutions spread upon their minutes, they determine whether they are to issue bonds in making this loan, and they should fix the period such bonds are to run and after what time they are redeemable, and also fix the rate of interest, which cannot exceed six per cent per annum. It is therefore, apparent that it is not necessary to state the rate of interest in the election proclamation for the reason that it is not neccessary for the rate of interest to be determined at all until after the county commissioners have first been given authority to make a loan for the amount specified in the election proclamation.

The other question submitted will be answered later.

Yours very truly,

ALBERT J. GALEN,

Attorney General.