

**Surety Companies, Requirements to Do Business in This State.  
Foreign Corporation Law, Not Applicable to Surety Companies.**

Foreign surety companies, in order to do business in this state, must comply with Chapter 139, Laws of 1909, and when they have so complied they do not have to also comply with the general laws relating to the admission of foreign corporations.

Helena, Montana, June 9, 1910.

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

Dear Sir:—

I am in receipt of your letter of June 7th, enclosing copy of the communication addressed to you by Mr. E. C. Murray, general agent of the Massachusetts Bonding & Insurance Company, and in your letter you make enquiry as to whether or not Sections 4413 to 4420, Revised Codes of Montana of 1907, relating to the admission of foreign corporations to do business in this state, must be complied with by foreign surety companies which transact business in this state.

This office heretofore rendered an opinion to you construing the foreign surety company law of this state as it existed prior to 1909 (see Opinions of Attorney General, 1906-08, p. 69). In such opinion it was held that before a surety company could lawfully transact business within this state it must file a copy of its charter in the office of the secretary of state, in the county in which was located its office or principal place of business, and appoint agents in each county in which it transacts business. Thereafter, the legislature of 1909, by Chapter 139, Laws of 1909, enacted a new law entitled "An act to permit foreign surety companies to do business in this state and regulating the methods thereof." Section 25 of this law provides that all acts and parts of acts in conflict herewith are hereby repealed. Section 5 of said Chapter 139

provides that any company organized under the laws of any state of the United States other than this state, for the purpose of transacting business as surety on obligations of persons or corporations, may transact such business in this state upon complying with the provisions of this charter, and not otherwise. The law then provides for the depositing with the insurance commissioner a copy of the charter or articles of the company, together with a statement showing the amount of its capital, which should not be less than \$250,000.00, etc., and that thereupon the commissioner may issue to such company a license authorizing it to transact business in this state. It further provides by such law that all such companies, before they transact business in this state, must first appoint, in writing, the insurance commissioner of this state to be the attorney of such company, upon whom all process in any proceedings against it may be served, and that a certificate of such appointment, duly certified and authenticated, shall be filed in the office of the insurance commissioner, and copies of such certificates certified to by the commissioners shall be sufficient evidence. The law further provides who shall be agents for receiving and transmitting applications for suretyship, and that no person shall act as agent of such company without first procuring from the insurance commissioner a certificate of authority to act as such agent. The law further provides for the fees to be paid to the insurance commissioner for the certificate of authority of such agents, and also the fees required for the admission of companies to do business in this state. Therefore, it is clear that this law was enacted to provide the method by which a foreign surety company may be permitted to do business in this state, and that when such a company has complied with the provisions of said Chapter 139 it is entitled to do business in this state and execute all kinds of bonds and obligations for persons and corporations without further complying with the law relating to foreign corporations generally. It was clearly the intention by this law to place surety companies exclusively under the jurisdiction of the insurance commissioner, and any person who has received a certificate of authority from the insurance commissioner to act as agent of the company is authorized to receive applications for and deliver bonds without the company having first filed the appointment of an agent in the county in which such bond is to be executed, as was formerly required under the old law.

Yours very truly,

ALBERT J. GALEN,  
Attorney General.