2544.

APPROVAL—BONDS, CITY OF ZANESVILLE, MUSKINGUM COUNTY, OHIO, $80,000.00, DATED APRIL 1, 1938.

COLUMBUS, OHIO, June 2, 1938.

The Industrial Commission of Ohio, Columbus, Ohio.
GENTLEMEN:

RE: Bonds of City of Zanesville, Muskingum County, Ohio, $80,000.00.

I have examined the transcript of proceedings relative to the above bonds purchased by you. These bonds comprise all of an issue of street improvement bonds dated April 1, 1938, bearing interest at the rate of 3% per annum.

From this examination, in the light of the law under authority of which these bonds have been authorized, I am of the opinion that bonds issued under these proceedings constitute valid and legal obligations of said city.

Respectfully,
HERBERT S. DUFFY,
Attorney General.

2545.

INSURANCE POLICY—ENDORSEMENT—LIABILITY—BODILY INJURY — PROPERTY DAMAGE — PREMIUM EARNED—STATUS—SECTION 9589-1, G. C.

SYLLABUS:

An endorsement attached to bodily injury liability and property damage liability insurance policies which provides that the premium deposited with the insurance company is earned if the automobile is involved in an accident during the policy year and 85% of the deposit

premium is earned if the automobile is not so involved, is not prohibited under Section 9589-1, *General Code.*

COLUMBUS, OHIO, June 3, 1938.

HON. ROBERT L. BOWEN, *Superintendent of Insurance, Columbus, Ohio.*

DEAR SIR: This will acknowledge receipt of your letter of recent date, requesting my opinion on the following matter:

Several insurance companies licensed to write automobile liability insurance in this state desire to adopt a so-called "safety experience plan." This plan contemplates the attachment of an endorsement to bodily injury liability and property damage liability insurance policies issued to owners of private passenger automobiles. The endorsement provides that the premium deposited with the insurance companies is earned if the automobile is involved in an accident during the policy year and 85% of the deposit premium is earned if the automobile is not involved in any accident. The unearned portion of the deposit premium is returned to the insured in cases where the insured's automobile is not involved in any accident.

You indicate that the above plan submitted by certain insurance companies is an alternative plan and the original plan submitted to you was held by you to be contrary to the insurance laws of this state. Inasmuch as your request for my opinion is directed to the alternative plan, no consideration will be given to the original plan at this time.

It is quite apparent that the "safety experience plan" gives some advantage and certain benefits to a particular class of automobile owners. Such advantages and benefits may be termed as inducements to insurance. However, it is to be noted that in the absence of statutory inhibition, discrimination in the amount of premiums charged by insurance companies is not illegal. 32 C. J. 1193. Section 9589-1, General Code, commonly referred to as the Anti-Rebate and Discrimination Law, prohibits certain types of inducements to insurance. Consequently, in order for the "safety experience plan" to be illegal, some prohibition to the advantages enumerated in the plan must be found in Section 9589-1, General Code, which reads as follows:

> "No corporation, association or co-partnership engaged in the state of Ohio in the guaranty, bonding, surety or insurance business, other than life insurance, nor any officer,

agent, solicitor, employe or representative thereof shall pay, allow or give, or offer to pay, allow or give, directly or indirectly, as inducements to insurance, and no person shall knowingly receive as an inducement to insurance any rebate of *premium payable on the policy,* nor any special favor or advantage in the dividends or other benefits to accrue thereon, nor any paid employment or contract for services of any kind or any special advantage in the date of the policy or date of the issue thereof, or any valuable consideration or inducement whatsovere *not plainly specified in the policy or contract of insurance or agreement of indemnity,* or give or receive, sell or purchase, or offer to give or receive, sell or purchase, as inducements to insurance or in connection therewith any stock, bonds, or other obligations of an insurance company or other corporation, association, partnership or individual. But the provisions of this act shall not apply, however, to prevent the payment to a duly authorized officer, agent or solicitor of such company, association or copartnership of commissions at customary rates on policies or contracts of insurance effected through him by which he himself is insured, provided such officer, agent or solicitor holds himself out as such and has been engaged in such business in good faith for a period of six months prior to any such payment; nor shall this act prohibit a mutual fire insurance company from paying dividends to policy-holders at any time after the same has been earned." (Italics the writer's).

There are two prohibitions in the foregoing provision which may apply to the advantages found in the endorsement under consideration. The first prohibition is the giving or receiving as an inducement to insurance any rebate of premium payable on a policy. The second prohibition is the giving or receiving of any valuable consideration or inducement whatsoever not plainly specified in the policy. It is to be noted that each prohibition enumerated in Section 9589-1, supra, is separated by a comma. However, no comma appears before the language "not plainly specified in the policy." If this language qualifies every prohibition which precedes it, then it would be permissible to return a portion of the deposit premium payable on the policy if such return were plainly specified in the policy. On the other hand, it might be argued that if the language in question only qualifies the giving or receiving of "any valuable consideration or inducement whatsoever," no return of the premium payable on

the policy may be allowed, even though plainly specified in the policy.

The courts of this state have held that statutes are not to be construed by strict adherence to technical grammatical rules. Thus, in the case of *Albright* vs. *Payne*, 43 O. S. 8, it was held as disclosed by the first branch of the syllabus:

> "In construing a statute, punctuation may aid, but does not control unless other means fail; and in rendering the meaning of a statute punctuation may be changed or disregarded."

