

INSURANCE: Officers, of foreign insurance company operating in Missouri without proper authorization, not subject to extradition and prosecution. Sole redress is civil action against corporation for penalty prescribed by Section 375.310, RSMo 1949.



June 23, 1953

Honorable Don W. Owensby
Prosecuting Attorney
Dallas County
Buffalo, Missouri

Dear Sir:

The following opinion is rendered in reply to your request reading, in part, as follows:

"Several policies of automobile insurance have been sold here in Dallas County by a local agent representing an insurance company with home office in Indiana. I am informed by the Missouri State Insurance Department that this company has never been licensed to do business in the state of Missouri. I am acquainted with the provisions of Section 375.300, R.S. Mo. 1949 as regards the criminal liability of the agent. Please advise as to whether or not it is possible to prosecute and extradite one or more of the officials of the company for receiving premiums under these circumstances. * * *"

Interstate extradition is accomplished by compliance with Section 3182, Title 18 U.S.C.A., and such extradition may be accomplished only when a person has been properly charged by affidavit or indictment with having committed "treason, felony or other crime". It necessarily follows that before officers of a foreign corporation may be extradited and prosecuted in Missouri, a specific statute of Missouri must be pointed to wherein the acts complained of are denominated a crime in Missouri.

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Section 375.310, RSMo 1949, represents the legislative declaration in Missouri relative to redress which may be taken against a foreign insurance company doing business in this State without proper authorization. Such statute only provides for a civil action to recover a stated penalty, and reads as follows:

"Any association of individuals, and any corporation transacting in this state any insurance business, without being authorized by the superintendent of the insurance division of this state so to do, or after the authority so to do has been suspended, revoked, or has expired, shall be liable to a penalty of two hundred and fifty dollars for each offense, which penalty may be recovered by ordinary civil action in the name of the state, and shall, when recovered, become part of the school fund, as by law provided for other fines and penalties; suit for said penalty may be brought by the attorney general, the superintendent of the insurance division, or any county, circuit or prosecuting attorney, in either the city or county in which the policy was delivered, or in which the money was paid to any agent of such association or corporation, or in which the receipt was delivered, or in any county or city in which an attorney for service or any agent of said association or corporation may be found; and if the plaintiff recover, an attorney's fee of twenty-five dollars for each cause of action upon which recovery is had shall be taxed as and added to the costs; service shall be made of process in any such action, either as in other civil actions or as provided in this chapter for service on insurance companies."

CONCLUSION

It is the opinion of this office that officers of a foreign insurance corporation may not be extradited and prosecuted in Missouri when such corporation conducts its business in the State without proper authorization. Redress against such corporation can only be had by civil action under Section 375.310, RSMo 1949, for the money penalty prescribed therein.

Honorable Don W. Owensby

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. Julian L. O'Malley.

Yours very truly,

JOHN M. DALTON
Attorney General

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