INSURANCE COMMISSIONER: Must policies covering property in Indiana be contracted for within state—must it be countersigned by a "resident agent."

November 21, 1933.

Honorable Harry E. McClain,
Commissioner of Insurance,
Indianapolis, Indiana.

Dear Sir:

I have before me your request that an official opinion issue and presenting the following inquiry:

"The question has arisen as to whether or not chapter 33, Acts of 1929, page 60, precludes the effecting of insurance on Indiana property other than by a resident agent and whether or not policies and coverage on property in the state must be effected or countersigned by a resident agent.

"Section 1 of said Act in defining the words agent and solicitor provides that said agent or solicitor shall be 'resident in this state.' Section 6 of said Act declares it unlawful, without conforming to the Act, 'to solicit, negotiate or effect any contracts of insurance, indemnity or surety or renewal thereof; or to attempt to effect the same on persons, property or insurable business activities or interests, located within or transacted within this State.'

"Does this act in addition to providing the qualifications necessary to write insurance in the State of Indiana also provide that insurance on property, etc., located within the State must be written or countersigned by such resident agent to be effective."

This requires a construction of the provisions of chapter 33, of the Acts of 1929, (page 60 et sequi), and in reality presents two different questions:

1. Does chapter 33 of the Acts of 1929, preclude the effecting of insurance in this state by any but a resident agent?

2. Must all policies of insurance covering property located within the State of Indiana be written or countersigned by a resident agent in order to be effective?

The act under consideration is an act entitled:
“An act relating to the qualification and licensing of insurance agents, solicitors and brokers, and providing for the revocation, suspension and reinstatement of such licenses.”


Provisions of this act pertinent to the present inquiry are as follows:

“The word ‘agent,’ as used in this act, is an individual, a co-partnership, or a corporation authorized by its charter or by law to do an insurance agency business, resident in this state, and authorized in writing by a company:

(a) To solicit risks, collect premiums and issue or countersign policies in its behalf; or

(b) To solicit risks and collect premiums in its behalf.

“The word ‘solicitor,’ as used in this act, is an individual, a co-partnership, or a corporation authorized by its charter or by law to do an insurance agency business, resident in this state, and authorized in writing by an agent to solicit risks and collect premiums in behalf of said agent.

“The word ‘broker,’ as used in this act, is an individual, a co-partnership, or a corporation authorized by its charter or by law to do an insurance agency business, resident in any state, and not an officer or agent of the company interested, who or which for compensation acts or aids in any manner in obtaining insurance for a person other than himself, themselves or itself. The interchange of business between ‘agents’ shall not be interpreted to require the ‘agent’ to qualify also as a ‘broker’.”

Chapter 33, Acts 1929, Sec. 1.

And also:

“Sec. 6. It shall be unlawful for any individual, co-partnership or corporation, as defined in this act, without conforming to the provisions of this act, to represent himself, themselves or itself as an agent, a solicitor or a broker; to solicit, negotiate or effect any con-
tracts of insurance, indemnity or surety or renewal thereof; or to attempt to effect the same on persons, property, or insurable business activities or interests, located within, or transacted within this state."

Chapter 33, Acts 1929, Sec. 6.

A reading of the first section of this act, supra, discloses that "agents" and "solicitors" are both defined as being "resident in this state"; while a "broker" is defined as being "* * * resident in any state." It is apparent that this distinction is made intentionally. Therefore, insurance contracts entered into within the state are to be with "residents" when an "agent" or a "solicitor" represents the company; but this limitation does not apply where the insurance is obtained through a "broker."

The second question presents the consideration of whether or not insurance on property located within the state must be written or countersigned by a resident agent in order to be valid. The answer must be "No, not necessarily" because insurance covering property within this state would still be valid even though the insurance company was not qualified to do business within the state and had no legally qualified licensed agents here, if the contract for such insurance was entered into in another state. It has been held that the general assembly has no power to prevent a citizen of Indiana from making contracts for insurance outside of this state even though the property insured is located within the state.

Swing v. Hill, 165 Ind. 411.

However, the Supreme Court there, carefully distinguished the situation involved there, from the power of the state to prevent foreign corporations from doing business within the state without complying with the laws concerning foreign corporations, and in so doing employed this language:

"Although it is competent for the state by legislation to prevent foreign corporations from entering into insurance contracts in this state concerning property therein without complying with the statutes, and while it is also competent for the state to prohibit the agents of such companies from soliciting insurance in this state, yet the legislature is not empowered to enact a
statute whereby it prohibits citizens from entering into contracts outside of this state insuring property within its boundaries."


But even were the contracts entered into in this state by a corporation not qualified to do business herein, or by an agent not lawfully authorized, qualified or licensed for any reason, the tendency of the courts in the later cases has been to hold the contracts not void, as to the insured. The rule follows the principle, that the public has the right, in the absence of bad faith and of actual knowledge to the contrary, to presume that a foreign corporation assuming to transact business in the state is acting lawfully, and the company, when sued on a policy, is estopped to allege that it had no lawful authority to issue the policy.


It has also been decided, that the fact that a foreign insurance company doing business in this state has not complied with the laws of this state, does not render the contract of insurance void, but merely constitutes matter in abatement until the company complies with the statute.