A strict grammatical construction of Section 9589-1, supra, would necessarily result in a conclusion that the clause "not plainly specified in the policy" only modifies the language "or any valuable consideration or inducement whatsoever," but does not modify every other prohibition which precedes it. However, in view of the authority above cited, the true meaning of a statute must prevail even though contrary to an apparent grammatical construction.

In order to determine the purpose of the legislation, it is necessary to refer to Section 9589-1, as originally enacted in 101 O. L. 117. This section was amended in its present form in 102 O. L. 81. An examination of the original enactment reveals that the language as contained therein "not specified in the policy contract of insurance" is separated by a comma and consequently modifies all of the prohibitions which precede such language. Thus, it is clear that the legislative intent at the time the original anti-rebate and discrimination law was enacted was to prohibit only such inducements as were not specified in the policy.

The court in the case of *State ex rel.* vs. *Conn*, 110 O. S. 405, recognized that there was no change in the purpose of Section 9589-1, as originally enacted and as amended in its present form. At page 408, the court said:

> "The particular section here under consideration was first enacted on April 12, 1910 (101 O. L., 117), and while subsequently amended (102 O. L., 81), and its scope extended to include corporations, associations, and co-partnerships engaged in insurance business other than fire, the particular provisions here under consideration were not changed."

Rather significant is the provision in Section 9589-1, supra, which prohibits the giving or receiving as inducements to insurance any stocks, bonds or obligations of an insurance company. It is to

be noted that this prohibition follows the clause "not plainly specified in the policy." This prohibition is not qualified in any manner. Consequently, in this state it is prohibited to give or receive as inducements to insurance any stocks or bonds even though such inducements may be plainly specified in the policy. It would seem that if the legislature did not intend to qualify all of the inducements which are enumerated before the clause "not plainly specified in the policy," it could have very readily accomplished that purpose by inserting such inducements together with the prohibition relating to the giving or receiving of stocks or bonds.

It is therefore apparent, after reviewing the history of the legislation, together with an examination of all the prohibitions found in Section 9589-1, that the purpose of the legislation was to prevent, with one exception, the giving or receiving of any advantage or benefit as inducement to insurance unless such advantage and benefit were plainly stated in the policy.

It is common knowledge that all insurance companies issue policies of insurance containing certain benefits and advantages. Such benefits and advantages are urged upon the buying public by insurance agents and there can be no doubt but that such benefits and advantages constitute "inducements to insurance." The legislature, in enacting Section 9589-1, supra, intended to prevent discrimination by the insurer between its insured by prohibiting insurance companies and their representatives from using certain benefits and advantages as inducements to insurance unless they were "plainly specified in the policy." If this clause does not apply to all of the enumerated inducements in Section 9589-1, supra, except the one referring to stocks and bonds, then every insurance company would be violating the foregoing provision. It is true that the inducements used by one insurance company may be more attractive to the purchasers of its policies than the inducements used by other insurance companies and thus result in the loss of business for the last mentioned companies. However, in the case of *State, ex rel.* vs. *Conn,* supra, the court pointed out "that the purpose of the fire insurance act (Section 9589-1, General Code) was to prevent discrimination as to rates directly or indirectly by the insurer between its insured, and that it has not for one of its purposes the prevention of competition between insurance companies as to the rate which each may charge."

The premium payable under the endorsement under consideration herein is 100% of the deposit premium in cases where automobiles are involved in an accident during the policy year and 85% of the premium deposit in cases where automobiles are not so involved. It might be argued that the return of the 15% of the premium deposit

constitutes a rebate. However, every rebate is not an unlawful one as was pointed out in Opinions of the Attorney General for 1932, Vol. II, page 822, wherein it was held that Section 9589-1, supra, "only prohibits a rebate of premiums *payable on the policy.*" Under the endorsement, owners of automobiles may be charged different amounts of premiums. However, this is not in violation of the provisions of the anti-rebate and discrimination law. This was recognized in the opinion above referred to wherein it was said at page 824 that Section 9589-1, supra, "does not prohibit charging different persons different amounts of premiums for the same risks, provided such premiums are stipulated in the policy and so long as the full amount of the premium payable on the policy is charged and collected."

In view of the foregoing, it is my opinion that the "safety experience plan" does not violate the provisions of Section 9589-1, General Code.

Respectfully,
HERBERT S. DUFFY,
Attorney General.

2546.

PLUMBING WORK — LICENSED PLUMBERS — COUNTY BUILDING — WHERE MUNICIPALITY ENFORCES ORDINANCE FOR LICENSEES—CONTRACTOR, STATUS.

SYLLABUS:

Plumbing work in a county building improvement, within a municipality which is enforcing an ordinance for the licensing of plumbers, must be actually done by plumbers licensed under said ordinance, even though the contractor himself may not be so licensed.

COLUMBUS, OHIO, June 3, 1938.

HON. THEODORE TILDEN, *Prosecuting Attorney, Ravenna, Ohio.*

DEAR SIR: This will acknowledge receipt of your recent letters in connection with the awarding of a plumbing contract for a county building, situated in the corporate limits of the city of Ravenna, to a plumbing contractor who is not licensed in the city of Ravenna and who subsequent to the date of the opening of the bids on such county contract failed in the examination given by the city of Ravenna for licensing plumbers. You inquire whether or not the low