

5136

## DOMESTIC MUTUAL COMPANY:

1. MAY ISSUE POLICIES ON WHICH RISK EXCEEDS FIVE PER CENT OF COMPANY'S ASSETS BUT DOES NOT EXCEED "THE MAXIMUM SINGLE RISK"—POLICIES ISSUED FOR CASH PREMIUM, PAYABLE IN ADVANCE—A CONTINGENT LIABILITY OF POLICYHOLDER NOT LESS THAN ONE NOR MORE THAN TEN TIMES CASH PREMIUM—SECTIONS 3941.01 ET SEQ., 3941.06 (B) RC.
2. COMPANY MAY NOT ISSUE POLICIES ON WHICH RISK EXCEEDS MAXIMUM OF FIVE PER CENT OF COMPANY'S ASSETS—POLICYHOLDER PAYS CASH PREMIUM IN ADVANCE AND ASSUMES NO CONTINGENT LIABILITY—SECTION 3941.08 RC.
3. COMPANY MAY NOT ISSUE ANY POLICY SOLELY FOR CASH PREMIUM UNLESS PROVISION SO MADE IN ARTICLES OF INCORPORATION OR IN BYLAWS—SECTION 3941.08 RC.
4. COMPANY EXPRESSLY FORBIDDEN TO ISSUE ANY POLICY FOR CASH PREMIUM UNLESS SURPLUS NOT LESS IN AMOUNT THAN REQUIRED CAPITAL STOCK OF DOMESTIC STOCK INSURANCE COMPANY—TRANSACTING SAME KIND OF INSURANCE—NOT NECESSARY FOR COMPANY TO PROVIDE IN ARTICLES OF INCORPORATION OR BYLAWS THAT SURPLUS MAY BE ACQUIRED BEFORE POLICY ISSUED FOR CASH PREMIUM—SECTION 3941.10 RC.
5. NOT REQUIRED THAT MAXIMUM SINGLE RISK BE ESTABLISHED AND MADE PART OF ARTICLES OF INCORPORATION OR BYLAWS.

## SYLLABUS:

1. A domestic mutual company organized under Section 3941.01, et seq., Revised Code, may issue policies on which the risk exceeds five per cent of the company's assets but does not exceed "the maximum single risk" as defined in Section 3941.06 (B), Revised Code, and which policies are issued for a cash premium payable in

advance and a contingent liability of the policyholder of not less than one, nor more than ten times the cash premium.

2. A domestic mutual company may not issue policies on which the risk exceeds the maximum of five per cent of the company's assets as specified in Section 3941.08, Revised Code, and for which the policyholder pays a cash premium in advance and assumes no contingent liability.

3. A domestic mutual company may not issue any policy solely for a cash premium unless the company has provided for such policies in the articles of incorporation or in the bylaws as authorized by Section 3941.08, Revised Code.

4. Section 3941.10, Revised Code, expressly prohibits a domestic mutual company from issuing any policy for a cash premium only unless the company has a surplus which is not less in amount than the required capital stock of a domestic stock insurance company transacting the same kind of insurance; therefore, it is not necessary for the company to provide in the articles of incorporation or the bylaws that such surplus must be acquired before any policy shall be issued solely for a cash premium.

5. Section 3941.08, Revised Code, establishes the maximum single risk which may be insured by a domestic mutual company by a policy issued for a cash premium only; therefore, it is not required that such a maximum risk be established and made a part of the articles of incorporation or the bylaws.

Columbus, Ohio, April 29, 1955

Hon. Walter A. Robinson, Superintendent of Insurance  
Columbus, Ohio

Dear Sir:

I have before me your request for my opinion, reading as follows:

"Your opinion is respectfully requested on the following matters:

"1. Revised Code Section 3941.08 reads as follows:

'A domestic mutual company may, in its articles of incorporation, or in its bylaws, provide for a cash premium payable in advance and a contingent liability of the policyholder of not less than one, nor more than ten times the cash premium in each policy, and may further provide for policies not exceeding on any one risk five per cent of the company's assets, to be issued for cash premiums payable in advance without contingent liability of the policy-holder.'

"Revised Code Section 3941.10 provides in part:

'No policy shall be issued for a cash premium without an additional contingent premium unless the company has a surplus which is not less in amount than the capital stock

required of domestic stock insurance companies transacting the same kind of insurance.'

"In view of these sections, may a domestic mutual insurance company formed under the provisions of Section 3941.01 and following sections of the Revised Code, which has a surplus equal to the amount of capital stock required of domestic stock insurance companies transacting the same kind of insurance, issue policies for cash premiums payable in advance on which the risk exceeds 5% of the company's assets?

"2. In order that it may issue non-assessable policies, is it necessary that a domestic mutual insurance company formed under the provisions of Section 3941.01 and following sections of the Revised Code make provision therefor in its articles of incorporation or its by-laws. If so must the authority contained therein be conditioned (1) upon the company having a surplus equal to the amount of the capital required of domestic insurance companies transacting the same kind of insurance and (2) upon the company not issuing policies on which the risk exceeds 5% of the company's assets."

