

**Surety Companies—License—Commissioner of Insurance.**

Under statutory provisions a person who acts as agent for a surety company operating in this state, must obtain a license to act in that capacity.

Helena, Montana, January 10, 1920.

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

Dear Sir:

I have your letter of the 30th ultimo, in which you submit to me a policy of the Missouri State Life Insurance Company and ask for an opinion as to whether or not this policy can be written in the State of Montana.

You also submitted with your letter and policy copy of a letter written by your actuary, Paul L. Woolston. In that letter attention is called to the proposition that the policy in question may be a participating policy. On the face of it the stipulations therein would indicate that it is a non-participating policy.

Section 4138 of the Revised Codes of Montana provides as follows:

“Every policy holder shall on all participating policies hereafter issued, be permitted annually to select the manner and method of the application of the surplus to be annually apportioned to his policy from among those set forth in the policy.

“All apportioned surplus not actually paid over to the insured or applied in the reduction of current or future premiums or in

the purchase of paid-up insurance or pure endowment additions, shall be credited to the insured and carried as an actual liability and be paid at the maturity of the policy."

The policy which you submit contains the following provision: "Non-Profit-Sharing with Profit-Sharing Privilege After Twenty Years. This policy is issued on the non-profit-sharing plan, but the insured shall have the privilege of exchanging it, without additional cost, for a Profit-Sharing Annual Dividend Paid-up Life Policy for the face amount hereof on the anniversary date next following the date of the last premium payment if all premiums have been duly paid as provided herein."

I am of the opinion that this particular clause as it is found in the policy is objectionable and in direct conflict with that part of our Insurance Code above quoted and found in Section 4138. That provision of our Code makes it the duty of every insurance company to permit the insured his choice of what application shall be made of any surplus on the premiums, if any. By the provision of the policy just referred to this is the right the company attempts to take away from the insured. It may be that there will be no surplus earning upon the policy as of the rate agreed in the policy, but that is not the deciding factor. The fact is that if there should be a surplus the insured has no choice as to the application of that surplus until after the period for which the insured has agreed to pay premiums, which ordinarily under the form of policy submitted is twenty years. It was the purpose of the Insurance Code above quoted to prevent insurance companies from accumulating and using large surplus earnings which in fact do not in any event belong to them but belong to the policy holder who has paid a higher premium than subsequent experience demands.

The policy contains a further provision to which your Actuary has referred as objectionable. That provision is found on page 2 of the policy and reads as follows:

"Profit-Sharing Endowment Option. The insured may mature this policy as a profit-sharing annual dividend endowment by continuing to pay the same annual premium, after the first twenty years, as is provided herein for the said twenty years, and in consideration of such continued payment of premiums, the face amount hereof will be payable on the death of \_\_\_\_\_, the insured, or the company will pay \_\_\_\_\_ Dollars, on the \_\_\_\_\_ day of \_\_\_\_\_, if the insured be then living. If the insured avails himself of this privilege the policy will be credited at the end of the twenty-first year and annually thereafter so long as premium payments are continued, with a cash dividend from the surplus then apportioned by the company to policies of the same age and kind, and the loan and surrender values after the said original premium paying period shall be equal to the full reserve on the endowment policy and a table thereof will be furnished on request."

I am inclined to believe that this particular provision is not objectionable. Under this provision, at the end of twenty years the insured has the privilege of changing the policy which to begin with is a twenty year paid life, to an endowment policy. He is required in fact to enter into a new contract at the end of twenty years; in other words, the present contract is completely changed so that there is a novation therein. The

provision referred to expressly provides that when the policy is changed to an endowment policy, the insured by continuing premium payments after the period of twenty years participates in any surplus earnings from then on. In that event there is no attempt by the insurance company to control the surplus charges.

The clause of the policy as referred to herein does make the policy objectionable as it is in conflict with the laws of Montana upon that proposition. I am, therefore, of the opinion that under the law you should deny to the Missouri State Life Insurance Company the privilege of writing this policy in Montana.

Respectfully,

S. C. FORD,

Attorney General.