

**OPINION
65-128**

September 30, 1965 (OPINION)

Mr. K. O. Nygaard

Insurance Commissioner

RE: Insurance - Certificate of Authority - Fidelity and Surety Bonds

This is in response to your letter in which you make reference to a letter written to Mr. A. J. Jensen, dated May 9, 1962, and to Chapter 6-05 and then ask what discretion does the commissioner of insurance have in granting or refusing a certificate of authority to do business under the following facts:

The American Trust and Deposit, Inc., a domestic corporation organized under the provisions of Chapter 6-05, has now applied for a certificate of authority to engage in the business of writing fidelity and surety bonds. The corporation has filed certified copies of its articles of incorporation and amendments thereto. The corporation has also filed a certificate from the state treasurer indicating that the corporation has complied with the provisions of sections 6-05-04 and 6-05-05 relating to deposit requirements.

Section 6-05-22 provides that every corporation intending to transact business in fidelity or surety bonds must comply with Chapter 6-05. This section provides "Upon the filing in the office of the commissioner of insurance by any such corporation of a certificate issued by the state treasurer showing compliance with section 6-05-05, together with a certified copy of its articles of incorporation and the payment of the proper fee therefor, the commissioner of insurance shall issue to the corporation a certificate setting forth that it has qualified and is authorized for the ensuing year to engage in the business of writing fidelity and surety bonds.* * *."

This section is specific and leaves little or no discretion with the insurance commissioner. Whether or not he should have discretion would be a matter for the Legislature to determine.

In reviewing the provisions of Title 26, we find that the insurance commissioner has general supervision of all companies engaged in the insurance business in the State of North Dakota. The furnishing of surety bonds is a form of insurance. In this respect section 26-01-12 provides as follows:

Before a surety company or an insurance company, other than a life insurance company, shall be authorized to transact business in this state, the commissioner of insurance may require it to file with him a sworn statement and other proof that it has not written, or caused to be written, any surety bond or insurance contract on any person, firm, or corporation, or on property in this state, at any time prior to filing its

application for a certificate of authority to do business in this state. * * *."

This section appears to be in addition to the provisions of section 6-05-22 and does not appear to be in conflict with said section. However, it is observed that the provisions of section 26-01-12 are permissible rather than mandatory.

In direct response to your question, it is our opinion that where a corporation organized under the provisions of Chapter 6-05 has complied with the provisions of section 6-05-22 and has caused to be performed or has performed all the conditions set forth therein, the corporation; is entitled to a certificate of authority to write fidelity and surety bonds. The certificate of authority which is required to be issued by the insurance commissioner constitutes authority to do business in the State of North Dakota as contemplated in section 26-17-01. It further appears that there is little or no discretion to be exercised by the insurance commissioner after the corporation has complied with the provisions of section 6-05-22, except that he may require the statement referred to in section 26-01-12.

It is our further opinion that the corporation engaging in the business of writing fidelity and surety bonds becomes subject to the provisions of Title 26 as well as to the provisions in Chapter 6-05. The state examiner has supervisory authority over the corporation in the matters set out in Chapter 6-05 and the insurance commissioner has authority over the corporation in matters pertaining to insurance as found in Title 26. Dual supervision in these instances can be in complete harmony and would not provide a basis for irreconcilable conflict.

HELGI JOHANNESON

Attorney General