

**Insurance Companies, Requirements for Domestic Company to Transact Business in This State. Securities, Character of Required to Be Deposited With the State Auditor.**

By the provisions of Section 4114 of the Revised Codes, the character of securities required to be deposited with the state auditor by the insurance companies are bonds of the state of Montana, or of the United States, and county, school district or municipal bonds do not constitute bonds of the "state," and registered state warrants cannot be accepted as "state bonds."

August 27th, 1910.

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

Dear Sir:—

I acknowledge receipt of your favor of this date calling my attention to Chapter 5, Div. 1, Part IV., Title III., of the Revised Codes of 1907, relating to life insurance companies, and note therein your request for my opinion as to whether you, as state auditor, are authorized in accepting from domestic life insurance companies by way of deposit with you, securities other than bonds of the United States, or of this State, or bonds or mortgages upon unencumbered real estate in this state, worth exclusive of improvements, at least double the sum loaned thereon, as a condition precedent to the issuance by you of a certificate authorizing such a company to transact business in the State of Montana. In this connection you ask as to whether or not the law authorizes you to accept securities consisting of registered and interest bearing state and county warrants, or whether you are required to accept only bonds of the United States or of the State of Montana.

I have given careful study and consideration to the chapter by you referred to with reference to the questions which you present, and believe that I fully comprehend the questions concerning which you desire advice.

Sec. 4114 of the Revised Codes of 1907 provides, in part, as follows:

“Stock companies organized under the laws of this state shall have not less than \$100,000.00 of capital subscribed, fifty per cent of which shall be paid up and invested in bonds of the United States or this state, or in bonds or mortgages upon unencumbered real estate in this state, worth, exclusively of improvements, at least double the sum loaned thereon, which security shall be deposited with the state auditor, and upon such deposit and evidence by affidavit, or otherwise, satisfactory to the auditor that the capital is all subscribed in good faith, and that the company is the actual and unqualified owner of the securities representing the paid up capital, he shall issue to such company the certificate hereinafter provided for.”

In construction of this statute the question arises as to what is meant by “bonds of the United States or this State.” And in construing this language the provision with reference to bonds of the United States can be eliminated, as this term has a well defined meaning which is, undoubtedly, by you thoroughly understood and needs no interpretation.

In considering the phrase “or this State,” however, we are confronted with a more difficult problem in determining the legislative intent. Our supreme court, in the case of Commissioners vs. Davis, 6 Mont., p 310, in speaking of the meaning of the phrase “state” said:

“The word “state” has various meanings. It may mean a place; it may mean an organized political community.”

It is defined by Cooley as:

"A political society organized by the common consent of the inhabitants of a certain territory for purposes of mutual protection and defense, and exercising whatever powers are necessary to that end."

Cooley's Const., Limitations 1.

An attribute of the state is sovereignty. It means the whole people living within a well defined territory organized and operating under a system of government. In common phraseology it is said to have two meanings: In one sense it signifies the territory inhabited by the people; in the other it means the body politic inhabiting the territory. And when use of the word is made in the constitution or laws, the whole state in its political capacity, and not her subdivisions is intended.

Case vs. Dillon, 2 Ohio State, 607.

Applying these definitions to the word "state," as used in the statute under consideration, it seems clear that the body politic, or sovereignty of Montana is meant, rather than any of its political subdivisions. We are further aided in this conclusion and construction of the statute because of other subsequent provisions contained in the chapter referred to. For instance, Section 4124 of the Revised Codes of 1907, regulating the investment of moneys of domestic insurance companies, provides that its moneys shall not be invested or loaned upon any shares of stock of any corporation other than a municipal corporation; government, state and municipal securities excepted. And further on, in section last mentioned, it is expressly provided:

"Any such company, in addition to other investments allowed by law, may invest any of its funds and accumulations in the bonds of the United States, or of this state, or of any county, city, town or village, or duly organized school district therein, or of any municipality or civil division of any state."

The legislative assembly having expressly designed United States or state bonds in Section 4114, and later on, in Section 4124, having made express references to "bonds of the United States or of this state, or of any county, city, town or village, or duly organized school district therein, or of any municipality or civil division of any state," it seems quite clear that it had in mind a clear distinction between the sovereignty or body politic and the political subdivisions of the state.

Again, in this same connection, there arises the question as to whether county warrants, county bonds, school district or municipal bonds, may be considered in view of this statute as "bonds of the State."

The definition and conclusion reached with reference to what is meant by the use of the term "state" seems to dispose of this branch of the enquiry in part, at any rate. It seems to leave open only the question as to whether or not registered state warrants may be considered as bonds of the state. County bonds and warrants, and the bonds of school districts, etc., cannot be in any sense considered bonds of the state. County bonds and warrants, and the bonds of school districts, etc., cannot be in any sense considered bonds of the state. It is true that a county bonded indebtedness is created by authority of the legislature, and

is, therefore, created through the exercise of state sovereignty acting by one of its political subdivisions. This, however, does not make the state as a whole liable for the payment of such debt, because, in its creation, and under the contract with the loaner, a liability is expressly limited to the property within the county limits.

See *State vs. Levy Court* (Del.) 43 Atl. 523.

And registered state warrants are not the character of bonds provided for in the statute under consideration, for "there is a vast difference between bonds and warrants. Warrants are general orders payable when funds are found, and there is propriety in the general provision that they shall be paid in the order of presentation, the time of presentation to be endorsed by the treasurer on the warrants. And bonds are obligations payable at a definite time, running through a series of years. They are payable when the time of their maturity arrives, independent of any presentation."

See decision of Justice Brewer in case of *Shelly vs. St. Charles County Court*, 21 Fed. 699.

A "bond" is defined by Blackstone as "a deed whereby the obligor obligates himself, his heirs, executors or administrators to pay a certain sum of money on a day appointed."

*Rondot vs. Rogers*, 99 Fed. 202.

And it has been held that where the phrase "state bonds" was used in a will directing the investment of funds in bonds of the state, that it was the intention of the testator to have investment made in "state bonds."

*Griggs vs. Veghte*, 19 Atl. 867.

In conclusion you are advised that the character of securities required to be deposited with you by the provisions of Section 4114 are bonds of the State of Montana or of the United States; that county, school district or municipal bonds do not constitute bonds of the state, and that registered state warrants cannot be by you accepted as "State Bonds."

Respectfully submitted,

ALBERT J. GALEN,

Attorney General