

Opinion No. 18.**Insurance — Agents — Countersigning.**

HELD: Countersigning by salaried representatives of insurance company does not meet requirements of Chapter 95, Laws of 1937.

January 30, 1939.

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

Dear Sir:

You have submitted copies of letters from bonding and surety companies inquiring if the counter-signature of a salaried representative is sufficient compliance with the requirements of Chapter 95, Laws of 1937, and, if so, if the commission must be paid to an authorized agent or if the representative may retain the commission himself.

Chapter 95, Laws of 1937, provides:

“It shall be unlawful for any insurance company or association, including * * * surety or indemnity

corporations * * * to make, write, place or cause to be made, written or placed in this state, any * * * bond * * * or contract of indemnity * * * unless written through and countersigned by an agent of this state duly licensed to transact * * * 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 * * * bonds * * * when the premium is paid."

The act was enacted "to the end that the state may receive the premium tax," but this act was also passed under the police power of the state to guarantee that foreign insurance and bonding companies would be represented by responsible local agents and that such agents would give local business the specialized protection to which it was entitled and in return would have the opportunity to write the local business and receive the premium therefor.

It is my opinion that only a resident agent is authorized to countersign policies and the intent of the law is that the countersigning agent shall receive a commission for his service. The term agent is a very broad and general one and the same is true of the adjective resident. Yet, the resident agent, as used in the act, must be taken to mean the local agent of the company who ordinarily solicits and writes insurance business and is compensated by a commission. I am, therefore, of the opinion that countersigning by a special salaried agent was not the legislative intent behind Chapter 95. In order to conform to that statute, all insurance policies, indemnity contracts, etc., must be countersigned by a regularly licensed resident agent.