

Commissioner of Insurance—Investment Companies— Fees—Refunds.

The \$25.00 fee mentioned in section 4050, R. C. M. 1921 as amended by chapter 179, laws of 1929, and in section 4033 R. C. M. 1921 is a filing fee and should not be refunded in case the commissioner refuses to issue a license. The papers filed should be retained regardless of whether or not the company is licensed to do business in the state.

Mr. George P. Porter, March 9, 1931.
State Auditor and ex-officio Investment Commissioner,
Helena, Montana.

My dear Mr. Porter:

You inquire whether a company coming under the provisions of the investment law must pay \$25.00 for filing its papers with the investment commissioner, regardless of whether it is issued a license to sell securities in this state, or whether the \$25.00 fee must be refunded in case the commissioner declines to issue such a license.

Section 4050, R. C. M. 1921, as amended by chapter 179, laws of 1929, provides that the fee for filing the original papers of an investment company or stockbroker shall be \$25.00 as provided in section 4033, R. C. M. 1921. The last mentioned section requires that the company must file certain papers and documents with the commissioner which it appears from said section and section 4036, R. C. M. 1921 is for the purpose of giving the commissioner certain information to be used by him in determining whether the company should be issued a license, and he may also make an examination of the company's affairs if he sees fit to do so. He may grant such a permit or deny it, upon the conditions mentioned in said section 4036. If he denies the company a permit it may appeal to the state board of examiners as provided in section 4038, and if on the appeal the decision of the commissioner is reversed he must then issue the permit.

From these sections it is apparent that the fee of \$25.00 is one that is chargeable for filing the papers and documents mentioned in section 4033, and it is apparent also that in determining whether a company should be licensed the commissioner examines the papers and documents filed. The filing of the documents and papers mentioned in section 4033 seems to be a condition precedent to the duty of the commissioner to examine them and it is these filed papers and documents that would be the basis of an appeal to the state board of examiners in case the commissioner refused to license the applicant.

Therefore, the fee is strictly a filing fee and it is required to be paid at the time the service of filing occurs and is a charge made by law for that service. Nothing appearing in the act which would authorize a refund of that fee in case the applicant was unsuccessful, it is my opinion that such a refund cannot be made.

You also inquire if you should retain the papers and documents so filed in case you decline to issue a permit. They should be retained by you for the reason that a thing once filed in a public office may not be withdrawn unless a statute specifically authorizes it (no such statute exists in this case) and for the further reason that if an appeal should be taken you are required to produce before the state board of examiners, for inspection and consideration, all the papers filed by the applicant in your office.

Very truly yours,

L. A. FOOT,

Attorney General.