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1. LICENSED INSURANCE AGENTS — THOSE REQUIRED TO BE LICENSED: OFFICERS AND EMPLOYES, CORPORATE INSURANCE AGENCY WHO PROCURE, RECEIVE OR FORWARD APPLICATIONS FOR INSURANCE AND WHO DO NOT CLAIM TO BE SOLICITORS FOR AGENCY OR THOSE OFFICERS OR EMPLOYES OF SUCH CORPORATE AGENCY WHO COUNTERSIGN INSURANCE POLICIES.
2. OFFICERS AND EMPLOYES OF CORPORATE INSURANCE AGENCY MAY BE LICENSED AS AGENTS FOR ALL INSURANCE COMPANIES FOR WHICH CORPORATION IS AGENT.

SYLLABUS:

1. *Only those officers or employes of a corporate insurance agency who procure, receive or forward applications for insurance and who do not represent themselves merely as solicitors for the agency, or those officers or employes of such corporate agency who countersign policies of insurance are required to be licensed as agents.*

2. *Officers and employes of a corporate insurance agency may be licensed as agents for some of the insurance companies for which such corporation is agent and need not be licensed as agents for all insurance companies for which the corporation is agent.*

Columbus, Ohio, January 13, 1941.

Hon. John A. Lloyd, Superintendent of Insurance,
Columbus, Ohio.

Dear Sir:

Receipt is hereby acknowledged of your recent request for my opinion, which reads as follows:

“May we call your attention to the last paragraph of an opinion issued on January 6, 1936 by the Honorable John W. Bricker, then Attorney General, on the subject of licensing incorporated agencies.

‘I am of the opinion, therefore, that a domestic corporation, authorized by its charter to transact the business of

insurance agency, may be licensed as an agency for a fire or casualty insurance company where the persons who are to act for such agency corporation possess the qualifications required of an insurance agent and are licensed therefor.¹

We would appreciate having your opinion as to whether or not this Division, under the above interpretation, should require every natural person in an incorporated agency engaged either in the solicitation of orders for insurance or in the active management of the agency to be licensed as an agent under Section 644, General Code."

The opinion to which you refer in your letter, the concluding paragraph of which you quote correctly therein, is found in Volume I of the Opinions of the Attorney General for 1936, page 19, and is numbered 5078.

You now ask whether the applicable statutes of this State, as construed in that opinion, require that every natural person engaged either in the active management of an incorporated insurance agency or in the solicitation of insurance for said agency must be licensed as an agent pursuant to the provisions of Section 644, General Code. Said Section 644, General Code, provides in part as follows:

"No person shall procure, receive, or forward applications for insurance unless a resident of this state and duly licensed by the superintendent of insurance. Upon written notice by an insurance company authorized to transact business in this state of its appointment of a person to act as its agent the superintendent of insurance, if he is satisfied that the appointee is a suitable person and intends to hold himself out in good faith as an agent: that appointee is honest, trustworthy and understands the duties and obligations of an agent and is familiar with the insurance laws of the state and with the terms and provisions of the policies and contracts of insurance he proposes to effect; that in applying for such license it is not appointee's purpose or intention principally to solicit or place insurance on appointee's own property or that of relatives, employers or employees or that for which they or the appointee is agent, custodian, vendor, bailee, trustee or payee, shall issue to appointee a license which shall state in substance that the company is authorized to do business in this state and that the person named therein is a constituted agent of the company in this state for the transaction of such business as it is authorized to transact therein. Such appointee, if he has not theretofore held a license as an insurance agent in this state, shall be required to submit to a hearing and examination as to the above qualifications. Such notice by an insurance company of its appointment of an agent shall be upon a form furnished by the superintendent of insurance and shall be accompanied by a statement under oath by the appointee which shall give appointee's name, age, residence, present

occupation, occupation for the five years next preceding the date of the notice and such other information, if any, as the superintendent of insurance may require, upon a blank furnished by him. Such examination and/or hearing shall be held and decision rendered by the superintendent of insurance within thirty days from date of application for license. * * * A foreign or alien insurance company shall pay a fee of two dollars for every such license and for each renewal thereof. * * *

An insurance company shall be bound by the acts of the person named in the license within his apparent authority as its agent.

This section shall not apply to life insurance companies, including fraternal nor to domestic mutual protective assessment fire associations as defined in section 9593 of the General Code nor affect the provisions of section 644-2 thereof."

This section was construed in the 1936 opinion, to which you make reference, as authorizing the issuance of a license to a domestic corporation as agent for a fire and casualty insurance company "where the persons who are to act for such agency corporation possess the qualifications required of an insurance agent and are licensed therefor." The opinion contains no discussion of the meaning of the phrase "to act for such agency corporation" nor is any limitation placed therein upon the scope of the meaning of this clause. If this language were given its most extended literal meaning, it would require the conclusion that no agency corporation could be licensed unless every person employed by it in any capacity "possessed the qualifications of an agent and be licensed therefor." For the reasons hereinafter set forth, I think such construction should not be given to the language in question.

