

Investment Commissioner, Powers of, What Property Company Has—Property of Investment Company, Not to be Investigated.

The Investment Commissioner is without authority to investigate an investment company for the purpose of ascertaining of what property its holdings consist.

July 15, 1920.

Hon. Geo. P. Porter,
Investment Commissioner,
Capitol.

Dear Sir:

This is in answer to your inquiry as to whether or not Chapter 85, Session Laws of 1913, commonly known as the Blue Sky Law, gives you authority to investigate and license companies having their property entirely within the State of Montana.

The Act in question, by Section 3 thereof contains the following provision:

“ * * * Nor shall this be so construed as to prevent any corporation either foreign or domestic from selling its own stock, bonds or securities through an officer or agent of such corporation, providing that two-thirds or more of the assets of said corporations shall consist of property situated within the State of Montana.”

The language above quoted is plain. It clearly exempts any concern coming under the designation of an investment company selling its own stock, bonds or securities, either directly or through an agent, when such investment company has situated within the State of Montana two-thirds or more of its assets. Your Department, therefore, has no authority to examine any company excepted from the provisions of the law, nor does such a company require a license from your office.

The thing which your office, as I understand it, desires to do is to make examinations of companies for the purpose of ascertaining whether or not such companies in fact are exempted from the operation of the law. In oral conversation with you you state that there are companies which overvalue their property within the State of Montana so as to make it appear that two-thirds of their property is here situated, thus exempting themselves from the operation of the law.

The act itself does not give the Investment Commissioner any authority to make investigations of companies for the purpose of ascertaining what their property holdings are. It is foreign to the spirit of our Government to permit an official to exercise such authority unless there is a law clearly delegating it. There are criminal penalties provided by the law against any one violating it. If you can show that persons are violating the law they are subject to prosecution. It is my opinion that as the law now stands you have no authority to compel the examination of the accounts, books and property of any company which is in fact exempted therefrom.

Respectfully,

S. C. FORD,

Attorney General.