

I have given the election board and the village my opinion, but the election board is desirous of having the opinion of the Attorney General in the matter, and I would be pleased to receive same at your earliest opportunity."

You state that a certain man's name was on the ticket for member of council and that he received sixty-six votes as such candidate.

Your letter also states that in addition to these votes for member of council this same candidate's name was written in for village clerk on twenty-six ballots and that by reason thereof the election board threw out these twenty-six ballots. In my opinion this was an error on the part of the election board.

There is nothing to prevent an elector from writing in the name of the same person for more than one office if said elector so chooses. The fact that an elector exercises this privilege of voting for a person for more than one office should not prevent the candidate from receiving the benefit of his election should he receive a majority of the votes cast.

In this instance your letter states that if the candidate whose name was regularly on the ticket receives the sixty-six votes cast for him as member of the council, he would be elected, while if the twenty-six ballots on which his name was written in for another office are thrown out, as was done in this case, he would not be elected to either office.

I am unable to find any adjudications on this subject. However, if the method practiced in the instant case would invalidate an election, then an elector over whom the candidate would have no manner of control could defeat the will of the majority of the electors by securing enough votes for said candidate for another office to reduce said candidate's vote below the given majority.

It is, therefore, my opinion that where a candidate whose name is regularly on the ticket for member of village council receives the requisite number of votes to be elected thereto, he is entitled to be declared elected notwithstanding the fact that his name was written in for another office on a considerable number of the ballots.

Respectfully,

EDWARD C. TURNER,
Attorney General.

1392.

INSURANCE—AUTOMOBILE PROTECTIVE ASSOCIATION CONTRACTING TO PAY MEMBER FOR LOSS OF CAR NOT RECOVERED IS TRANSACTING AN INSURANCE BUSINESS.

SYLLABUS:

Under the provisions of Section 665, General Code of Ohio, an automobile protective association which contracts among other things that in the event it is unable to recover a stolen automobile belonging to one of its members within sixty days of said loss that it will pay said member such sum as shall be deemed just and right by arbitrators duly selected, said sums of payment being graduated upon the age of the car from one hundred per cent of its value on a car one month old to ten per cent of its value on a car eight years old or more, is transacting an insurance business.

COLUMBUS, OHIO, December 17, 1927.

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

DEAR SIR:—This will acknowledge receipt of your recent communication requesting my opinion as follows:

"We recently addressed Mr. E. H. Buchman of Fremont, Ohio, concerning the doings of the Sandusky County Automobile Protective Association, as we had been informed that the operations of this association were in the nature of an insurance business.

Mr. G. C. Sheffler, prosecutor of Sandusky County, responds apparently in Mr. Buchman's behalf with a letter, of which the enclosure is a copy.

After your reading of the enclosure and such reference as you may wish to make, will you kindly advise the Division of Insurance whether in your opinion the operations of the above named association constitute an insurance business."

Accompanying your letter and to which you refer is a letter from G. C. Sheffler, prosecuting attorney of Sandusky County, as follows:

"Re: Sandusky County Automobile Protective Association.

One Mr. E. H. Buchman handed me a letter written by you dated Nov. 1, 1927, concerning the above matter.

Mr. Buchman has explained what has been done in the year 1924 concerning the above matter, and showed me the Articles of Incorporation secured from the State of Ohio.

The third part of the Articles of Incorporation reads as follows:

'THIRD: Said corporation is formed for the purpose of prosecuting the stealing of automobiles within Sandusky; to pursue and recover any automobile or automobiles stolen from any member of the association; to pursue, capture and prosecute to conviction any person guilty of automobile stealing within said county; and in case any automobile stolen from a member of this association cannot be recovered by the association or proper authority, then to assist in remunerating the owner for his loss, and in accordance with the provisions of the statute in such case made and provided.'

And they are signed by five business men of Sandusky County, viz.: George W. Smith, S. J. Hirt, F. H. Thurn, H. A. Kowalk and H. A. Betow.

If you will notice this was done for the purpose to pursue and recover any stolen automobile and to capture and prosecute any person guilty of stealing an automobile owned in this county, but there is another clause that seems to me to be vital, and it reads as follows:

'and in case any automobile stolen from a member of this association can not be recovered by the association or proper authorities then to assist in remunerating the owner for his loss * * *'

Mr. Buchman who is the secretary of this association, is a very fine gentleman; born and raised in this county, and he says that this was done only for the protection of the men that belong to this organization. It may be possible that this will come under the Insurance Act, or it may not, but I told Mr. Buchman that I would send you all the facts, and if you are in doubt as to the situation you ought to turn it over to the Attorney General for his attention, and then write me immediately as to the opinion of the Attorney General, and advise me what this organization should do under the conditions as to complying with the law.

