

Life Insurance Companies, Foreign, Authority to Loan Money.

The section requiring foreign life insurance companies to comply with the general foreign corporation law having been repealed by Senate Bill 46, Laws of 1901, page 150, the presumption is that such companies are not governed by that law.

When such companies have complied with the laws and regulations of the State Auditor's office regarding foreign insurance companies, they may loan money in the state, as that is one of the usual functions in the conduct of insurance business. Whether such companies before loaning money in the state must also comply with the general corporation law is a question to be determined by the company, rather than by your office.

Helena, Montana, April 25th, 1906.

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

Dear Sir:—Your letter of the 23rd inst., requesting opinion of this office, received. From your letter it appears that the Penn Mutual Life Insurance Company of Philadelphia, has complied with the laws of the State of Montana and the regulations of your office relative to the transaction of insurance business in this state, by filing the required statements and written appointment of agent in this State upon whom process may be served. The question now submitted is "whether any further requirements are necessary from such company in order to enable it to make loans through their local office in the State of Montana?"

Prior to March 9th, 1901, foreign life insurance companies were required to comply with the provisions of the Code relating to foreign corporations (Secs. 1030 to 1038) as Sec. 1035 of the Political Code provided as follows: "Foreign Life Insurance Companies, not on the assessment plan, are hereby declared within the provisions of this Act."

Senate Bill No. 46, Laws of 1901, page 160, repealed said Sections 1030 to 1038, and enacted a new law providing the conditions upon which foreign corporations may do business in this state. This new law contained, practically, the same provisions as the old law, but for some reason omitted Section 1035, which expressly declared that foreign life insurance companies came under the provisions of said law.

It would appear from this omission in the law of 1901 of the provisions contained in said Section 1035, that it was the intention of the legislature that foreign life insurance companies should not be governed by the general foreign corporation law, and, since the supreme court, in *State vs. Rotwitt*, 17th Mont. 51, held that fire insurance companies were not governed by the general corporation law and had only to comply with the special laws relating to insurance companies, it has been held that foreign life insurance companies should comply with the laws governing foreign fire insurance companies and thereby file their statements and appointments of agents in your office before being permitted to do business in this state.

It is true that there is no express provision in our law stating in what office foreign life insurance companies must file statements and written appointments of agents, unless the general language of said Senate Bill No. 46 could be held to apply to them, which reads as follows:

'All foreign corporations or joint stock companies, organized under the laws of any state or the United States, or of any foreign government

shall, before doing business within this state, file in the office of the Secretary of State," etc.

In as much as the legislature repealed the section which expressly placed foreign life insurance corporations under the provisions of the law relating to foreign corporations, we must presume that it was the intention to take them from out the provisions of such law and put such companies under the jurisdiction of the State Auditor, the same as all other insurance companies.

The question then arises as to whether a foreign life insurance company after having complied with the requirements of the State Auditor's Office and having been properly admitted into the State for the purpose of doing business as a foreign life insurance company can transact the business of loaning money in the state without first complying with Senate Bill No. 46.

As life insurance is the principal business of such corporation and the investment of its funds by making loans is simply one of the functions in the conduct of such business, we are of the opinion what such company would be lawfully permitted to loan money in this state under its license to do business herein, issued by the State Auditor.

However, as Section 3 of said Senate Bill No. 46 provides that no foreign corporation governed by that act which shall attempt to do business in this state without complying with the provisions of such act can enforce any contract made by it during the time it shall so neglect to comply with the act, it is for the foreign corporation to determine whether it wishes to loan money under the authority given it by you. Having complied with all the requirements of your department relating to foreign life insurance companies, it is unnecessary for your department to decide whether they may loan money or not under the license granted them by you.

Yours very truly,

ALBERT J. GALEN,

Attorney General.