

**Insurance Companies—Agents—Sug-Agents, License Of.**

A sub-agent cannot write insurance in the name of the agent without obtaining a license in accordance with the insurance laws.

January 19, 1920.

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

Dear Sir:

I have your letter of the 13th instant, making inquiry as to whether or not a duly licensed agent of an insurance company might have sub-agents writing insurance in his name without the necessity of such sub-agents themselves obtaining a license.

Section 4023 of the Revised Codes of 1907, provides as follows:

“Before transacting any fire, life or other indemnity or insurance business, each and every agent, firm or corporation acting as agent, solicitor or representative of such corporations or associations, shall procure annually from the State Auditor a certificate of authority or license as an agent, solicitor or representative of such corporation or association represented by him or them.  
\* \* \* Any person or persons who shall in any way violate the provisions of this section shall upon conviction be fined not less than fifty dollars nor more than one hundred dollars or imprisonment in the county jail for not less than thirty days nor more than ninety days, or both such fine and imprisonment at the discretion of the court. Certificates of authority or licenses issued under this section shall be considered the licenses of the company, corporation, association or society applying for the same and may at all times be transferred from the agent, firm or corporation for which the license was originally issued to another agent, firm or corporation on the surrender of the said license to the State Auditor, who will make the proper endorsement thereon.”

The insurance act in our laws is designed to give the State Auditor full supervision over the activities of insurance companies and their agents and all persons connected with such activity. The proposition of licensing agents is designed for the protection of both the insurance company and the public who apply for insurance. Under the provisions of the section

quoted it will be noted that the certificate of an agent in fact belongs to the company and that it may at any time transfer the certificate from one agent to another. The section quoted as well as other portions of our insurance act amply provide that no person shall write insurance who is not licensed.

Under the circumstances as you present them to me, it would be a very easy matter to disregard the important feature of licensing insurance agents if in fact one duly licensed agent may employ any number of non-licensed agents to write insurance in his name. It is generally held by the courts that such laws as our Insurance Code are remedial in their nature and must receive a construction which will reach the evil aimed at. It is held that the letter of such statutes must conform to the evident intent of the legislature as deduced from the whole act.

State vs. Stone, 118 Mo. 388, 25 L. R. A. 243; People vs. Peoples Insurance Exchange, 126 Ill. 466, 18 N. E. 774, 2 L. R. A. 340; Noble vs. Mitchell, 100 Ala. 14, So. 581, 25 L. R. A. 238.

As an example of the liberal construction placed upon insurance codes, we refer to the case of Noble vs. Mitchell, supra. The law of Alabama provided that an agent of an insurance company writing insurance in the State of Alabama, when such company was not licensed, should be personally liable for the full amount of any liability occurring under such insurance policy. The agent in this particular case took an application from the plaintiff and placed such application with an insurance broker. The agent in fact did not have in mind any particular company when he took the application and did not know the particular company in which the insurance was placed until after a liability had accrued when the suit was brought. The plaintiff sued this particular agent on the statutory liability. The defense was that he was not an agent of the company within the meaning of the law, as he never knew the company until suit was brought against him. The Supreme Court of Alabama, however, did not accept this contention but held that he was an agent within the meaning of the Act, as such Acts must receive a liberal construction to effect the purposes designed thereby.

I am of the opinion that any individual soliciting insurance in the State of Montana is violating the law if he does so without obtaining a license from the Commissioner of Insurance for this purpose.

Respectfully,

S. C. FORD,

Attorney General.