2994.

INSURANCE—DEPOSIT OF INDEMNITY COMPANY UNDER SECTION 9510—COLLECTION OF INTEREST ON DEPOSIT BY RECEIVER—REINSURANCE BY ANOTHER FOREIGN INSURANCE COMPANY.

SYLLABUS:

Where an insurance company of another state admitted to transact in this state the business of indemnifying employers and others has made the deposit required by section 9510, *General Code, with the Superintendent of Insurance of Ohio for the benefit of its policyholders, and thereafter all the liabilities on outstanding policies of said company have been reinsured by another foreign insurance company and its assets, including its rights on said deposit, have been conveyed by it to the latter company and the former company thereupon ceased to do business, and where the liabilities of the latter company on outstanding policies were later reinsured by a third foreign insurance company and all of its assets, including its rights in said deposit, have been conveyed to said third company and where a receiver has thereafter been appointed for said third company, which is now in the process of liquidation, and there remain unpaid liabilities on Ohio policies of the first company, the receiver of the third company is not entitled to collect the interest on said deposit which has matured since the appointment of said receiver, but said interest becomes a part of the deposit to be administered for the benefit of those entitled to share in said deposit as provided by sections* 641, 642 *and* 643, *General Code.*

COLUMBUS, OHIO, August 4, 1934.

HON. CHARLES T. WARNER, *Superintendent of Insurance, Columbus, Ohio.*

DEAR SIR:—I acknowledge receipt of your communication which reads as follows:

> "March 28, 1917, the Georgia Casualty Company, an insurance corporation of Macon, Georgia, in order to qualify for license in Ohio, made a deposit of securities in the sum of $50,000.00, with the Superintendent of Insurance of Ohio, in trust for the benefit and security of its policyholders pursuant to section 9510, sub-paragraph 2 of the General Code of Ohio. Subsequently, on or about the 1st day of January, 1931, this company was reinsured by the Public Indemnity Company of New Jersey. This latter company had no deposit of securities in Ohio, it being qualified to do business in Ohio by virtue of a deposit of securities with the Insurance Commissioner of its domiciliary state under and by virtue of the provisions of section 9510-7 and section 9569, General Code of Ohio. On or about the 11th day of January, 1933, the Public Indemnity Company was reinsured by the International Re-Insurance Corporation of Dover, Delaware, and this company likewise operated in Ohio by virtue of a deposit with the Commissioner of Insurance of its domiciliary state under the same statutory provisions as above indicated. All during this process and up to the present time, the deposit in Ohio remained in the name of the Georgia Casualty Company on the records of this Division. On April 19, 1933, the International Re-Insurance Corporation was placed in the hands of a receiver and is at the present time undergoing liquidation.

By reason of the above mentioned receivership, the Attorney General of Ohio, on behalf of the Superintendent of Insurance, brought an action in the Common Pleas Court of Franklin County, Ohio, for the liquidation of the deposit of the Georgia Casualty Company under the provisions of Section 641, General Code of Ohio. In this proceeding the court appointed a Special Master Commissioner to hear claims and report on them. It is represented to this Division that this work is about completed and that the Master is prepared to make his report to the Court in the very near future.

Ever since this deposit has been in the possession of the Superintendent of Insurance of Ohio and prior to the liquidation referred to above, the Superintendent, pursuant to the provisions contained in the last clause of section 9510, sub-paragraph 2, General Code of Ohio, has transmitted the accumulations in the form of interest checks on this deposit to the company. These interest checks were drawn as follows:

'Pay to the order of the Superintendent of Insurance of the State of Ohio, in trust for the benefit and security of the policyholders of the Georgia Casualty Company of Macon, Georgia;'

but since said receivership the Superintendent of Insurance by reason of the insolvency of said reinsuring companies has retained all interest checks of the Georgia Casualty Company which have come into his possession.

Through some manner unknown to the Superintendent of Insurance of Ohio, the Ancillary Receivers of the International Re-Insurance Corporation have secured possession of the interest check, number 11671, on the securities, dated May 1, 1934, payable to the order of the Superintendent of Insurance, as hereinbefore specifically noted, and this check has now been submitted to the Superintendent of Insurance of Ohio by the Primary Receivers with a request that he endorse and return same to them.

By reason of the above circumstances, I respectfully request an opinion from you on the following question:

After insolvency are the Primary or Ancillary Receivers entitled to possession and use of interest checks such as this or do the accumulations become a part of the original deposit and as such become a part of the funds which the Special Master Commissioner reports to the court for distribution?"

Section 9510, General Code, reads in part as follows:

"* * But a company of another state, territory, district or county admitted to transact the business of indemnifying employers and others, in addition to any other deposit required by other laws of this state, shall deposit with the superintendent of insurance for the benefit and security of all its policy holders, fifty thousand dollars in bonds of the United States or of the state of Ohio, or of a county, township, city or other municipality in this state, which shall not be received by the superintendent at a rate above their par value. The securities so deposited may be exchanged from time to time for other securities. So long as such company continues solvent and complies with the laws of this state it shall be permitted by the superintendent to collect the interest on such deposits."

