

**Insurance Companies, License Fee to Re-Insure Business.
Licenses, Liability of Re-Insurance Companies to Pay.**

Where a fire insurance company comes into the state for the purpose only of handling re-insurance of other companies which pay the license fee provided by Section 4017, the re-insurance company is not required to pay such license fee.

Helena, Montana, March 9, 1909.

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

Dear Sir:

I am in receipt of your letter of the 5th inst., requesting an opinion construing Section 4017, in connection with the following statement of facts:

There are now admitted to do business in this state several foreign fire insurance companies which have complied with Section 4021, Revised Codes, by paying the \$300.00 fee for filing the documents required to be filed under Section 4062. These particular companies do not write any direct policies of fire insurance on risks in this state, or transact any business in Montana other than accepting re-insurance from other companies in Montana which write the original insurance and collect the premiums direct from the insured. These re-insurance companies are admitted for that purpose alone. The companies who actually write the insurance upon the risks and collect the premiums from the insured pay the license fee required to be paid under Section 4017; namely, \$125.00 on the first \$5,000.00, or less, of premiums collected by them, and \$20.00 for each thousand dollars of premiums collected over and above \$5,000.00.

The question you present upon the above statement of facts is whether the re-insurance company, which does not write policies upon risks in Montana nor collect premiums from the insured in Montana, must also pay the license fees required by said Section 4017.

Section 4037 provides that no insurance company shall re-insure any business written by it in this state in any other company not authorized to transact business in this state, and Sections 4021 and 4062 provides for the papers that are to be filed by a foreign company desiring to engage in the business of insurance in this state, and fixes the fee for the filing of such papers.

In our opinion, if the foreign insurance company files its papers, and pays the fee provided for by Sections 4021 and 4062 merely for the purpose of enabling it to accept reinsurance in accordance with the pro-

visions of Section 4037, and the company which writes the insurance in this state and collects the premiums pays all the fees due on such insurance under Sections 4017, that the company merely accepting the re-insurance of such risks should not also be required to pay the license fees upon the amount of premiums represented by the insurance re-insured in such company. Such fees having been fully paid once by the original company writing the insurance in this state, it seems unjust, and in my opinion is not the intention of the law, that the company in which this insurance is re-insured should be compelled to again pay license fees upon this same business.

Of course, if the company which has been admitted to do business in this state under Sections 4021 and 4062 should write any original business in the state, then it would be liable for the fees provided by Section 4017.

It should be satisfactorily shown to you that the companies writing original insurance in this state have actually paid all the fees required under Section 4017.

You also ask what disposition should be made of fees heretofore paid under Section 4017 by companies which are doing only a re-insurance business in this state.

You are advised that where such companies have paid such fees, and the same have been turned over to the State Treasurer, as required by law, that there is no method by which these fees can be taken out of the general fund of the state and returned to the parties who paid them.

Very truly yours,

ALBERT J. GALEN.

Attorney General.