A speedy reply as to the above inquiry will be appreciated by me and also by this organization as they do not wish to do anything contrary to the law.

The Articles of Incorporation were signed Feb. 20, 1924, and the certificate was issued by Thad H. Brown, Secretary of State, February 21, 1927, Vol. 293, p. 563, Record of Incorporation, Secretary of State's office."

Upon request for further information you have furnished us with a copy of the constitution and by-laws of the association. Sections 1 and 2 of Article V of the constitution of said association are as follows:

Section 1. "The association shall pay, in case an automobile or truck of a member of this association should be stolen, and not recovered within sixty days, from time of stealing, such sum as shall be deemed just and right by arbitrators selected as follows: One arbitrator to be selected by the president of the association, one arbitrator to be selected by the member sustaining the loss, the third arbitrator to be chosen by the arbitrators before selected, none of the arbitrators shall be related to the person sustaining the loss or in any way interested, and all arbitrators shall be members of this association.

The majority report of these arbitrators shall be final but in no case to exceed the schedule of prices found in Article VIII, Section 1.

The association shall not be held to pay for an automobile or truck that is stolen while in transit or being shipped by any member who makes a business of buying and shipping automobiles or trucks."

Section 2. "The association shall pay, in case an automobile or truck of a member of the association should be stolen and afterwards recovered, all damages done said automobile or truck while stolen; such damages to be ascertained by arbitrators as provided by Article 5, Section 1."

Section 1 of Article VI provides:

"Any member of this association who neglects or refuses to pay his assessment within thirty days from time of notice, then the secretary shall be authorized to collect the same by due process of law."

Section 1 of Article VIII provides:

"Automobiles and trucks stolen from members of this association shall not be paid for in any amount to exceed the following schedule:

AUTOMOBILES AND TRUCKS

1 month old or less.....	100%
1 year old or less.....	90
2 years old or less.....	80
3 years old or less.....	60
4 years old or less.....	50
5 years old or less.....	40
6 years old or less.....	30
7 years old or less.....	20
8 years old or more.....	10"

Article VI of the by-laws is as follows:

"This association will not be liable for loss sustained during invasion, or any of the casualties of warfare."

Coming now to your specific inquiry as to whether or not this association is transacting an insurance business, will say, in the case of *Com. vs. Wetherbee*, 105 Mass. 149, 160, insurance is defined as:

“An agreement by which one party, for a consideration (which is usually paid in money either in one sum or at different times during the continuance of the contract of the risk), promises to make a certain payment of money upon the destruction or injury of something in which the other party has an interest.”

Also in *Dover Glass Works Co. vs. Ins. Co.*, 1 Marv. (Del.) 32, 29 Atl. 1039, 65 Am. St. Rep. 264:

“An insurance in relation to property is a contract whereby the insurer becomes bound, for a definite consideration, to indemnify the insured against loss or damage, to a certain property named in the policy, by reason of certain perils to which it may be exposed.”

And again in *Corpus Juris*, Vol. 32, page 975, insurance is defined as follows:

“Broadly defined, insurance is a contract by which one party, for a compensation called the premium, assumes particular risks of the other party and promises to pay to him or his nominee a certain or ascertainable sum of money on a specified contingency. *United States' Physicians Defense Company vs. Cooper*, 199 Fed. 576-579; *State vs. Amazon Ins. Company*, 1 O. C. C. (N. S.) 4; 24 O. C. C. 387.”

It is apparent upon examination of the constitution and by-laws of said association that it is transacting, among other things, an insurance business. Section 665, General Code, provides as follows:

“No company, corporation, or association, whether organized in this state or elsewhere, shall engage either directly or indirectly in this state in the business of insurance, or enter into any contracts substantially amounting to insurance, or in any manner aid therein, or engage in the business of guaranteeing against liability, loss or damage, unless it is expressly authorized by the laws of this state, and the laws regulating it and applicable thereto, have been complied with.”

It was said by the court in the case of *First National Bank vs. National Surety Company*, 228 N. Y. 469, reversing 182 App. Div. 262, 169 N. Y. S. 774, that:

“The primary requisite essential to a contract of insurance is the presence of a risk of loss.”

The insurer, in return for a consideration paid to him or it by the insured assumes this risk, and when such a risk is assumed by one of the parties to the contract, it is in fact a contract of insurance. Risk is essentially the subject of the contract.

Specifically answering your inquiry, it is my opinion that said association, among other things, is transacting a business which substantially amounts to insurance.

Respectfully,
EDWARD C. TURNER,
Attorney General.