Credit Insurance, Law Applicable to. Insurance Companies, May Engage in Credit Insurance When.

Companies desiring to engage in the insurance of depositors in banking institutions, are not covered by Chapter 139, Laws of 1909. They may, however, by complying with Chapter 114, Session Laws of 1911, engage in this sort of business.

Helena, Montana, October 21, 1915.

Hon. William Keating,
State Auditor,
Helena, Montana.

Dear Sir:

I am in receipt of your communication under date the 7th instant, inquiring whether an insurance company which states that it intends

> "to insure depositors in national, state and savings banks, and loan and trust companies against loss, through the failure of the bank, under a section of the Massachusetts insurance law, reading as follows: 'Ninth, to carry on the business commonly known as credit insurance or guaranty, either by agreeing to purchase uncollectable debts, or otherwise to insure against loss or damage from the failure of persons indebted to the assured to meet their liabilities,' may be admitted to this state for that class of business under the provisions of Chapter 139, Session Laws of the Eleventh Legislative Assembly."

I am of the opinion that the subject of credit insurance such as this company apparently proposes engaging in, is not covered by Chapter 139. The companies covered by this Act, as shown by Section 1 thereof, are "for the purpose of transacting business as surety on obligations of persons or corporations." The word "surety," as defined by our Code, means:

> "A surety is one who, at the request of another, and for the purpose of securing to him a benefit, becomes responsible for the performance by the latter of some act in favor of a third person, or hypothecates property as security therefor."
>
> Section 5680, Rev. Codes, 1907.

Credit insurance as defined by the text books, is:

"Credit insurance is a subsidiary form of commercial insurance, and may be defined as an agreement whereby, for a valuable consideration, the insurer agrees to indemnify the insured in a specified amount against losses arising through the insolvency of third parties to whom goods and merchandise have been sold on a credit basis by the insurer. Credit insurance, as thus defined, constitutes a valid form of insurance."

Frost Guaranty Insurance, 2nd Ed. p. 568.

Insurance as defined by our Code, is as follows:

"Insurance is a contract whereby one undertakes to indemnify another against loss, damage or liability arising from an unknown or contingent event."

Section 5545, Revised Codes, 1907.

It will thus be seen that the insurance or guarantee of bank deposits, or credit insurance, is properly a subject coming under the insurance laws rather than the laws relating to suretyship, as these terms are defined by our Code, and we find this to be the fact. Chapter 114 of the Session Laws of the Twelfth Legislative Assembly, being an Act to amend Section 4050 of the Revised Codes, providing among other things:

"It will be lawful for any corporation organized under this chapter, and doing business in this state, (5) to insure titles and credit."

Section 4061, Revised Codes of Montana, prescribes the conditions upon which foreign insurance companies, engaged in the sort of insurance covered by that Chapter, may do business in this state. You will note that it makes it unlawful

"for any insurance corporation or company, organized or associated for any of the purposes specified in this chapter, incorporated by, or organized under the law of any other state, or the United States, or any foreign government, directly or indirectly, to take risks or transact any business of insurance in this state, unless possessed of two hundred thousand dollars of actually paid up capital, exclusive of assets of any such corporation or company, as shall be deposited in any other states or territories or foreign countries for the special benefit or security of the insured therein."

While the business of insuring bank credits is not strictly within the definition of credit insurance, as given by Mr. Frost, in as much as this is an insurance against the loss of money entrusted to the bank, rather than a loss through the selling of goods on credit, there is no distinction in the principal involved, since as between a depositor and his bank, there exists a relationship of creditor and debtor, just as there does upon the sale of goods upon credit.

Yours very truly,

J. B. POINDEXTER,

Attorney General.