

**Insurance Commissioner—Licenses—Automobile Dealers
—Insurance Agents.**

Under the provisions of section 6124 R. C. M. 1921, as amended by chapter 20, laws of 1923, the state insurance commissioner has no authority to promulgate a rule prohibiting automobile dealers or their employees from securing a license as insurance agents.

George P. Porter, Esq.,
State Auditor and Commissioner of Insurance,
Helena, Montana.

June 27, 1927.

My dear Mr. Porter:

You have requested my opinion on the following question:

“Under the authority of section 6124 R. C. M. 1921, as amended by chapter 20, laws of 1923, and section 6118 R. C. M. 1921, has the commissioner of insurance the authority to promulgate a rule to the effect that automobile dealers, or their employees, cannot be licensed as insurance agents?”

Section 6124, supra, insofar as it applies to this particular question, provides as follows:

“The insurance commissioner is hereby given power to do all things necessary and convenient for carrying into effect the laws of this State governing insurance companies and may from time to time promulgate necessary rules and regulations for the better protection of the insuring public.”

Section 6118, supra, further provides in part that “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 * * *”.

The legislature has provided by section 6118 that any agent, firm or corporation acting as agent, solicitor or representative of an insurance company must procure a license from the state auditor but no other requirement other than the payment of the prescribed fee is required. The provisions of section 6124, supra, give the insurance commissioner the power to do all things necessary and convenient for carrying into effect the laws of this state governing insurance companies and the right to promulgate necessary rules and regulations for the purpose of putting into effect these laws but do not confer upon the insurance commissioner the authority to enact additional requirements for the granting of licenses or the right to refuse to grant a license where the law has been in other respects complied with.

I am forced to this conclusion as to the intent of the provision in question for the reason that the legislature could not, if it had so desired, invest a state officer with arbitrary power to grant or refuse a license.

“It is commonly required by statute that any insurance agent or broker doing business in the state shall have a certificate or license under state authority for the transaction of such business. Such statutes are valid as a proper exercise of police power; but the state cannot impose unreasonable and arbitrary conditions to the right to the license, or invest a state officer with arbitrary power to grant or refuse a license.”

32 C. J. 999;

Welch v. Maryland Cas. Co. (Okla.) 147 Pac. 1046.

It is therefore my opinion that under the provisions of section 6124 R. C. M. 1921, as amended by chapter 20, laws of 1923, and section 6118 R. C. M. 1921, the state insurance commissioner has no authority to promulgate a rule prohibiting automobile dealers or their employees from securing a license as insurance agents.

Very truly yours,

L. A. FOOT,

Attorney General.