

agent for a named company and a local resident agent for the same company at the same time.

Although this specific question relates to the subject of a "special agent," it is necessary that for the purpose of this opinion only one type of special agent be considered.

In using the term "special agent" it has been said that such may denominate many different types of agents who are detailed to many different types of jobs for a particular purpose. Therefore, I shall use the definition which you have given me in the first paragraph of your letter to be the type which I shall discuss here, namely, that of a special agent who is a "traveling salaried employee."

This question involves interpretation of Section 2, Chapter 62, Laws of 1941, which reads as follows:

"Only resident agents within this State, whose compensation for soliciting and writing insurance is by way of comission figured as a percentage of the premium for each contract of insurance written, may countersign contracts of insurance or endorsements thereto within this State; provided, however, the provisions of this section shall not apply to mutual or stock companies soliciting insurance by salaried representatives who are paid no commission on contracts of insurance written. Except as hereinafter provided, no branch manager, state agent, special agent, general or other like supervisory agent or any other representative of an insurance company, hereinafter referred to as company representative, whose compensation in the insurance business is derived either in whole or in part by salary, may countersign contracts of insurance or endorsements thereto; however, in any case where 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

Opinion No. 2

Insurance Companies, Employees— Agents, Insurance Companies.

Held: Traveling salaried employees may not act in the capacity of a special agent for a named company and local resident agent for the same company at the same time.

December 23, 1946.

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

Attention: Mr. Neil E. Flaherty
Deputy Insurance
Commissioner.

Dear Mr. Holmes:

You have requested an opinion of this office asking if one individual may act in the capacity of a special

insurance is subsequently countersigned by a resident agent who shall keep a written record of all such contracts of insurance issued." (Emphasis mine.)

It must be noted therefore that salaried employees of a company are specifically prohibited from countersigning any policy. Since under Chapter 62, Section 1, Laws of 1941, countersignature is a necessary element in any contract, it is obvious that traveling salaried employees cannot validate a policy in this state.

In the event a traveling salaried employee were able to secure a license to sell insurance as a local agent of the state of Montana, he could not issue the same without the countersignature of another licensed agent. It would appear that the purpose of this act is to prevent any but regularly licensed local agents of the state of Montana from countersigning policies in this state. Though there is no specific provision relating to the question in Chapter 62, this interpretation by implication would deny the right of a special traveling salaried agent from becoming a local agent and thereby indirectly doing that which the statute forbids him doing directly.

It must be noted that this opinion is limited not only in its scope as to a certain type of special agent, but further it shall in no way apply to those salaried representatives who are specifically exempted from the operation of the statute by Section 6, Chapter 62, Laws of 1941.

It is therefore my opinion that traveling salaried employees, referred to in your letter as special agents, may not act in the capacity of a special agent for a named company and local resident agent for the same company at the same time.

Sincerely yours,
R. V. BOTTMOLY,
Attorney General.