No. 429

## INSURANCE—BONDS—COUNTERSIGNING

Held: 1. An authority requiring a bond may accept and file the same in an emergency as provided by Section 2, Chapter 62, Laws of 1941, without counter-signature, unless such bond contains a stipulation it is not valid until counter-signed.

2. Under the conditions provided in Section 2, Chapter 62, Laws of 1941, a resident agent may countersign a bond subsequent to its acceptance and filing, but such counter-signature must be made personally on such bond by the agent, or—if by paster or rider—such paster or rider must be personally signed by the agent and by him personally appended to the bond.

June 22, 1942.

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

Dear Mr. Holmes:

You have requested my opinion as to the meaning and application of Section 2, Chapter 62, Laws of 1941.

Specifically, you desire an opinion on the following questions:

1. May the authority calling for an indemnity bond accept a bond without the resident agent's countersignature, where it must be presumed that in due course the authorized agent for the issuing carrier will counter-sign the bond?
2. What constitutes a "subsequent counter-signature," as that term is used in Section 2, Chapter 62, Laws of 1941?
3. If an agent executes a rider to be attached to the bond, wherein is specifically designated the bond to which the rider is to be attached and files the rider with the authority, will such act constitute a counter-signature within the meaning of Section 2, Chapter 62, Laws of 1941?

Answering your first question, it is generally held a stipulation that a policy must be counter-signed by the agent in order to become a binding obligation is one which the insurer has a legal right to make. (Royal Exchange Assurance of London v. Almon, 202 Ala. 374, 80 So. 456, 457.) The countersigning is regarded as a necessary part of the execution of the policy, and is therefore essential to its validity. (Firemen's Insurance Company v. Barnsch, 161 Ill. 629, 44 N. E. 285; Badger v. American Popular Insurance Co. 103 Mass. 244, 4 Am. Rep. 547; Lynn v. Burgoyne, 13 B. Mon. (Ky.) 400; Peoria Insurance Co. v. Walser, 22 Ind. 73; Prall v. Mutual Protection Society, 5 Daly (N. Y.) 298; Newcomb v. Provident Fund Society, 5 Colo. App. 140, 38 Pac. 61; 1 Cooley's Briefs 439; 1, May on Insurance, Sec. 65.)

Therefore, if a policy or bond contains a stipulation it must be countersigned by the agent before it becomes a binding contract, your first question must be answered in the negative—and the authority may not accept a bond without the countersignature. A bond required by statute is for the protection of the public and the requirement usually contained in the statute that the bond must be filed before the person qualifies to enter upon his duties connotes the bond, when filed, must be a valid and binding obligation. On the other hand, however, the authorities hold the violation of an insurance statute does not render a policy void where the statute does not so provide. (32 Corpus Juris 1108, Sec. 199; Sales-David Co. v. Henderson, 193 Ala. 166, 69 So. 527; Meridian Life Insurance Co. v. Dean, 182 Ala. 127, 62 So. 90; Blount v. Royal Fraternal Association, Inc., 163 N. C. 167, 79 S. E. 299; Roane v. Union Pac. Life Insurance Co. 67 Ore. 264, 135 Pac. 892.)

Therefore, a bond or other contract of insurance mentioned in Chapter 62, Laws of 1941, in the absence of a stipulation it is not valid unless countersigned, may legally be filed and accepted by the authority calling for the same without a countersignature, and such would be valid and binding. However, because of the provisions of Chapter 62, the countersignature must appear on the contract for the reason we shall hereafter point out.

The purpose and intent of Chapter 62, Laws of 1941, are clearly expressed in the title, which in effect is that all policies of insurance covering risks within the state by "commission paying companies" must be countersigned by the resident agent "so that the state may receive the premium tax" and the agent receive the commission. The act provides a penalty on the company issuing a policy in violation of the act. Neither the act, nor any statute of the state, requires a countersignature as a necessary requisite to the validity of the contract; and, therefore, in the absence of a stipulation to this effect in the policy or contract itself, such contract would be valid without a countersignature.

The evident purpose of the countersignature under this act is that the state receive the premium and the agent the commission on all contracts covering risks within the state, as the act requires the agent to keep a written record of all such contracts. In order that these two objects be accomplished, the law requires the resident agent to sign and prohibits the issuing company from issuing without the countersignature, except as provided by Section 2.

The word "countersign" is defined by Webster as "to sign in addition to the signature of another in order to attest the authenticity of the other." "To attest" is defined as "to bear witness to; to certify; to affirm to be true or genuine; to witness and anthenticate by signing as a witness; to attest the truth of a writing or record." "Subsequent," of course, means "following in time, coming or being later than something else."

Section 2 of Chapter 62, Laws of 1941, provides, "in case it is necessary to execute an emergency contract of insurance, where a resident agent is not available who has authority to execute such contract, a company representative may execute the contract in the first instance in order to produce a valid contract between the company and the obligee or the insured; **provided such contract of insurance is subsequently countersigned by a resident agent who shall keep a written record of all such contracts of insurance issued.**" (Emphasis mine.)

This provision simply permits a departure from the regular requirement and allows a company representative in emergencies to execute the contract in the first instance without the countersignature of the resident agent, provided a resident agent subsequently countersigns, that is, countersigns at some time after the issuance of the policy. Under such conditions it seems clear a contract so issued would be valid and the authority calling for the bond or contract could accept the same, on condition a resident agent countersigned later.

Now, how may the countersigning be accomplished?

According to the definitions of the term "countersign," it would seem clear the countersignature must be written on the policy by the resident agent personally. How else could he "attest," "bear witness to," or "affirm to be true or genuine" the signature of the company representative? He would necessarily have to see such signature.

A paster or rider attached to a policy or contract has been held not to to be a "countersigning" as required by statute.

In the case of Royal Exchange Assurance of London v. Almon, supra, the policy of insurance contained a provision for a countersignature as follows: "Countersigned at New Decatur, Alabama, this 1st day of December, 1915.....Agent." There was no signature in the blank space. Instead, there were inserted a paster on which appeared in typewriting the words, "Attached to and forming a part of Policy No. 4745208 of the Exchange Agency of New York, N. Y., L. B. Wyatt & Son, Agent." The testimony showed that that form was pasted on the policy at the time of issuance and at no time was the signature of the agent made in ink. After quoting the definition of the word "countersign," taken from Webster, referred to above, the Court said:

> "Upon the evidence, which we have stated, we think it cannot be said that the policy in question was countersigned within the meaning of the stipulation on that subject."
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> Royal Exchange Assurance of London v. Almon, 202 Ala. 374, 80 So. 456.

It, therefore, is my opinion that—unless the contract of insurance, whether an indemnity bond or otherwise, contains a stipulation that the same must be countersigned before it is a valid contract—the authority requiring a bond or contract may accept and file the same without a countersignature under conditions contained in Section 2, Chapter 62, Laws of 1941, on condition the resident agent countersigns subsequent to the acceptance and filing.

It is further my opinion a countersignature may not be appended to the bond or contract by paster or rider, unless signed by the resident agent, and personally appended thereto by him.

Sincerely yours,

HOWARD M. GULLICKSON
Attorney General