The first sentence of Section 644, General Code, *supra*, provides that "No person shall procure, receive, or forward applications for insurance unless a resident of this state and duly licensed by the superintendent of insurance." This language, however, should be construed with reference to the provisions of Section 644-1, General Code, which provides in part as follows:

"Any agent duly authorized and licensed as provided in the preceding section, and representing one or more insurance corporations within this state may employ such solicitors as he may desire to represent him and his agency, but such solicitors shall not represent themselves, by advertisement or otherwise, as agents of insurance companies for which their employer may be the authorized agent, and such solicitors shall in all instances represent themselves

only as solicitors for said authorized agent. Upon written notice by any such duly authorized and licensed agent that he has employed such a person as a solicitor, the superintendent of insurance, if he is satisfied that the applicant is a suitable person and intends to hold himself out in good faith as a solicitor; that the applicant is honest and trustworthy; that he has training or instruction in the business and understands the duties and obligations of a solicitor; that he is familiar with the insurance laws and with the provisions of the policies and contracts of insurance he proposes to solicit and that in applying for such license it is not appointee's purpose or intention principally to solicit or place insurance on appointee's own property or that of relatives, employers or employees or that for which they or the appointee is agent, custodian, vendor, bailee, trustee or payee, shall issue to him a license in such form as may be prepared by the superintendent, and such notice shall be upon a form furnished by the superintendent of insurance and shall be accompanied by a statement under oath by the solicitor which shall give his name, age, residence, present occupation, his occupation for the five years next preceding the date of the notice, the kinds of insurance for which he wishes license to solicit, and such other information, if any, as the superintendent of insurance may require, upon a blank furnished by him.

Such appointee, if he has not theretofore held a license as an insurance solicitor in this state, shall be required to submit to a hearing and examination as to the above qualifications.

For the purpose of licensing solicitors, insurance shall be considered as of three classes, namely. (1) fire, including marine and inland transportation, (2) casualty, and (3) surety. Each solicitor's license shall state the kind or kinds for which issued and no solicitor shall be licensed for the same kind of insurance by more than one agent. * * *

An insurance agent licensed under the provisions of Section 644, General Code, whether incorporated or not, could, under the provisions of the section from which I have just quoted, appoint a solicitor who undoubtedly could legally solicit orders for insurance, provided such solicitor does not in any way represent himself as agent for the insurance company or companies for which his employer might be an authorized agent, and provided he represents himself only as a solicitor for such authorized agent. If, however, an officer or employe of an incorporated agency who solicits insurance represents himself in any way as an agent, the statutes require him to be licensed as an agent.

Your attention is invited to Section 5438, General Code, which provides, in so far as pertinent hereto, 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. * * *

Any officer or employe of a corporate insurance agency who countersigns policies would therefore be required to be licensed as an agent.

When my predecessor in his opinion No. 5078 of the Opinions of the Attorney General for 1936 used the words "act for such agency corporation," he undoubtedly referred to those persons who acted for such corporation in procuring, receiving or forwarding applications for insurance and who did not represent themselves merely as solicitors and he also meant such officers or employes of such corporate agency who countersigned policies of insurance. These are the only acts the performance of which is prohibited by a person not licensed as an agent by the provisions of our laws, and I find nothing in the statutes which requires the licensing as agents of other employes or officers of such an agency corporation who do not perform any of such acts.

It therefore follows that the only officers or employes of an incorporated insurance agency who are required to be licensed as agents are those who procure, receive or forward applications for insurance and represent themselves as agents of an insurance company and not as solicitors for the agency, and also such officers and employes of such agency who countersign policies of insurance.

I come now to a consideration of the further question raised by your letter, viz., are those officers and employes of a corporate agency, who must be and are licensed as agents for one or more of the insurance companies which the corporate agency represents, required to be licensed for all of the insurance companies for which the corporate agency is agent?

It is, of course, elementary that a corporation can act only through its agents and a corporate insurance agency is no exception to this rule. But it does not follow that every agent of a corporation must be authorized to represent it to the full extent of its powers. A corporation can delegate to an agent such limited portion of its powers as it may desire and an insurance agency corporation may therefore authorize one or more of its officers or agents to act as agent for such of the insurance companies which it represents as it may choose and it may withhold such authority from its other officers and employes. The provisions of Sections 644 and 5438, General

Code, supra, require that the officers or employes so chosen by an agency corporation to represent an insurance company or companies be licensed as agents for such insurance companies, but no reason is perceived why officers or employes of such agency corporation must be licensed as agents for insurance companies for which they do not act as agents.

In this respect, as well as in others, a corporation differs from a partnership. As a general rule, a partnership has no legal existence apart from its members and is not considered to be a separate entity. Each of the partners is an agent for the firm and each partner has authority to bind his co-partner by any act within the scope of the partnership business. This conception requires that every member of a partnership transacting a fire or casualty insurance agency business be licensed as agent for every insurance company which the firm represents.

I am therefore of the opinion that:

1. Only those officers or employes of a corporate insurance agency who procure, receive or forward applications for insurance and who do not represent themselves merely as solicitors for the agency, or those officers or employes of such corporate agency who countersign policies of insurance are required to be licensed as agents.

2. Officers and employes of a corporate insurance agency may be licensed as agents for some of the insurance companies for which such corporation is agent and need not be licensed as agents for all insurance companies for which the corporation is agent.

Respectfully,

THOMAS J. HERBERT,
Attorney General.