Examination of the first problem presented in your inquiry indicates that it resolves itself into separate questions. They appear to be as follows:

1. May a domestic mutual insurance company formed under the provisions of Section 3941.01, et seq., Revised Code, having a surplus not less in amount than the capital stock required of domestic stock insurance companies transacting the same kind of business, issue any policy on which the risk exceeds five per cent of the company's assets?

2. May a domestic mutual insurance company, so formed and having such required surplus, issue a policy on which the risk exceeds five per cent of the company's assets and for which the policyholder pays a cash premium in advance and assumes no contingent liability?

In addition to the sections of the Revised Code which you have set forth in your request, there is one additional section, Section 3941.06, Revised Code, which should receive attention, the pertinent parts of which read as follows:

"No domestic mutual company shall issue policies or effect insurance until the superintendent of insurance has licensed it to do so; nor shall such license be issued or renewed unless the company complies, as to each kind of insurance which it effects, with the following conditions:

“(A) It shall hold bona fide applications for insurance upon which it shall issue simultaneously, or it shall have in force, at least twenty policies to at least twenty members for the same kind of insurance upon not less than one hundred separate risks, each within the maximum single risk described in division (B) of this section.

“(B) ‘The maximum single risk’ shall not exceed twenty per cent of the admitted assets or three times the average risk or one per cent of the insurance in force, whichever is the greater, any reinsurance taking effect simultaneously with the policy being deducted in determining the maximum single risk.”

Reading this section together with Section 3941.08, Revised Code, which you have quoted in your request for my opinion, it is apparent that one of the problems presented by your first question may be quickly resolved. Section 3941.08, Revised Code, reads:

“A domestic mutual company may, in its articles of incorporation, or in its bylaws, provide for a cash premium payable in advance and a contingent liability of the policyholder of not less than one, nor more than ten times the cash premium in each policy, *and may further provide for policies not exceeding on any one risk five per cent of the company's assets, to be issued for cash premiums payable in advance without contingent liability of the policyholder.*” (Emphasis added.)

It can thus readily be determined that Section 3941.06, Revised Code, establishes a definite upper limit beyond which no risk may be insured without any reinsurance taking effect simultaneously. That maximum single risk may be that amount which is greater as determined by being either twenty per cent of the admitted assets, three times the average risk or one per cent of the insurance in force.

Section 3941.08, Revised Code, expressly authorizes domestic mutual companies to provide for the issuance of policies for a cash premium payable in advance and a contingent liability. This section also establishes the permissible ratios which may exist between the cash premium and the contingent liability of the insured.

Applying the appropriate portions of Sections 3941.06 and 3941.08, Revised Code, to the first problem presented, it becomes clear that a domestic mutual company may issue policies for a cash premium payable in advance and a contingent liability of the policyholder on which the risk exceeds five per cent of the company's assets.

This conclusion, however, disposes of only one aspect of your first question and presents for determination the problem of whether such a domestic mutual company may issue policies for cash premiums payable in advance *without contingent liability of the policyholder* when such policies exceed on any one risk five per cent of the company's assets.

Turning again to Section 3941.08, Revised Code, it is seen that it provides :

“A domestic mutual company may, in its articles of incorporation, or in its bylaws \* \* \* further provide for policies not exceeding on any one risk five per cent of the company's assets, to be issued for cash premiums payable in advance without contingent liability of the policyholder.”

In the enactment of Section 3941.08, Revised Code, the legislature granted certain clearly defined privileges to domestic mutual companies ; these companies may, but need not, avail themselves of these privileges.

It now becomes necessary to determine the exact meaning and scope of the privilege granted by which domestic mutual companies may provide for policies to be issued for a cash premium only, such policies not to exceed on any one risk five per cent of the company's assets.

Section 3941.08, Revised Code, presents the basis for the determination of the question. This statute uses the permissive “may” in authorizing domestic mutual companies to make in their articles or bylaws the provisions under consideration here ; there is no statutory compulsion to make provision for any policy on which the policyholder pays a cash premium, either with or without an additional liability. The legislature did not grant the privilege and do nothing more ; on the other hand, certain clear and definite lines were established within which this self-government of the company may be exercised. The five per cent limitation is a maximum risk beyond which a domestic mutual company may not go in issuing a policy solely for a cash premium.

The language of Section 3941.08, Revised Code, lends itself to this interpretation. Then, too, even a cursory examination of those statutory provisions which were in effect prior to the enactment of the present section discloses that domestic mutual insurance companies had formerly been granted only a limited discretion in establishing an annual cash premium with a certain definite relationship between that premium and the required contingent liability of the policyholder. Such a provision was

enacted in 85 Ohio Laws, 273, being Section 3634, Revised Statutes, and later Sections 9527 and 9528, General Code. This enactment permitted mutual fire insurance companies to charge and collect a full annual premium in cash, but such companies were also required to fix by a uniform rule the contingent liability within prescribed limits.

