The statutes contain no provisions which, in my opinion, either expressly or by implication would authorize such an enterprise to be undertaken by the county commissioners or the surveyor.

Without further discussion, in answer to your inquiry, it is my opinion that neither the county commissioners nor the county surveyor may legally sell gravel from the county pits to township trustees or contractors.

Respectfully,
GILBERT BETTMAN,
Attorney General.

2354.

INSURANCE—ADMISSION TO DO BUSINESS IN OHIO—FOREIGN CASUALTY COMPANY MAY NOT BE DENIED ADMISSION ACCOUNT OF ITS STOCK SET-UP IN ABSENCE OF EXPRESS STATUTORY INHIBITION.

SYLLABUS:

The Superintendent of Insurance is without authority to refuse to admit a foreign casualty insurance company to transact its appropriate business in Ohio solely on the ground that the capital stock of such foreign casualty insurance company is composed of more than one class of shares, of which classes of shares a minority class has the sole voting power and, therefore, the control of the company.

COLUMBUS, OHIO, September 17, 1930.

HON. C. S. YOUNGER, *Superintendent of Insurance, Columbus, Ohio.*

DEAR SIR:—This will acknowledge the receipt of your communication in which you ask my opinion as follows:

> "I respectfully request your opinion as to whether or not a foreign insurance company may be admitted to Ohio to transact its appropriate business as a casualty insurance company, wherein the capital stock of said company consists of 20,000 shares of the par value of $10.00 each, of which fifteen thousand shares are known as Class 'A'—Non-voting stock, and five thousand shares are known as Class 'B'—Voting stock.
>
> The Class 'B' stock composed of $50,000 worth of the capital stock would thus control the $200,000 corporation. It is a preferred stock in that respect at least, although I am informed it is not preferred as to dividends.
>
> We would not permit a set-up of this kind for a domestic insurance company. The question arises whether we are obliged to admit a company whose stock set-up we would not permit in a domestic company, of the same character."

The question upon which you desire my opinion is whether the Superintendent of Insurance of Ohio is authorized to refuse to admit a foreign insurance company into the State of Ohio for the purpose of transacting a casualty insurance business for the reason that the capital stock of the company is composed of two classes of shares, of which one class, containing a minority of the total number of shares of

such company, has the sole voting privileges and therefore the control of the corporation.

Section 9560 of the General Code provides:

> "No company, association or partnership organized under the laws of another state, shall take risks or transact business of insurance in this state, directly or indirectly, unless possessed of the amount of actual capital required by similar companies formed under the provisions of this chapter, nor unless the capital stock of the company is paid up and invested as required by the laws of the state where it was organized, and if a live stock insurance company, until it has deposited in such state or in this state, for the benefit of its policy-holders, securities approved by the insurance department of such state in an amount equal to one-fourth of its entire capital stock. If the company is a mutual fire insurance company it must have actual cash assets of the amount and description required of such companies of this state, after organization, invested as required by the law of the state where the company was organized. Such companies must also have either premium notes or contingent liability of the amount required of similar fire insurance companies of this state, which contingent liability may be either in writing or be expressed in the policies issued by the company."

Since the contrary is not stated, I assume that the capital stock of the corporation in question is entirely paid up and that, unless the facts stated in your communication constitute a violation of the laws of Ohio, there is no other ground upon which objection to the company's engaging in business may be predicated. I further assume, as stated in the briefs filed by counsel for the insurance company, that the amount of capital stock of said company is equal to or greater than required by the laws of the state under which said company was organized.

Section 9524, General Code, is cited in briefs of counsel as bearing on this question. I note, however, that this provision refers exclusively to joint stock insurance companies. I do not understand that the corporate organization of said company brings it within the definition of a joint stock insurance company. A careful examination of the general corporation and insurance laws of Ohio does not disclose any provisions which I deem pertinent to the solution of the sole question involved in this opinion, as stated above. Particularly, I have not found any statute which specifically or impliedly prohibits the admission of a foreign casualty insurance company into the State of Ohio for the purpose of transacting its appropriate business, where the corporate structure of such company provides for two classes or more than one class of shares, or where the control of said insurance company's affairs is vested in one of such classes of shares, which class constitutes a minority of the aggregate number of shares of such company.

In the case of *State* vs. *Aetna Life Insurance Company,* 69 O. S. 317, the question before the court was whether a foreign insurance company could be prohibited from conducting an insurance business in the state which was not specifically authorized by the laws of Ohio. It was held by the court that, contrary to the contention of the then counsel for the State of Ohio, there was ample statutory authority for the transaction of the insurance business sought to be transacted by the Aetna Life Insurance Company and further that the refusal of the right of a foreign insurance company to do business in this state must rest on specific statutory prohibition or that the business which said insurance company proposes to engage in in Ohio is obnoxious to the clearly expressed policy of the laws of Ohio. In the opinion, at page 327, Crew, J., says:

"It is said by the Supreme Court of Illinois in *People* vs. *The Fidelity and Casualty Co.,* 153 Ill. 25: 'The rule is, that where there is no positive prohibitive statute, the presumption, under the law of comity that prevails between the states of the Union, is that the state permits a corporation organized in a sister state to do any act authorized by its charter or the law under which it is created, except when it is manifest that such act is obnoxious to the policy of the law of this state.'

Again, in *Colwell* vs. *Springs Co.,* 100 U. S. 55, it is said: 'If the policy of the state or territory does not permit the business of the foreign corporation in its limits, * * * it must be expressed in some affirmative way; it cannot be inferred from the fact that its Legislature has made no provision for the formation of similar corporations,' etc. The views thus expressed are in harmony with our laws and in accord with the recognized policy of this state. As said in argument by counsel for defendant in this case, 'It is not the policy of this state to repel or discourage solvent, reputable foreign corporations from doing business within its borders, and the courts will not anxiously seek an excuse in the statutes to drive them out."

See *Mannington et al* vs. *Railway Co.,* 16 O. F. D. 580, 183 Fed. 158, 8 O. L. R., citing *State* vs. *Aetna Life Insurance Co., supra.*

Your communication does not state that the company in question either indulges or is likely to engage in any practices which will violate the rights of the people of Ohio who may take out policies in said company, nor can it be assumed that the corporate structure of said company, as outlined in your communication, will lead said company to transact its business in such a way that policy holders will not have their rights fully protected. I do not think it could be stated that wrongful practices will inevitably be indulged in by reason of the fact that a minority of the shareholders control the company. If after such company is admitted to the State of Ohio it indulges in practices detrimental to its policy holders in Ohio, the deposit of securities required by law with the State of Ohio should under usual circumstances be ample to protect such wronged policy holders until the Superintendent of Insurance has forced the offending company to discontinue doing business in Ohio or the indulgence in wrongful or illegal practices. Ample authority is contained in the statutes of Ohio and the decided cases of the state to control and stop such practices, a citation of which I deem unnecessary for the purposes of this opinion. As a matter of policy, it might perhaps be well that foreign insurance companies should not be permitted to do business in Ohio if the control of the company is vested in a minority or less than all the shareholders. However, the question upon which you desire my opinion, and to which I confine myself, is whether, as a matter of law, the admission of a foreign insurance company with such a capital stock setup may be admitted to do business in Ohio.

Under the citation of authorities above, I am of the opinion that the Superintendent of Insurance is without authority to refuse to admit a foreign casualty insurance company to transact its appropriate business in Ohio solely on the ground that the capital stock of such foreign casualty insurance company is composed of more than one class of shares, of which classes of shares a minority class has the sole voting power and, therefore, the control of the company.

Respectfully,
GILBERT BETTMAN,
Attorney General.