

42.

APPROVAL, BONDS, STOW TOWNSHIP, SUMMIT COUNTY, \$2,100.00.

COLUMBUS, OHIO, February 2, 1927.

Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.

43.

APPROVAL, BONDS, VILLAGE OF DOVER, CUYAHOGA COUNTY,
\$70,635.00.

COLUMBUS, OHIO, February 2, 1927.

Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.

44.

FOREIGN INSURANCE BROKER'S LICENSE—WHO ENTITLED TO SAME
—WHEN OHIO CORPORATION ENTITLED TO RESIDENT AGENT'S
LICENSE—INTERPRETATION OF SECTIONS 644-2 AND 644 G. C.*SYLLABUS:*

1. *Under the provisions of Section 644-2, General Code of Ohio, as amended in 111 O. L., p. 183 only a suitable natural person, resident in another state, is entitled to a foreign insurance broker's license, upon complying with the conditions in said section stated.*

2. *An Ohio corporation duly incorporated under the insurance laws of Ohio therefor, upon making application in due and regular form, supplying therewith the necessary information, makes a prima facie case entitling it to a resident agent's license, under the provisions of Section 644, General Code.*

3. *Such domestic corporation may not use its license so obtained for the purpose of conducting, directly or indirectly, a foreign brokerage insurance business under the provisions of Section 644-2, General Code, as amended in 111 O. L., 183.*

COLUMBUS, OHIO, February 3, 1927

HON. HARRY L. CONN, *Superintendent of Insurance, Columbus, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent request for my opinion, supplementing a former letter from this department under date of July 8, 1926, on the subject of foreign fire and marine insurance brokers. Your request is as follows:

"Referring to your opinion in the foreign broker law matter, in which you say the matter is one of good faith where non-residents seek to incorporate under the Ohio law and procure a license under the foreign broker's law, may I invite your attention to this matter again in view of another situation that is certain to arise?

In cases of Johnson & Higgins and Marsh & McLennan, these corporations have been in Ohio for some years and obviously are not organizing in view of the above referred to new law. There are other foreign brokers, however, who expect to organize corporations in Ohio, such non-residents retaining the controlling interest in the Ohio corporation—perhaps all of it—and what I wish to ask your opinion on is, in such cases, will this department be required to issue a license?

The effect of such a procedure would be that non-residents, if allowed to organize a local company, would thereby be able to obtain a license in the state, and, as you will recall, our agent's qualification law permits only residents to be licensed.

There will be no question of good or bad faith, for the reason that if it can be done under the law, of course, it will be in good faith.

May I ask your view, therefore, both as regards not only the corporations now in existence in Ohio, but also as to new ones which may be organized?"

In the former letter from this department under date of July 8, 1926, in re Marsh & McLennan Company, reference was made to an opinion of this department for 1922, at page 909, the syllabus of which is as follows :

"A licensed foreign fire and marine insurance broker is without authority to maintain a resident representative in this state, and neither can he send a representative here, for the purpose of negotiating contracts of insurance in his behalf; and this limitation upon his authority cannot be evaded or circumvented by him through the agency of a domestic corporation organized for the ostensible purpose of conducting a legitimate insurance agency business, but which, in fact, was organized and is being managed and used by him and others over whom he exercises a controlling influence, for the ulterior purpose of negotiating contracts of insurance in his behalf.

A domestic corporation incorporated, controlled and used for such purpose should not be licensed as an insurance agent by the superintendent of insurance.

A licensed foreign fire and marine insurance broker is without authority to negotiate contracts of insurance in this state for an unlicensed foreign broker.

The superintendent of insurance would be justified in revoking the license of a foreign fire and marine insurance broker when it is made to appear that the broker is using his license for the purpose of negotiating contracts of insurance in this state for an unlicensed broker, or when it is made to appear that the licensee is practicing a subterfuge for the purpose of evading and circumventing the insurance laws of the state."

Section 644-2, General Code, relative to foreign broker's license at the time the foregoing opinion was rendered by this department, read in part :

"The superintendent of insurance may upon the payment of ten dollars issue to any suitable person resident in any other state, a license to act as an

insurance broker to negotiate contracts of insurance or reinsurance or place risks or effect insurance or reinsurance, with any qualified domestic insurance company or its agent or with the authorized agent in this state of any foreign insurance company duly admitted to do business in this state and not otherwise upon the following conditions. * * *

The above section of the General Code was amended in 111 O. L., p. 183, to read :

“The superintendent of insurance may upon the payment of ten dollars issue to any suitable *natural* person resident in any other state, a foreign broker's license to place fire insurance policy contracts, negotiated with residents of other states who own or control the insurable risk or property in this state on which said fire insurance policy contracts are written, with any qualified domestic fire insurance company in this state, or its agent in this state, or with the licensed agent in this state of any foreign fire insurance company duly admitted to do business in this state and not otherwise and upon the further following conditions: * * *

By this amendment the word “natural” before the word “person” was the only change made in the foreign broker's law.

