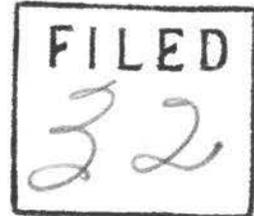


INSURANCE: Persons who are insurance brokers.

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September 1, 1944

Mr. J. R. Garstang  
Prosecuting Attorney  
Osage County  
Linn, Missouri



Dear Sir:

We are in receipt of your letter of recent date wherein you state as follows:

"Referring to your letter of the 26th inst. will say in reply thereto that the Bonding Company is the American Surety Company of New York; That I have been acting as the attorney for this company for the past 20 years or longer;

"Whenever a bond is required from this company, the company issues the bond and I collect the premium on the bond and send the premium less my collection fee, to the company. I do not solicit business, but when anyone wants a bond, I send to the American Surety Company for the bond, and collect the premium on the bond after the Bonding company has issued the bond and delivered it either to me or to my client.

"I do not issue the bonds, nor do I act as agent for the company, am not obligated to send to that company for my client's bonds, but naturally, having been associated with them for so long, I do throw most of my business to them.

"I have been acting under the provisions of Section 8297, R. S. 1939, which apparently applies exactly to my case.

"However, the company does pay me a \*commission\* or fee for collecting the premiums, and that fee is on a percentage basis the same as I charge merchants or other clients for collecting their bills.

"I never at any time have the right or title to any of the bonds, neither do I pass on the qualifications of the persons applying for the bonds, although I sometimes do help my clients fill out applications for the bonds.

"There is no licensed 'broker' in Osage County, and when we need a bond, we have to send direct to some bonding company to get it.

"I do not want to be licensed as a broker, for I am a licensed attorney, and only do the applying for bonds for convenience to my clients, as most of the other attorneys of this county do.

"What I want to know, is whether, under that state of facts, and in view of the provisions of Section 8279 (above) a broker's license is required.

"P.S. The bonds we apply for are merely 'surety' or 'fidelity' bonds, and are not bonds for purchase or sale, as contemplated by the statute.

You raise the question of whether, under the facts submitted, a broker's license is required of you, particularly in view of Section 8297, R. S. Mo. 1939.

Section 8293, R. S. Mo. 1939 provides for the licensing of money brokers:

"No person, or association or company of persons, shall carry on the business of dealing in, or buying or selling, or shaving any kind of bills of exchange, checks, drafts, bank notes, promissory notes, bonds or other kind of writing obligatory, or in procuring the gold and silver of the country, to dispose of the same for a premium, in this state or elsewhere, without a license for that purpose continuing in force."

Section 8297, R. S. Mo. 1939 declares which persons shall be amenable to the above law.

"Persons who do not deal as money brokers or exchange dealers, except as incidental to their other business and as the exigency and convenience thereof may require, are not amenable to the provisions of this chapter."

The bonds contemplated by Section 8297, supra, are as you point out "bonds for purchase or sale" and do not apply to surety or fidelity bonds. In addition, the statute is directed to persons, associations, or companies who carry same on as a business. Since your dealings are merely incidental you would, in any event, be exempt from the purchase of a

brokers license under the provisions of Section 8297, R. S. Mo. 1939 supra.

Section 5906, R. S. Mo. 1939 authorizes the incorporation of insurance companies "for the purpose of transacting the business of becoming surety on bonds or obligations of persons or corporations, or of insuring the fidelity or persons holding places of public or private trust,". Section 6015, R. S. Mo. 1939 defines the persons that shall be deemed insurance brokers:

"Whoever, for compensation, acts or aids in any manner in negotiating contracts of insurance or reinsurance, for placing risks or effecting insurance or reinsurance for any person other than himself, and not being the appointed agent or officer of the company in which such insurance or reinsurance is effected shall be deemed an insurance broker, and no person shall act as such insurance broker, save as provided in this section. The superintendent of insurance may, upon the payment of a fee of ten dollars, issue to any person a certificate of authority to act as an insurance broker to negotiate contracts of insurance or reinsurance, or place risks, or effecting insurance or reinsurance with any qualified domestic insurance company or its agents, and with the authorized agents in this state of any foreign insurance company duly admitted to do business in this state. Such certificate shall remain in force one year, unless revoked by the superintendent of insurance for cause. Any person who shall act as broker or agent, in negotiating insurance or reinsurance, as above stated, without first having obtained a certificate of authority or broker's license for such purpose, shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be fined not less than ten nor more than one hundred dollars for each offense, to be recovered and applied in the manner prescribed in section 6020."

Under the facts as submitted you are, for compensation, aiding in placing risks effecting insurance for persons other than yourself, and are not the appointed agent or officer of the company in which such insurance is effected.

Since the language of Section 6015 supra, defining insurance brokers is plain and of but one meaning, there is no room for statutory construction (Cummins v. Kansas City Public

Mr. J. R. Garstang

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September 1, 1944

Service Company, 334 Mo. 672, 66 S. W. (2d) 920). We are therefore of the opinion that, under the facts submitted, you are an insurance broker and come within the provisions of Section 6015 R. S. Mo. 1939, which requires a certificate of authority from the insurance department.

Respectfully submitted,

APPROVED:

MAX WASSERMAN  
Assistant Attorney General

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ROY McKITTRICK  
Attorney General

MW:mb