

Stock Insurance Companies, Capital Stock Of. Fire Insurance Companies, Amount of Capital Stock. Capital Stock, of Fire Insurance companies, Amount Of.

Under the provisions of Sec. 4044, Revised Codes, a stock fire insurance company may be incorporated with a capital of not less than \$200,000 nor more than \$1,000,000, all of which stock must be fully subscribed before said company is entitled to transact business.

November 12, 1912.

Honorable Charles M. McCoy,

State Auditor and Commissioner of Insurance Ex-Officio,
Helena, Montana.

Dear Sir:

I acknowledge receipt of your favor of the 7th inst., wherein you request my official opinion in construction of Section 4044, of the Revised Codes of 1907, relating to the capital stock of insurance companies, and in which you ask:

“Whether or not a stock fire insurance company being incorporated for \$250,000 can qualify if they have subscribed \$200,000 with \$100,000 paid in cash, the balance paid for in notes secured by at least one surety?”

Sec. 4044, Revised Codes, provides that the capital stock of every corporation formed under the provisions of that Chapter should be not less than \$200,000 nor more than \$1,000,000, as may be specified in the Articles of Incorporation, and further provides that such corporation shall issue stock divided into shares of the par value of \$100 each, at least 50 per cent of which stock shall be fully paid up in cash, and the remainder of the stock shall be paid for by notes secured as therein provided.

From a reading of this Section it is rather uncertain as to the exact meaning of the Legislature as to the minimum amount of capital with which an insurance company may begin operation. Sec. 4044 was originally Sec. 652, of the Civil Codes of Montana and was adopted verbatim. Sec. 652, however, was originally Sec. 566 of the Fifth Division of the General Laws of Montana as contained in the Compiled Statutes of Montana of 1887. By reference to said Sec. 566, I believe that the intention of the Legislature is plain. That section was formerly worded as follows:

“No joint stock company shall be incorporated under the provisions of this Chapter with a smaller capital than \$200,000,

nor more than \$1,000,000, as may be specified in the certificate of incorporation, which stock shall be divided into shares of \$100 each, of which capital at least 50 per cent shall be fully paid up in cash, and that for the remainder of its capital there are in its possession notes of its stockholders, etc.”

It will be seen that in re-enacting this Section 566, a separate paragraph was made with reference to the issuance and sale of stock. I believe that in construing Sec. 4044 some significance must be given to the words “as may be specified in the Articles of Incorporation.” No authority is contained in that section for a subscription of less than the full amount of the capital stock as specified in the Articles of Incorporation, and if we say that though a given corporation is incorporated with a capital of \$250,000 it may proceed to transact business when \$200,000 of its capital has been fully subscribed and paid for as therein specified, there is no provision in the section from which we could say that it was required even to have subscribed and fully paid the \$200,000. It is my opinion that the word “any” contained in the fifth line of the Sec. 4044 should be “and,” and that the section would then read: “not be less than \$200,000 nor more than \$1,000,000 as may be specified in the articles of incorporation, and such corporation shall issue stock divided into shares, etc.”

It is, therefore, my opinion that the full amount of the capital stock of the class of corporations referred to in this opinion should be fully subscribed, 50 per cent of which should be fully paid up in cash and the remaining 50 per cent paid for by notes as therein specified.

Yours very truly,

ALBERT J. GALEN,

Attorney General.