

### **Insurance Policies—Participating and Non-Participating Policies.**

Although an insurance policy may have some of the features of a participating policy, but if in fact it is a non-participating policy, or has the effect of such, it cannot be written in this state.

Helena, Montana, January 8, 1920.

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

Dear Sir:

I have your letter of December 20th, 1919, in which you make inquiry as to whether or not certain surety companies are violating Section 4021 of the Revised Codes.

I understand that these surety companies are writing surety bonds for employes in the service of the United States government in Montana, and that in order to write this business the Government requires that they appoint and maintain an agent in the State of Montana upon whom service of process might be made. These companies have appointed various agents in the State of Montana and have written the class of business referred to without obtaining a license from your office to do any business in the State.

I am of the opinion that Section 4021 of the Revised Codes does not apply to surety companies. This section is one which requires "every foreign insurance corporation, association and society" to procure a license and pay a fee before it can do business in the State of Montana, and penalizes every person who represents a foreign insurance company which is doing business in this State in violation of the law. It is generally held that license statutes and statutes imposing a penalty are strictly construed and cannot be extended beyond the words found in the statute. For this reason I am of the opinion that the section referred to embraces insurance companies only, and a surety company in the strict sense of the word is not an insurance company within the meaning of Section 4021 of the Revised Codes.

In 1909 the Legislative Assembly of Montana passed an Act regulating foreign surety companies. This Act is complete in itself and requires any

foreign insurance company before it can do business in the State of Montana to comply with the provisions thereof. It requires such companies to file statements and procure licenses from the Insurance Commissioner, and prescribes the fee for such licenses. By Section 11 it prohibits any person from acting as agent for the company within the State of Montana unless such company has been approved and licensed in the State. Section 12 of the Act reads as follows:

“Every person who shall receive or transmit applications for suretyship or receive for delivery bonds founded on applications forwarded from this state, *or otherwise procure suretyship to be effected by such company upon the bonds of, or the bonds given to, persons or corporations in this state shall be deemed an agent of such company.*”

Section 13 of the Act prohibits any person from acting as agent for such foreign surety company which has not been licensed in the State of Montana, and Section 14 of the Act prescribes a penalty for acting as such agent.

Under this Act, particularly the sections referred to, I am of the opinion that any person acting as agent for the foreign insurance companies named in your letter under the circumstances which you specify, is doing so unlawfully and subject to a fine.

Respectfully,

S. C. FORD,

Attorney General.