Accompanying the correspondence in this request, is a memorandum from the Marsh & McLennan Company, through its counsel, from which the following statement is taken :

“Our understanding is that, following the opinion of the Attorney General in November, 1922, and the ruling of your department based on such opinion, the operation of our Ohio Corporation, The Marsh & McLennan Company, will not be permitted under its present name and organization so long as we continue to operate in Ohio as non-resident brokers, this being upon the theory that the corporation may be considered as in the nature of a resident office or representative of ourselves as licensed brokers. We submit for your approval, therefore, the following plan for continuing our operations in Ohio subsequent to the expiration of our current broker's licenses :

(1) We propose to discontinue our operations in Ohio as licensed brokers, and to make no application for renewals of such licenses at the expiration of the current year on February 28th.

(2) Subsequent to the date last named, we propose to transact all of our Ohio agency and brokerage business through and in the name of our present Ohio corporation, which will operate under and subject to the Ohio laws and requirements as to insurance agents, in precisely the same way as any other incorporated agency is permitted to operate in your state.

This will mean that our Ohio agency and brokerage business will be transacted in your state by our Ohio corporation, instead of from without the state, and will, of course, involve such additions to the personnel and equipment of our Ohio corporation as will enable it to render the same quality and degree of insurance service for clients in Ohio as we have rendered in the past as licensed brokers. We feel that this plan will meet the requirements that have been laid down by your department and which have been discussed with you in the past, and trust that the same will meet with your full approval.”

The former opinion of this department referred to, supra, on page 914, used the following language :

"In determining whether or not the incorporation and organization of domestic corporation is for the purpose of enabling the foreign insurance broker to bring into being an artificial person which might on paper, appear to be 'a resident of this state' within the meaning of Section 644 G. C., to act ostensibly as an insurance agent, when as a matter of fact it is to be used as an agency or tool by the non-resident foreign broker in negotiating contracts of insurance in his interest, you should make inquiry, among other things, to ascertain who conceived the idea of the incorporation and organization, whether or not those who acted as incorporators and those who appear to be stockholders were and are acting bona fide and in their own personal interest, or in the interest of the foreign broker, who financed, advanced and paid the incorporation and organization expenses, and who is financing it now and controlling its business policy, who employed the legal talent necessary to prepare the incorporation and other papers, whose money was used by the stockholders in purchasing the shares of stock standing in their names, whether or not there was any understanding or agreement, oral or otherwise, whereby those who appear to be stockholders, and who may have advanced their own funds to acquire stock, are to be reimbursed, either directly or indirectly, by the foreign broker, what control or influence, if any, the foreign broker has been or is exerting over the property, business and affairs of the corporation, and over its officers and stockholders, etc., etc.; and if, upon investigation you would be of the opinion that the corporation was incorporated and organized and is being used by the foreign insurance broker for the purpose of enabling him to circumvent or evade the statutory limitations or restrictions upon his authority and activity, as described and found in Section 644-2 of the General Code, you would be justified, as already indicated, in refusing an agent's license to the corporation, and not only that, but you would be warranted in revoking such license if one has been granted, and also the license of the foreign insurance broker, for the reason, in the first case, that the agent's license is being used for an unauthorized purpose, and in the second case, for the reason that any broker who engages in such a course of conduct is an unsuitable person to act as broker, and hence not entitled to the benefits and protection of our insurance laws.

We are also of the opinion that a resident of another state who has been granted a foreign broker's license under favor of Section 644-2, G. C., should not use his license in the interest of an unlicensed broker. The license is personal to him and is granted to *him* or *his* authority to negotiate contracts in this state, and not to be used to aid an unlicensed broker in negotiating his contracts. If a non-resident broker desires to negotiate contracts of insurance in this state, and secure the benefits of our insurance laws; he must, himself, meet all the requirements of the Ohio law personal to himself, and which are conditions precedent to the securing of a license, and not attempt to evade these statutory requirements by negotiating through another who has complied with the law and received a license. A licensed foreign broker who uses his license for such purpose would be making an improper use of it. The same considerations which required the licensed broker to secure his license, equally apply to such unlicensed broker, and not only that, but, as already held by us, there is no authority under our insurance laws whereby a foreign broker, whether licensed or unlicensed, can transact business in this state through a representative or employe."

