

Opinion No. 274.**Insurance—Foreign Insurance Companies—Non-Licensed Companies—
Illegal Advertising—Penalty.**

HELD: 1. Newspapers and periodicals publishing advertising matter of non-licensed insurance companies in this state, are subject to the penalty provided by law.

2. Officers, agents and employees of such non-licensed insurance companies soliciting business in this state are likewise subject to such penalty.

April 28, 1938.

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

Dear Sir:

You have requested my opinion: (1) As to whether newspapers and periodicals published in the State of Montana can publish advertisements of companies not licensed to do business in this state. (2) As to whether officers and employees of non-licensed companies are subject to the Montana law.

Section 6116, Revised Codes of Montana, 1935, provides:

"Penalty for foreign corporations doing business in violation of law. Every foreign insurance corporation, association, and society, which may hereafter desire to engage in the business of insurance in this state, shall first pay as a fee for filing the documents provided for in Section 6149 of this code, the sum of three hundred dollars, and if any person or persons, agents, officers, or trustees of any corporation, association, and society, doing any insurance business, shall cause to be issued or procured, received or forwarded, application for insurance, or delivered policies for any company or companies or associations of persons not having complied with the provisions of this act, or shall adjust any loss, or in any manner, either directly or indirectly, aid in the transaction of insurance with any such company in

this state, or in any way violate the provisions of this section, shall, upon conviction, be deemed guilty of felony."

Section 6149, Revised Codes of Montana, 1935, declares:

"It shall not be lawful for any insurance company, association, or partnership * * * incorporated by or organized under the laws of any other state, or the United States, or any foreign government, **directly** or **indirectly** to take risks or transact any business of insurance in this state, unless possessed of two hundred thousand dollars of actual paid up capital, exclusive of any assets of any such company as shall be deposited in any other states or territories, or foreign countries for the special benefit or security of the insured therein; provided however that such insurance companies coming within the provisions of this act shall be subject to all restrictions and duties which are now or may be imposed on insurance companies of the character organized under the laws of this state, and shall have no other or greater power, and any such company desiring to transact any such business as aforesaid, by any agent or agents in this state, shall appoint in writing the commissioner of insurance and its successors in office to be its true and lawful attorney, upon whom legal process upon any action or proceeding against it shall be served, and in such writing shall agree that any lawful process served against it which is served upon such attorney shall be of the same legal force and validity as if served upon such company, and that the authority shall continue in force so long as any liability remains outstanding in this state." (Underscoring ours.)

Section 6112, Revised Codes of Montana, 1935, provides that:

"License Fee. All insurance corporations, associations, and societies, as hereinbefore specified in the preceding section, before commencing to do business in the State of Montana, shall be required to secure a license, authorizing them to transact business of insurance corporations, associa-

tions, or societies, and shall pay to the state auditor, for such license, the following fees:

"For a license to collect in any one year premiums amounting to five thousand dollars or less, one hundred and twenty-five dollars.

"For a license to collect in any one year premiums over the sum of five thousand dollars, the sum of twenty dollars for each and every one thousand dollars to be so collected; * * *"

These three sections have laid down rules for the protection of Montana citizens in their dealings with foreign insurance companies. It is within the police power of the State of Montana to make such rules and regulations as are deemed necessary for the protection of the public in contracting for insurance. The Montana legislature has provided that foreign insurance companies must file certified copies of their charters and must make a financial report showing that there is at least \$200,000 available for the payment of claims of Montana residents, and various other statements proving the financial stability of the company. Then, in order that litigation arising out of insurance contracts may be speedily and conveniently prosecuted by Montana residents, the legislature has provided for constructive service on the commissioner of insurance so that the Montana courts may acquire jurisdiction. Then for the privilege of writing policies and securing insurance business in this state, Montana has levied a license tax that yearly brings in many thousands of dollars to the treasury of the state.

A foreign company that does not comply with these provisions of Montana law is depriving the assured of the protection afforded by the insurance commissioner and is depriving the State of Montana of revenues accruing from the gross premium tax. Hence the penalty prescribed by Section 6116.

From the copy of the advertisement you submitted along with your request for an opinion, apparently a Montana resident reading the advertisement sends for a policy for free inspection and "full particulars" and a policy is mailed to him in this state. By mailing \$1.00 for every \$1500 worth of insurance carried he can accept the policy and thus enter into a contract with the insurance company in accordance with

the written terms of the policy. If such a procedure constitutes doing business in the State of Montana, then such company must comply with Sections 6112, 6116, and 6149, supra.

An insurance company is doing business in a state if it actively solicits insurance and collects premiums or assessments from resident policyholders. (*Tomson v. Iowa State Traveling Men's Association*, 129 N. W. 529.) Certainly advertising for clients is actively soliciting insurance and entering into contracts in Montana, and is therefore doing business in the state. If the company has not complied with the provisions of Sections 6112 and 6149, the penalty prescribed in Section 6116 would apply, and any agent, officer, trustee or person connected with such association aiding in such illegal practice would likewise be guilty of a felony.

As for newspapers carrying advertising of such non-admitted companies, the statute plainly says that any person or persons who aid "either directly or indirectly" in the transaction of insurance business with non-admitted companies is guilty of a felony. It is my opinion that newspapers and periodicals carrying the advertising of mail-order insurance companies are directly aiding in the transaction of illegal insurance business and guilty of a felony as prescribed by Section 6116.