

Clerk of Court, Duty of to Approve Attachment bond. Attachment Bond, Duty of Clerk to Approve. Surety Company on Attachment Bond, Action of Clerk with Reference to. Foreign Surety Company, Right of Clerk to Refuse Bond By.

1. There is not any duty resting upon the clerk of the court to approve attachment bond executed by surety unless the authority of the agent of the company who executes the bond is shown.

2. It is not the duty of the clerk to approve attachment bond of a foreign insurance company unless such company exhibits to him its authority to do business in this state.

January 4, 1916.

Hon. Paul Babcock,
County Attorney,
Plentywood, Montana.

Dear Sir:

I am in receipt of your letter of the 29th ultimo, submitting the questions:

1. Is it the duty of the clerk of court in attachment proceedings, to approve a bond executed by a surety company, prior to the exhibition to him of the authority of the local agent of such company through whom the bond is executed?

2. Is it the duty of the clerk of court in an attachment proceeding, to approve a bond transmitted to him by a foreign surety company, without requiring such company to exhibit to him its authority to do business in the state of Montana, and that the bond so transmitted, is the genuine bond of such surety company?

Under the provisions of Section 6659, Revised Codes, it is the duty of the Clerk in attachment proceedings to require a written undertaking with sufficient sureties to be approved by the clerk. In the discharge

of this duty this section vests the clerk with authority to pass upon the sufficiency of the sureties. He is, therefore, justified in making inquiry in order to satisfy himself that the surety offered is sufficient. Chapter 139 of the Session Laws of 1909, prescribe the conditions on which foreign surety companies may do business in this state, and when such company has complied with the provisions of that Chapter, a license is issued to it authorizing it to transact business in this state. Section 6 of said Chapter, requires a sworn statement to be filed with the insurance commissioner, and Section 7 requires an appointment or designation of the insurance commissioner as the attorney of such company upon whom all process may be served. No license is issued to any company until it has complied with these requirements. Under Section 13 of this Chapter, no person shall act as agent of the company until a certificate of authority has been issued to him as such agent. The clerk of the court is, therefore, not authorized to accept a bond of any surety company unless he is first convinced by satisfactory evidence: (1) that such company exists; (2) that it is authorized to do business in Montana; (3) that the person purporting to act as its agent, is the authorized agent of such corporation. The evidence of these facts are the certificates issued to the corporation and to the local agent. It is a rule of the department of insurance that foreign insurance companies may act in this state only through some authorized local agent. Hence, the bond issued by the surety company should be signed, or be endorsed by an authorized local agent. The clerk, therefore, is fully justified in refusing to accept the bond of a surety company until the certificate of authority issued by the insurance commissioner, has been exhibited to him, or he is otherwise fully convinced that such authority exists. Otherwise, he would have no means of protecting himself against spurious bonds. In the case stated by you, it appears that the clerk refused the bonds in both instances, and we believe his action was fully justified. Of course, if a local agent presents his certificate of authority, issued under the provisions of Section 13 of Chapter 139, Laws of 1909, this certificate alone is sufficient evidence that the company does exist, and is authorized to do business in Montana, and that such agent has authority to act for the company, for such certificate would not be issued by an insurance commissioner, unless all these conditions had been complied with. Both questions stated must be answered in the negative.

Yours very truly,

J. B. POINDEXTER,

Attorney General.