

**Opinion No. 166.****Insurance—Countersigning Policies—  
Full Commission to Be Paid  
Local Agents — Contracts  
Conflicting Invalid.**

HELD: 1. Montana agents must be paid the same commission for countersigning foreign insurance policies as for the same business written in their own plant.

2. Contracts or stipulations entered into prior to the enactment of Chapter 95, Laws of 1937, are invalid if conflicting with the terms of that act.

September 22, 1937.

Honorable John J. Holmes  
State Auditor  
The Capitol

My Dear Mr. Holmes:

You have requested an opinion relative to the meaning of "full commission," as used in Paragraph 2 of Section 1, Chapter 95, Laws of 1937. The paragraph reads as follows:

"A resident agent shall countersign all policies, bonds or contracts of indemnity so issued, and shall receive the full commission on all such policies, bonds or contracts of insurance on indemnity, when the premium is paid, to the end that the State may receive the tax required by law to be paid on the premiums collected for

insurance on all persons, property or other insurable risks resident, situated or located within this State; provided that nothing in this act shall be construed to prevent any insurance company or association from issuing policies, bonds or contracts at its principal or department offices, covering property or persons or other insurable or indemnity risks resident, situated or located in this State; provided, however, such policies are issued upon application procured and submitted to such company or association by a resident agent, who shall keep a record of all such policies, bonds or contracts of indemnity so issued, and countersign the same, and that said resident agent or agents shall receive the full commission on all policies when premium is paid. It shall be unlawful for any such resident agent to rebate or divide such commission, with intent to evade the provisions of this act; and any violation of this provision shall be punished as provided in Sections 6123 and 6124, Revised Codes of Montana, 1935. Provided, however, that the signature of a resident agent on an application for a life insurance policy shall be deemed a countersigning of the policy if a copy of such application is attached to the policy."

In any interpretation of a legislative act, it is elementary that the sole object is to ascertain the meaning and intention of the legislature. If the language of the statute is plain and free from ambiguity and expresses a single, definite and sensible meaning, that meaning is conclusively presumed to be the meaning the legislature intended to convey. In other words, the statute must be interpreted literally.

Black on Interpretation of Laws 33.

"Words and phrases used in the Codes and other statutes of Montana are construed according to the context and approved usage of the language. \* \* \*"

Section 15, R. C. M. 1935.

Applying this rule to the phrase "full commission" we find that "full" means, as defined by Webster's Dictionary, "complete, entire, without abatement, mature and perfect," a definition that has been approved in *Quinn v. Donovan*, 85 Ill. 194-195. "Commission"

means, "percentage or allowance made to a factor or agent for transacting business for another." Therefore, "full commission" must mean the complete, entire allowance paid to the agent for transacting the business of the company. The whole of it. Then it is clearly apparent that the legislature intended that the resident Montana agent should receive the same commission for countersigning an insurance contract as he would receive from the same business if he secured it himself.

"When an act is expressed in clear and concise terms and the sense is manifest, there can be no reason not to accept the sense which it naturally presents, to go elsewhere in search of conjectures in order to find a different meaning is not so much to interpret the statute as to elude it."

People v. N. Y. Central R. R., 13 N. Y. 78.

The history of the act, the motives of the legislature, the contemporaneous circumstances and the public policy of the state all point in the same direction. The countersigning agent is to get the whole premium just the same as if the policy had been written in his own plant.

It is true that the State Auditor has no jurisdiction over rates as such, but he does have jurisdiction over the commission paid if they violate the provisions of this act. As I interpret the law, the insurance corporations can contract for any commission they see fit, providing that the commission on countersigning and the commission on other business are the same. If the insurance corporation pays a commission of 40% to the agent for new business, it must pay a commission of 40% for business countersigned.

By Section 6162 it is the duty of the State Auditor to inspect the books of insurance companies when notice of a violation of the act is received. If he finds that a different amount has been paid to the resident agent for countersigning a policy than for a policy written locally, then he must prosecute to enforce the penalties prescribed. For your department a *verbis non est recedendum*, and this must be enforced even though there is a present existing contract between an insurance corporation and the agent providing for some other arrangement for countersigning policies.

It is contended that Chapter 95 of the 1937 Session Laws, in its application to insurance contracts existing at the time of its enactment, is unconstitutional insofar as the provisions of Article III of the State Constitution are concerned, as said chapter may alter or modify said contracts.

The business of insurance is quasi public in character and subject to the police powers of the State, and the right to engage in it is a franchise and the State may regulate the business and all the persons in it, and may prescribe the terms and conditions on which the business may be conducted.

While contracts cannot be impaired or abridged, and their sanctity is recognized as inviolate by the Federal and State Constitutions, yet by reason of the quasi public character of a contract of insurance, such contract is executed subject to and in contemplation of legislative enactment such as is provided for in said Chapter 95.

A contract cannot be created which would exclude the State from its regulatory powers, both police and revenue, and to do so would eventually remove many future restrictions and regulations upon insurance companies. Chapter 95 thus has become a part of any existing contract, and the existing contract was created with that implication, and it necessarily follows that no modification of an existing contract has been made, and, therefore, the contention of impairment of contract is inapplicable.

The statute in question is a revenue measure and was passed "to the end that the State may receive the tax required by law to be paid on the premiums collected for insurance on all persons, property or other insurable risks resident, situated or located within the State." A contract between individuals cannot have the effect of depriving the State of any power of taxation belonging to it.

12 Corpus Juris, 993;

Forbes v. Mid-northern Oil Co., 100 Mont. 10, 12.

Therefore, it is my opinion that the State Auditor must insist that full commission, in accordance with the definition herein, be paid countersigning agents in all cases; prior stipulations or contracts between the company and the local agent notwithstanding.