1448.

INSURANCE—CONVERSION OF 20-YEAR ENDOWMENT POLICY INTO STRAIGHT LIFE POLICY—PREMIUM RATES DISCUSSED.

SYLLABUS:

Under the provisions of paragraph 3, Section 9421, *General Code, a policyholder with a* 20-*year endowment policy may not convert the same to a straight line policy at the premium rate at age of original entry instead of the attained age at the date of conversion, but the age at date of conversion will govern.*

COLUMBUS, OHIO, December 27, 1927.

HON. WILLIAM C. SAFFORD, *Superintendent of Insurance, Columbus, Ohio.*

DEAR SIR:—This will acknowledge receipt of your request for my opinion as follows:

> "Two domestic legal reserve companies have raised the question of their right to convert higher forms of policies to lower forms, and give the difference in additional insurance. In other words, could a policyholder with a 20-year endowment convert to a straight life policy, taking the difference in reserve in additional insurance at the age of entry rather than the attained age. Of course the insurance companies will require a medical examination in connection with the additional insurance, so that the question of adverse selection is not involved. This question is being raised in various states at the present time. It has been the rule in the Department here that Section 9421, paragraph 3 prohibits such conversion. May we have your opinion?"

As stated in your letter this question has recently been under consideration by several state insurance departments. You state your Department has heretofore ruled that this is not permissible under paragraph 3 of Section 9421, General Code. Section 9421, General Code, prohibiting certain provisions in life insurance policies issued in this state, in so far as pertinent to the instant question, reads:

> "No policy of life insurance in form other than as prescribed in sections ninety-four hundred and twelve to ninety-four hundred and seventeen, both inclusive, shall be issued or delivered in this state or be issued by a life insurance company organized under the laws of this state, if it contain any of the following provisions:
>
> (1) * * *
>
> (2) * * *
>
> (3) A provision by which the policy shall purport to be issued or to take effect before the original application for the insurance was made, if thereby the assured would rate at an age younger than his age at date when the application was made, according to his age at nearest birthday.
>
> (4) * * *"

The question propounded in your letter is:

> "could a policyholder with a 20-year endowment convert to a straight life policy taking the difference in reserve in additional insurance at the age of entry rather than at the attained age."

Putting your question in another way, would this be:

> "a provision by which the policy shall purport to be issued or to take effect before the original application for the insurance was made, if thereby the assured would rate at an age younger than his age at date when the application was made, according to his age at nearest birthday."

In other words would this be a dating back of the new policy and thereby come within the prohibitive provision above quoted.

One of the reasons for this agitation throughout the various states is the complaints being offered concerning the activity of certain agents in soliciting from the insured changes in policy forms from higher premium to lower premium forms.

This question recently was before the insurance department of New York and the superintendent of insurance of that state made the following ruling:

> "This department considers that the only fair method of changing a higher priced policy to an ordinary life, especially where the policyholder desires additional insurance, is on the basis of a policy dated as of the original policy which is now being carried, to a policy for the amount which the premium the policyholder is now paying would have purchased at such original date."

I may say we have no citation of authority to support the above ruling.

I think it has been the practice of most companies in the past to permit conversion of policies from higher to lower premium forms, subject to satisfactory evidence of insurability, and to grant the excess of the cash value of the original policy, under the reserve provision of the converted policy, for the same amount in cash. This privilege may have been abused in some instances by agents recommending to old policyholders with substantial cash values on their policies that they convert the policy to a lower premium form and release a part of the cash value for the purpose of buying new insurance.

I am informed that this question has been the subject of considerable agitation in insurance circles, which accounts for its presence before a number of insurance departments. However, you request my opinion under the Ohio law as to whether or not the plan as proposed and contained in the New York ruling would be permissible under the laws of Ohio, or whether it would be in conflict with paragraph 3 of Section 9421, supra. It is evident that the insurance on the converted policy would be in a greater sum than the original amount and it would therefore be a modified contract, to say the least, if not a new contract.

In accordance with the rules applicable to contract generally, a modification of an insurance policy is valid and binding only when both parties consent thereto. The question called for in your inquiry is whether or not if both parties would assent to the proposed form of contract, based upon the age of the insured at the date of the original contract instead of his attained age, said contract would thereby violate the provisions of the section above quoted.

Cooley on Insurance at page 1484, says:

> "An insurance contract may be subsequently modified as to material terms by the parties after which the rights of the parties are govened by the modified contract."

and again on the same page he says:

> "an insurance policy 'is but the written expression of a contract which the parties themselves may modify by mutual consent' citing in support Perrigo vs. Connecticut Commercial Travelers' Mutual Accident Association, 127 A. 10, 101 Conn. 648."

It is apparent, however, that a contract so modified by the consent of both parties is required to be in accordance with law. In the case of Cans vs. Aetna Life Insurance Company of Hartford, Connecticut, 146 N. Y. S. 453, 161 App. Div. 250, it was held:

> "Where an insured exercised his privilege of exchange contained in a five year renewable term policy, and exchanged it for an ordinary life policy bearing the date of the exchange, the second policy was not a mere continuation of the first, but created a new contract from its date; since term insurance and the ordinary life policy are essentially different, being based upon different considerations."

It is evident that before a change in the policy could be made an application by the policyholder in some form would be required. It is also evident that the legislative intent in the enactment of paragraph 3, Section 9421, General Code, above mentioned, was to prevent the dating back in any manner or form the policy contract, thereby interfering with the actuarial rates of risks under policies.

In view of the foregoing it is therefore my opinion that the plan as proposed would be in violation of paragraph 3, Section 9421, General Code of Ohio,.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1449.

APPROVAL, BONDS OF VAN BUREN TOWNSHIP RURAL SCHOOL DISTRICT, MONTGOMERY COUNTY—$20,400.00.

COLUMBUS, OHIO, December 27, 1927.

Industrial Commission of Ohio, Columbus, Ohio.

1450.

APPROVAL, BONDS OF THE VILLAGE OF WESTERVILLE, FRANKLIN COUNTY, OHIO—$33,500.00

COLUMBUS, OHIO, December 27, 1927.

Industrial Commission of Ohio, Columbus, Ohio.