

Opinion No. 273.**Insurance—Full Commission—
Countersigning.**

HELD: A Montana insurance agent may not remit a portion of the full commission he receives for counter-

signing an insurance policy to a broker for engineering and inspection service.

April 23, 1938.

Mr. John J. Holmes
State Auditor and Ex-officio
Commissioner of Insurance
Capitol Building
Helena, Montana

Dear Sir:

You have asked an opinion as to whether an agent may pay a portion of the commission he received for countersigning an insurance policy to a broker or other agent for inspection, engineering, or other service. The question has arisen out of a state of facts as follows:

A large firm of out-of-state brokers has written a fire insurance policy covering Montana property. This policy was sent into Montana and countersigned by a Montana agent, then this brokerage firm billed the Montana agent for a special engineering and inspection service. The net result was that on the books of the brokers the Montana agent was credited with the full commission and debited for services rendered, so that all that was ultimately remitted of the full commission was the countersigning commission that was customary before the enactment of Chapter 95, Laws of 1937. Said chapter provides in Section 1:

"It shall be unlawful for any insurance company or association, including life, fire, casualty, surety or indemnity corporations or associations doing business within the State of Montana (except so-called assessment life insurance companies, as hereinafter provided, and fraternal benefit societies and rural mutual insurance companies) to make, write, place, or cause to be made, written or placed in this State, any policy, bond, duplicate policy, contract of insurance or contract of indemnity of any kind or character, or any general floating group policy upon persons or property, or upon any insurance risk, resident, situated or located in this State, unless written through and countersigned by an agent of this State, duly licensed to transact insurance, bonding or indemnity business therein.

"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 premium 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."

That provision exactly covers the situation here. The full commission must be paid and no rebate is permitted.

This office has held that full commission means the same as if the business had been solicited and placed by the local agent. If extra services are required they should be taken care of by the insurance company or by the insured. If the out-of-state broker is rendering an extra service, there is no objection to his being compensated therefor, but it should not come out of the ordinary full commission due the Montana agent. If extra service is not being rendered, this procedure is merely a bookkeeping transaction in order to evade the law and as such is forbidden. Hence it is my opinion that remission of part of the full commission under the circumstances set out above is a violation of Chapter 95.