

**OPINION NO. 878****Syllabus:**

The term "do business" as found in Section 3905.44, Revised Code, includes the solicitation of, advertising in connection with solicitation of, sale of, acceptance of and applications for insurance policies (but does not include maintenance or servicing of policies or contracts of insurance or annuity which have been lawfully written) and the Director of the Department of Insurance has the power to regulate these activities.

- - - - -

To: William R. Morris, Director of Department of Insurance, Columbus, Ohio  
By: William B. Saxbe, Attorney General, February 18, 1964

Your request for my opinion reads as follows:

"Is the term 'do business' as found in Section 3905.44 of the Ohio Revised Code construed broadly so as to include solicitation of, advertisement of, sale of, acceptance of applications, and the servicing or maintenance of insurance policies so as to clothe the Director of Insurance with broad powers of regulation; or is the term 'do business' construed narrowly to the execution of contracts by domestic Ohio companies outside the state and thereby limiting the authority of the Director of Insurance in his ability to reciprocate in the enforcement of the insurance laws of other states."

Section 3905.44, Revised Code, reads as follows:

"No domestic insurance company, qualified under the laws of this state, shall do business in any other state or territory of the United States without being first legally admitted and authorized so to do under the laws of such state or territory. For violation of this section by any such insurance company, the superintendent of insurance may revoke the license or authority of such company doing business in this state and may require such company to pay the taxes upon such unlawfully written business to the state or territory in which it was written, as provided by the laws of such state or territory. 'Do business' as used in this section does not include the maintenance or servicing of policies or contracts of insurance or annuity which have been lawfully written."

The above cited statute does not define the words "do business" insofar as the expression applies to domestic insurance companies, except as to exclude certain insurance business. The term "do business" is, however, sufficiently defined by implication in related statutes dealing with insurance in the Ohio Revised Code. These statutes generally define the area of business in which an insurance agent or corporation may not engage before becoming licensed by the Superintendent of Insurance.

Section 3905.01, Revised Code, states in part that "no person shall procure, receive, or forward applications for insurance" unless a resident of the state and duly licensed.

Section 3905.16, Revised Code, defines a life insurance agent as any person who "solicits, negotiates for, places, or receives" life insurance policies or agreements.

Section 3905.21, Revised Code, indicates that no agent shall "negotiate for, receive, or transmit" any application for life insurance.

Section 3905.23, Revised Code, states that no person, firm, or corporation shall "offer within the state, in person,

or by advertisement, poster, letter, circular, or otherwise sell, procure, or obtain policies" of insurance without proper licensing by the Superintendent of Insurance.

Section 3905.43, Revised Code, provides that it is unlawful for any person or corporation to publish, distribute, or receive and print any advertising matter in which insurance business is solicited unless the advertiser has complied with state laws governing insurance.

In addition, Sections 3909.01, 3909.11, and 3911.01, Revised Code, indicate that "doing business" also includes "transacting any business of insurance, taking risks or procuring applications for insurance either directly or indirectly."

Section 3905.42, Revised Code, further indicates that an unauthorized corporation may not engage in the insurance business or enter contracts of insurance directly or in directly.

The above statutes must be read in pari materia with Section 3905.44, Revised Code. While these sections of the Revised Code were not necessarily enacted at the same time, it is a fundamental rule of statutory construction and interpretation that sections and acts which are in relation to the same matter, subject or object should be construed together. 50 Ohio Jurisprudence 2d, Statutes, Sec. 216. I find nothing in these statutes which indicates a contrary intention of the legislature.

Had the phrase "to write insurance" been used in these statutes, rather than the words and phrases used, a narrow construction of the words "do business" would be implied, and limited to the execution of contracts of insurance, Vol. 2, Couch on Insurance, 2nd, Sec. 21: 49. However, the various terms used lead me to believe that the legislature had in mind all of the various facets of the insurance business when these statutes were enacted.

Not long ago the Supreme Court of the United States modified its rule that the mere solicitation within a state of contracts to be executed outside the state did not constitute "doing business" within that state by holding in International Shoe Co. v. Washington, 326, U. S. 310, that regular and systematic solicitation could be considered "doing business" to the extent of subjecting the solicitor's principle to process within the state in which the solicitation is taking place.

Even this general rule concerning "doing business", however, is clearly not meant to be as broad as the definition to be perceived in the legislative intent in enacting Title 39, Ohio Revised Code, regulating the insurance industry. Thus, engaging in the business of insurance has been held to be a privilege granted by the state upon specific terms and conditions, not an absolute right, Motors Insurance Corp. v. Robinson, 62 O.L.A. 58, Affd. 62 O.L.A. 72, dis. no deb. q. 157 Ohio St., 354; dis. for want of fed. q. 344 U.S. 803. Further,

"It is well settled that the business of insurance is impressed with a public use, and that the statutes designed to regulate such

business should be liberally construed to effect the purposes to be served and to prevent and correct evils growing out of the conduct of such business, \* \* \*" State ex rel. Federal Ins. Co. v. Warner, 128 Ohio St., 261, 264.

See also Verducci v. Casualty Co. of America, 96 Ohio St., 260. The legislature, in enacting the statutes regulating the insurance industry, was recognizing an important need of protecting the general public. The first paragraph of the syllabus, State, ex rel. Duffy v. Western Auto Supply Co., 134 Ohio St., 163, holds:

"The business of insurance is impressed with a public use, and its regulation, supervision and control are authorized and required to protect the general public and safeguard the interests of all concerned."

See also State, ex rel. Herbert v. The Standard Oil Co., 138 Ohio St., 376.

As the Supreme Court held in State ex rel. Federal Insurance Co. v. Warner, *supra*, at page 264, "In order to fully effectuate the purpose of such statutory provisions [ the statutes regulating the insurance industry, Title 39 ] the Superintendent of Insurance has been vested with a measure of discretion in the matter of granting or withholding such licenses." The statutes regulating the insurance business, being remedial, must be liberally construed to conserve the legislative purpose and to prevent and correct evils growing out of the insurance business, State ex rel. v. Conn. 115 Ohio St., 607, 608.

Therefore, it is my conclusion that the legislative intent in the enactment of Title 39, Revised Code, was to clothe the Director of Insurance with broad powers to regulate the insurance industry. Since the above cited statutory provisions make it clear that the Director of Insurance has the power to regulate solicitation, advertisement, selling, acceptance of applications and the servicing and maintenance of insurance policies, these subjects are within the definition of "doing business" within the frame of reference of Title 39, Revised Code. It follows that they are embraced by the phrase "do business" in Section 3905.44, Revised Code, subject to the specific exceptions contained therein.

Accordingly, it is my opinion and you are advised that the term "do business" as found in Section 3905.44, Revised Code, includes the solicitation of, advertising in connection with solicitation of, sale of, acceptance of and applications for insurance policies (but does not include maintenance or servicing of policies or contracts of insurance or annuity which have been lawfully written) and the Director of the Department of Insurance has the power to regulate these activities.