

Legal Process—Writs of Attachment.

Under Chapter 220, Laws of 1919, legal process includes writ of attachment garnishing funds in the hands of an insurance company.

December 31, 1919.

Hon. George P. Porter,
Commissioner of Insurance,
Capitol.

Dear Sir:

I have your letter of the 15th instant, in which you ask for a construction of Chapter 220, Laws of 1919. The specific question upon which you desire information is whether or not the term used in said chapter, "legal process," includes a writ of attachment.

Chapter 220 of the Laws of 1919 provides that insurance companies of the character therein designated shall appoint in writing the Commissioner of Insurance and his successors in office to be its true and lawful attorney upon whom legal process in any action or proceeding against it shall be served. By Section 8071 of the Revised Codes of Montana it is provided that the word "process" is a writ issued in the course of judicial proceedings. It is further specified in said section that the word "writ" signifies an order or precept in writing issued in the name of the State or of a court or judicial officer. It is generally held by the courts that the word "process," when used in the law relating to service of writs, is sufficiently comprehensive to include writs of attachment. *Boyd vs. Chesapeake etc. Railroad Company*, 17 Md. 195, 79 Am. Dec. 646. It is also held that a garnishment, or attachment, while in the nature of a proceeding *in rem*, is, in effect, an action by the defendant in the appellant's name against the garnishee, the purpose and result of which is to subrogate the plaintiff to the right of the defendant against the garnishee. 2 *Drake on Attachments*, 7th Ed. Section 452; *Neufelder vs. German American Insurance Company*, 6 Wash. 336, 33 Pac. 870, 36 A. S. R. 166, 22 L. R. A. 287.

I am, therefore, of the opinion that Chapter 220 of the Laws of 1919 includes a writ of attachment against insurance companies as well as other legal process.

Respectfully,

S. C. FORD,
Attorney General.