

**Insurance—Life Insurance—Investments.**

Section 6269 R. C. M. 1921, as amended by chapter 54, laws of 1925, does not prohibit foreign insurance companies admitted to this state from investing in stocks of corporations or loaning money thereon, and this section is not unconstitutional as violating the provisions of section 11, article XV of our state constitution.

March 24, 1928.

George P. Porter, Esq.,  
State Auditor,  
Helena, Montana.

My dear Mr. Porter:

You have requested my opinion on the following question:

“Does section 6269 R. C. M. 1921, as amended by chapter 59 of the laws of 1925 prohibit foreign insurance companies admitted to this state from investing in stocks or loaning money thereon?

“If not, is this section unconstitutional as depriving a domestic corporation of rights enjoyed by foreign corporations?”

In answer to your first question, section 6269, *supra*, as amended, provides in part as follows:

“No life insurance company organized or incorporated under the laws of this state shall invest in or loan upon any shares of stock of any corporation \* \* \*.”

No mention is made in this section of foreign corporations, and that it applies only to domestic corporations cannot be questioned.

Your second question is more difficult of solution. Article XV, section 11 of our state constitution, provides in part as follows:

“And no company or corporation formed under the laws of any other country, state or territory, shall have, or be allowed to exercise, or enjoy within this state any greater rights or privileges than those possessed or enjoyed by corporations of the same or similar character created under the laws of the state.”

At first glance it would appear that the placing of this investment limitation on domestic corporations and not on foreign corporations would be a violation of this constitutional prohibition. However, our supreme court in discussing this constitutional provision in the case of *Uihlein v. Caplice Commercial Co.*, 39 Mont. 327, quoted with approval the case of *South Yuba Water & Mining Co. v. Rosa*, 80 Cal. 333, 22 Pac. 222, as follows:

“Whether or not it is expedient that foreign corporations should be required to deposit record evidence of their incorporation in every county in this state where they have property, in like manner as domestic corporations are required to do, is matter for consideration for the legislature alone.”

And then said:

“The constitutional provision relied on was intended to prohibit the passage of laws giving to foreign corporations the right to exercise or enjoy any greater privileges than those possessed or enjoyed by domestic corporations, and it is only in cases where a foreign corporation attempts to exercise or enjoy a right or privilege expressly given to it by the legislative assembly that its right to exercise the same may be questioned. The mere fact that a burden is placed upon domestic corporations from which foreign corporations are exempt does not operate to bring foreign corporations within the provisions of a law intended to apply solely to domestic corporations.”

In the same case the case of *First National Bank of Butte v. Weidenbeck*, 97 Fed. 896 is also quoted to the following effect:

“The contention is that under this provision of the constitution a statute imposing any duty or obligation on a domestic corporation which is not also imposed on foreign corporations doing business in the state is unconstitutional. The position is untenable. \* \* \* In the very nature of things, it is impossible to provide exactly the same system of laws for foreign as for domestic corporations. It is never done. The constitutional provision quoted contemplated no such thing. It is an inhibition against the grant of powers and privileges to foreign corporations that are not granted to, or cannot be enjoyed by, domestic corporations under like conditions.”

In view of the interpretation placed upon this constitutional provision by the supreme court of this state it is my opinion that section 6269, supra, as amended, is not unconstitutional.

Very truly yours,

L. A. FOOT,  
Attorney General.