Then, too, cognizance should be taken of a provision appearing in 69 Ohio Laws, 140, being Section 3653, Revised Statutes, and Section 9574, General Code, which permitted certain mutual companies then doing business in Ohio to issue policies on the mutual or stock plan, but this provision was based on certain assets having been invested as provided by law, and these companies were limited to insuring risks no one of which exceeded five per cent of such assets.

Having concluded that domestic mutual companies may, but need not, make proper provision for policies to be issued solely for a cash premium, it is apparent that the companies must so provide in the articles of incorporation or the bylaws in order that such contracts of insurance may be made.

Attention must now be directed to your inquiry regarding the necessity that the articles of incorporation or bylaws provide that the domestic mutual company have the required surplus before any non-assessable policy may be issued.

Section 3941.10, Revised Code, quoted in part in your inquiry, reads as follows:

“The maximum premium payable by any member of a domestic mutual company may be a cash premium and an additional contingent premium not less than the cash premium, or may be solely a cash premium. No policy shall be issued for a cash premium without an additional contingent premium unless the company has a surplus which is not less in amount than the capital stock required of domestic stock insurance companies transacting the same kind of insurance.”

This statute is clear and unmistakable in its prohibition against the issuance of any policy for a cash premium only unless and until the surplus of the company is at least equal to the capital stock required of a domestic stock insurance company transacting the same kind of insurance. This section, formerly Section 9607-9, General Code, which was enacted in its present form in 107 Ohio Laws, 647, represented an increased grant

of authority to domestic mutual companies to issue policies for a cash premium only, and also liberalized the ratio which had previously existed between a cash premium and the contingent liability to be assumed by the insured.

Section 9607-9, General Code, was first enacted in 104 Ohio Laws, 202, to read:

“No such mutual company shall issue any insurance policy for a cash premium and without contingent liability until and unless it possesses surplus of at least two hundred thousand dollars. No such company shall provide for a contingent liability of less than three times the cash premium in the policy, until and unless it possesses surplus of at least twenty-five thousand dollars.”

The explicit language of Section 3941.10, Revised Code, leaves no doubt that a domestic mutual company may issue a policy solely for a cash premium when, but only when, the statutory surplus has been attained. This direct prohibition in the statute makes it unnecessary that the articles or bylaws be so drawn that they provide that the issuance of policies on which there is no additional liability of the insured is dependent upon the necessary surplus having been acquired by the company.

In a similar manner it is apparent that Section 3941.08, Revised Code, establishes that limit beyond which no one risk may be insured by a domestic mutual company in a contract of insurance for which the insured assumes no further liability after the prescribed cash premium has been paid. Thus, a provision in the articles of incorporation or the bylaws prohibiting the insurance by such policy of any one risk exceeding five per cent of the company's assets is not a necessity; this would neither add to nor detract from the plain statutory mandate.

In specific answer to your questions, therefore, it is my opinion and you are advised:

1. A domestic mutual company organized under Section 3941.01, et seq., Revised Code, may issue policies on which the risk exceeds five per cent of the company's assets but does not exceed “the maximum single risk” as defined in Section 3941.06 (B), Revised Code, and which policies are issued for a cash premium payable in advance and a contingent liability of the policyholder of not less than one, nor more than ten times the cash premium.

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In specific answer to your questions, therefore, it is my opinion and you are advised:

1. A domestic mutual company organized under Section 3941.01, et seq., Revised Code, may issue policies on which the risk exceeds five per cent of the company's assets but does not exceed “the maximum single risk” as defined in Section 3941.06 (B), Revised Code, and which policies are issued for a cash premium payable in advance and a contingent liability of the policyholder of not less than one, nor more than ten times the cash premium.

2. A domestic mutual company may not issue policies on which the risk exceeds the maximum of five percent of the company's assets as specified in Section 3941.08, Revised Code, and for which the policyholder pays a cash premium in advance and assumes no contingent liability.

3. A domestic mutual company may not issue any policy solely for a cash premium unless the company has provided for such policies in the articles of incorporation or in the bylaws as authorized by Section 3941.08, Revised Code.

4. Section 3941.10, Revised Code, expressly prohibits a domestic mutual company from issuing any policy for a cash premium only unless the company has a surplus which is not less in amount than the required capital stock of a domestic stock insurance company transacting the same kind of insurance; therefore, it is not necessary for the company to provide in the articles of incorporation or the bylaws that such surplus must be acquired before any policy shall be issued solely for a cash premium.

5. Section 3941.08, Revised Code, establishes the maximum single risk which may be insured by a domestic mutual company by a policy issued for a cash premium only; therefore, it is not required that such a maximum risk be established and made a part of the articles of incorporation or the bylaws.

Respectfully,

C. WILLIAM O'NEILL

Attorney General