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"RESIDENTS OF THE UNITED STATES"—TERM INCLUDES WITHIN ITS MEANING RESIDENTS OF TERRITORY OF HAWAII—SECTION 9565, G. C.

SYLLABUS:

The term "residents of the United States" as used in Section 9565, General Code, includes within its meaning residents of the Territory of Hawaii.

Columbus, Ohio, November 5, 1943.

Hon. J. Roth Crabbe, Superintendent of Insurance,
Columbus, Ohio.

Dear Sir:

You have requested my opinion as follows:

"The Q Insurance Company, Ltd., an alien fire and marine insurance company, has on deposit in this office, pursuant to Section 9565, General Code, \$100,000.00 in U. S. Bonds 'for the benefit and security of its policyholders residing in the United States.'

Some years ago the United States branch of this company reinsured all of its business in the continental United States and since 1931 has written no new business except in the Territory of Hawaii. The company has outstanding liabilities on policies in that territory.

The company seeks to withdraw its Ohio deposit pursuant to Section 656, General Code. I desire your opinion of whether the Territory of Hawaii is included in the 'United States' as used in Section 9565. Obviously if the deposit covers policyholders residing in Hawaii, I can not be satisfied that all liabilities and obligations which said deposit has been made to secure have been paid and extinguished."

Section 9565, General Code, to which you refer in your letter, provides:

"A company incorporated by or organized under the laws of a foreign government, shall deposit with the superintendent of insurance, for the benefit and security of its policyholders residing in the United States, a sum not less than one hundred thousand dollars in stocks or bonds of the United States, the state of Ohio or a municipality or county thereof, which shall not be

received by the superintendent at a rate above their par value. Stocks and securities so deposited may be exchanged from time to time for other like securities. So long as the company so depositing continues solvent and complies with the laws of this state, the superintendent shall permit it to collect the interest or dividends on such deposits."

Section 656, General Code, to which you also refer, provides in part:

"After such publication, the superintendent shall deliver to such company or association its securities held by him, if he is satisfied by the affidavits of the principal officers of the company and on an examination made by him or by some competent, disinterested person or persons appointed by him, if he deems it necessary, that all liabilities and obligations which said deposit has been made to secure have been paid and extinguished; * * *

You desire to know whether the deposit made pursuant to Section 9565, General Code, is for the benefit and security of policyholders of the company in question residing in Hawaii, and this makes it necessary for me to determine whether residents of Hawaii are residents of the United States within the meaning of such term as used in Section 9565, General Code.

The Hawaiian Islands were annexed to the United States by a joint resolution adopted by Congress on July 7, 1898 (30 Stat. at L., 750). On June 14, 1914, the Hawaiian Islands were formally incorporated under the name of the "Territory of Hawaii" by Act of Congress. (31 Stat. at L., 141, Chapter 339.)

In the case of *Downes v. Bidwell*, 182 U. S., 244, 21 S. Ct., 770, 45 L. Ed., 1088, the members of the Supreme Court were not in agreement as to what the term "United States" comprehended. Mr. Justice Brown was of the opinion that the term as used in Section 8 of Article I of the Constitution of the United States meant only the original thirteen states and such states as were thereafter admitted to the Union, which Mr. Justice Gray, Mr. Justice Shiras, Mr. Justice White and Mr. Justice McKenna were of the opinion that the term "United States" as so used in the Constitution included all territory incorporated into the United States by Act of Congress. Mr. Chief Justice Fuller, Mr. Justice Harlan, Mr. Justice Brewer and Mr. Justice Peckham were of the view that when Congress created a civil government for Porto Rico and constituted its inhabitants a body politic, it became part of the United States, irrespective of incorporation therein.

In *Rasmussen v. United States*, 197 U. S., 516, 25 S. Ct., 514, 49 L. Ed., 862, the court held that Alaska was incorporated into the United

States and that therefore the Sixth Amendment to the Federal Constitution controlled Congress in legislating for Alaska. It therefore seems clear that the Supreme Court of the United States is bound to the view that where Congress has incorporated a territory into the United States it becomes a part of the United States.

Section 9565, General Code, had its origin in Section 3660, Revised Statutes. The original enactment made no provision "for the benefit and security of policyholders residing in the United States," but limited the protection of the statute to policyholders residing in Ohio. It was not until 1904 that the words "United States" found their way into the section. This was shortly after the Spanish-American War and subsequent to the decision in *Downes v. Bidwell*, *supra*. It does not seem improbable, in view of the wide publicity which was given to that case, that the General Assembly of Ohio was familiar with the conclusion reached by the court therein and that when it used the term "United States" in Section 9565, General Code, it intended such term to include not only the states admitted into the Union, but all territory incorporated into the United States by Act of Congress.

It is also interesting to note that Section 601 of Title 8, U. S. C., makes persons born in Hawaii citizens of the United States. While this enactment of Congress is, of course, not conclusive as to the meaning to be placed upon the term "United States" as used in Section 9565, General Code, nevertheless, it is of some assistance as showing in what relation to the United States Congress regards persons born in Hawaii.

While the question is not entirely free from doubt, I believe that the term "residents of the United States" as used in Section 9565, General Code, includes persons living in the Territory of Hawaii.

Furthermore, I deem it appropriate to point out to you that it is highly probable that the company in question is insuring property located in Hawaii but which belongs to residents of a state admitted into the Union. If this be the case, then clearly the deposit would be for the benefit and protection of such persons.

Respectfully,

THOMAS J. HERBERT,
Attorney General.