

Life Insurance Companies, Capital Stock Of. Insurance Companies, Life, Capital Stock Of. Capital Stock, of Life Insurance Companies. Capital Stock, of Life Insurance Companies to Be Fully Paid Up.

Section 4114 provides that companies organized under its provisions must have a capital stock of not less than \$100,000 which must all be subscribed in good faith. If the capital stock is in excess of \$100,000 the requirement of bona fide subscription still remains.

February 2, 1911.

Hon. Harry R. Cunningham,
Commissioner of Insurance,
Helena, Montana.

Dear Sir:

I am in receipt of your letter of December 21, 1910, and have in mind also the numerous conferences which we have since had with reference to the question submitted therein.

Your inquiry calls for an interpretation of the provisions of Sec. 4114, relating to the capital stock of life insurance companies. It seems that Sec. 4114 is practically a re-enactment of Sec. 1769 of the Revised Codes of Iowa of 1907, with certain changes which make the Montana law somewhat more stringent in its application than that of Iowa. An examination of the annotated codes of Iowa and the reports of that state seem to indicate that the supreme court of Iowa has never placed an interpretation upon the section as enacted there. My research has not disclosed any reported cases from any other jurisdiction which would shed light upon the question here considered.

Sec. 4114 of the Revised Codes of Montana provides that stock companies organized under the laws of this state shall have not less than One Hundred Thousand Dollars capital subscribed, fifty per cent of which shall be paid up and invested in securities designated by the statute. It is made the duty of the Auditor upon the deposit of such securities and upon being furnished with evidence satisfactory to him that "the capital is all subscribed in good faith" to issue to such company a certificate in the form provided by statute. Your query is based upon a state of facts practically as follows: A life insurance company having a capital stock makes application to do business in this state, being organized under the laws of Montana. The articles of incorporation fix its capital stock at, say, five hundred thousand dollars. The stock actually subscribed in good faith amounts to the sum of one hundred thousand dollars, which is the minimum capital allowed insurance companies under Sec. 4114. Fifty per cent of the paid in capital stock has been invested in securities satisfying the requirements of Sec. 4114, and the company offers to deposit the securities and to furnish the state auditor with satisfactory evidence that the capital stock of the company to the extent of one hundred thousand dollars has been fully subscribed in good faith. The question is: Does this procedure satisfy the requirements of the statute?

You are advised that in my opinion it does not. The statute provides that life insurance companies organized under its provisions must have a capital stock. It places no limit upon the amount of this capital stock except a minimum below which it must not fall, namely, one hundred thousand dollars. If a company desires to engage in the business of life insurance under the statutes of this state it is not required by law to have a capital in excess of the amount last mentioned, but the law does require "that the capital is all subscribed in good faith." The incorporators, therefore, have the privilege of fixing their capital stock at one hundred thousand dollars, or at some amount in excess thereof. If they do fix it at one hundred thousand dollars, then all of that capital must be subscribed in good faith and the deposit required by Sec. 4114 must be made with the state auditor before certificate can issue. If in their discretion the incorporators see fit to place the capital stock at some amount greater than one hundred thousand dollars, they must then see that all of the stock is subscribed in good faith and that the deposit of securities to the extent of fifty per cent is deposited with the state auditor before they are in position to demand the issuance of a certificate permitting them to do business. Of course, in the event that Articles of Incorporation of a certain company are filed showing a capital stock in excess of the minimum of one hundred thousand dollars provided by law, there is no reason, so far as I can see, why if the entire amount of stock cannot be sold in good faith the amount of capital stock could not be reduced under our statutes providing for a reduction of capital stock of corporations. The deposit of securities seems to be made an important factor by the chapter of our code dealing with life insurance companies, as you will notice that Sec. 4117 provides that after the first annual report of any company doing business in this state, the auditor shall require the deposit of approved securities on the basis of the net cash value of every policy in force. The whole policy of the law, as I read it, is to give to the state officer in charge of the department of insurance the power and authority to exact such deposits as will protect the policy holders in the obligation owing to them by the company issuing these policies, irrespective of the strength of the company based upon the responsibility of its stockholders, or the efficiency of its management.

You are therefore advised that the certificate provided for in Sec. 4114 should not issue by you until evidence satisfactory to yourself has been submitted showing that the entire capital stock provided for by the articles of incorporation has been subscribed in good faith and fifty per cent thereof paid up and invested in securities prescribed by statute, and the remainder of the capital secured by the notes of the stockholders of the company, accompanied by a certificate of the clerk of the district court certifying that the person making the note is good and responsible therefor.

Yours very truly,
ALBERT J. GALEN,
Attorney General.

NOTE—This opinion is modified by opinion rendered May 12, 1911, to Hon. Harry R. Cunningham, commissioner of insurance.