The licensing of foreign insurance brokers is regulated and governed by Section 644-2, General Code, as amended. This section, among other things, provides that the

superintendent of insurance may issue to any suitable *natural* person resident in any other state, a license to act as a foreign insurance broker to negotiate contracts of insurance or reinsurance or place risks or effect insurance or reinsurance with any qualified domestic company or its agent, or with the authorized agent in this state of any foreign insurance company duly admitted to do business in this state, and *not otherwise*, upon certain conditions therein described and set forth. An applicant for a foreign insurance broker's license must file with the superintendent an application, under oath, stating, among other things, his name, age, residence and occupation, occupation for the five years next preceding, and also that he intends to hold himself out and carry on business in good faith as an insurance broker, and shall give such other information as the superintendent may require. The section also requires that the application shall be accompanied by a statement upon a blank furnished by the superintendent of insurance as to the trustworthiness and competency of the applicant, signed by at least three reputable citizens of this state. The section further provides that if the superintendent of insurance is satisfied that the applicant is trustworthy and competent and intends to hold himself out and carry on business in good faith as an insurance broker, he may issue to him the license applied for. Provision is also made that the superintendent may at any time after the granting of a broker's license, for cause shown, and after a hearing, determine that the licensee has not complied with the insurance laws or is not trustworthy, or competent, or is not holding himself out and actually carrying on business as an insurance broker, or is not a suitable person to act as such broker, or has negotiated fire insurance contracts with residents of this state or has placed insurance or risks in this state in companies or other insurers not authorized to transact business in this state, and he shall thereupon revoke the license of such broker and notify him that the license has been revoked.

In this connection it may be of interest to consider Section 5438 of the General Code, as bearing upon the question under consideration. Its provisions are as follows:

"An insurance company or agent legally authorized to transact insurance business in this state shall not write, place or cause to be written or placed, a policy, renewal of policy or contract for insurance upon property, situated or located in this state, except through a legally authorized agent in this state, who shall countersign all policies so issued and enter the payment of the premium upon his record. The writing, renewal, placing or causing to be written or placed of a policy of insurance, in any other manner or form is a violation of the law providing for the payment of taxes by foreign insurance companies doing business in the State of Ohio, as set out and provided in this chapter. Provided, that any authorized agent of an insurance company duly authorized to transact business in this state may procure the insurance of risks or parts of in other like companies duly authorized to transact business in this state, and may pay a commission thereon to such agent. But such insurance shall be consummated, through a duly licensed resident agent only of the company taking the risk. Provided further, that any authorized agent of an insurance company duly authorized to transact business in this state may accept business from such insurance brokers only as duly authorized and licensed as provided in Section 644-2 and such agent may pay a commission thereon to such broker."

It will be observed that the second provision of the above mentioned section authorizes any agent of a duly authorized insurance company to accept business from such insurance brokers only as are duly authorized and licensed as provided in Section 644-2, General Code, and that such agent may pay a commission thereon to such brokers.

Section 644-5 of the General Code, as amended in 111 O. L., at page 185, specifically refers to Section 5438, *supra*, and provides that nothing in the act shall be construed as modifying or repealing section 5438 of the General Code. It therefore becomes necessary to consider and construe the sections referred to together.

It may be of interest to observe that the purpose clause of The Marsh & McLennan Company, an Ohio corporation, which apparently is still in full force and effect, shows the following recital:

“To act as agents or brokers in the business of marine, fire, life, accident and fidelity insurance, subject to the provisions of the laws of Ohio relating thereto.”

It will be observed that the words “agents or brokers” are used parenthetically in the above charter but it would not be permissible to extend the meaning to include *foreign brokers* under our insurance law, and especially so in view of the express provisions of Section 644-2, General Code, as amended.

The Johnson & Higgins Company, referred to in your letter, likewise an Ohio corporation, has the following purpose clause:

“Said corporation is formed for the purpose of conducting a general insurance agency business and the business of average adjusting.”

In conclusion, it is my opinion that these Ohio corporations, apparently being in good and regular standing, are entitled to all the rights, benefits and privileges of similar Ohio corporations organized for similar purposes, as in said charters stated, subject to the laws of Ohio relating thereto, and that when said Ohio companies, and others of a similar nature, have made their applications in due and regular form, supplying therewith the necessary information, they have made a *prima facie* case entitling them to a license, under our resident agent’s license law only.

And it is further my opinion that such domestic corporation may not use its license so obtained for the purpose of conducting, directly or indirectly, a foreign brokerage insurance business under the provisions of Section 644-2, General Code, as amended in 111 O. L., 183.

Respectfully,
EDWARD C. TURNER,
Attorney General.

45.

FRANCHISE FEE—MINIMUM PRESCRIBED BY SECTION 5499 G. C.—ADJUSTMENT UNDER SECTION 5495 G. C. SUBJECT TO LIMITATION—SHALL NOT BE REDUCED BELOW FEE PROVIDED IN SECTION 5499 G. C.

SYLLABUS:

The minimum prescribed by Section 5499 of the General Code applies to every case in which a franchise fee is payable to the state for the current year and any adjustment of the franchise fee, as provided for in Section 5495 of the General Code,