In 1930 the liabilities of the Georgia Casualty Company on its outstanding policies were reinsured by the Public Indemnity Company and apparently all the assets of the former company were conveyed to the latter, including such rights which the Georgia Casualty Company had in the deposit which it had made in this state under section 9510, General Code. Thereafter, the Georgia Casualty Company ceased to do business. In 1933 the liabilities of the Public Indemnity Company on its outstanding policies were reinsured by the International Re-Insurance Corporation, and all the assets of the former were conveyed to the latter. As stated in your letter, an action is now pending in the Common Pleas Court of Franklin County to liquidate said deposit for the benefit of those who may be found to be entitled thereto, as provided by sections 641, 642 and 643, General Code. When such a deposit is made by an insurance company as required by law, a trust is thereby created by statute for the benefit of the policyholders of such company which can be held and used only for the beneficiaries of the trust. *Falkenbach* vs. *Patterson,* 43 O. S. 359; *State, ex rel.,* vs. *Crabbe,* 114 O. S. 504.

In the case of *State, ex rel.,* vs. *Matthews,* 64 O. S. 419, the following was held:

> "1. Where securities have been deposited with the Superintendent of Insurance, by an insurance company, to be held by such superintendent in trust for the benefit and protection of, and as security for, the policy holders of such company, the assignee of such company, under our insolvent laws, cannot recover such securities from such superintendent without first showing that such company is no longer liable to any of its policy holders.
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> 2. It is the official duty of such superintendent, in the event that such company becomes insolvent, to act, and perform his trust, by distributing the funds so deposited with him, *pro rata* among the several policy holders, and when their just claims shall all be satisfied, to pay the balance, if any, to the company, or its assignee or other successor."

This deposit, having been made under the provisions of section 9510, General Code, is held for the primary benefit of Ohio policyholders only. *State, ex rel.,* vs. *Casualty Company,* 8 O. A. 285. The fact that the Georgia Casualty Company's rights have been assigned to others does not change the character of this deposit nor give to the International Re-Insurance Corporation, or its receivers, any greater rights to said fund than the Georgia Casualty Company had. When deposited, it was impressed with the trust for the benefit of the Ohio policyholders of the Georgia Casualty Company, and it is still impressed with that trust, which must be administered in the manner provided by law.

In the case of *Lovell, et al.,* vs. *St. Louis Mutual Life Insurance Company,* 111 U. S. 264, the following was said:

> "* * * The assignment of all its assets, by the old Company to the new one, upon the consideration of its obligations being assumed by the new company, is somewhat analogous to an assignment of property by a debtor for the benefit of his creditors, in which only those creditors who are preferred or those who choose to come in and participate in the fund assigned, receive any benefit, whilst those who refuse to come in take no benefit, preferring to retain their claim against the debtor. So here, if the complainant does not choose to continue his insurance with the new company, he would have no remedy except against the old Company, which is totally unable to respond, were it not for the fund which

has been attached in the hands of the state Treasurer of Tennessee. To this fund the complainant, being a citizen of Tennessee, had a right to resort. The object of the laws of Tennessee in requiring the fund to be placed on deposit with the Treasurer was to protect and indemnify its own citizens in their dealings with the Company. The assignment to the new company in Missouri could not deprive them of the right to this indemnity."

The general rule is that where a deposit is made by an insurance company, as required by law, for the benefit of its policyholders, the interest earned thereon is to be added to it, unless permission is granted to the company by statute to collect it. 32 C. J. 989.

There are instances, of course, where a company which seeks to withdraw its business from Ohio and has paid all its liabilities which the deposit was made to secure, may with certain conditions withdraw its deposit. Sections 655, 656, 9510-10 and 9607-38, General Code. In such event the company withdrawing the deposit is, of course, entitled to all the interest that has been earned thereon. *Des Moines Mutual Association* vs. *Steen,* 43 N. D. 298. But until the deposit is withdrawn, the company is not entitled to the interest thereon in the absence of statutory provision permitting it to collect the interest.

In this case section 9510, General Code, does allow companies to collect the interest on their deposits which were made under the provisions of this section, but only so long as such companies continue solvent and comply with the laws of this state. Similar provisions with reference to the right to collect interest on deposits made by other types of insurance companies are found in sections 9347, 9383, 9565, 9569 and 9607-34, General Code. The only reasonable inference that can be drawn from this statute is that after a company ceases to be solvent or to comply with the laws of this state, it should not be allowed to continue to collect interest on its deposit.

In the case of *Moies* vs. *Insurance Company,* 12 R. I. 259, the statute instead of providing that a company making a deposit *shall* be permitted to collect interest thereon, provided that such a company "*may* be permitted to receive and collect the interest and dividends on its securities so deposited." However, said statute did not limit its right to collect the interest to the period of time that it remained solvent. The court held that the statute was enacted for the protection of the policyholders, that a discretion was given to general treasurer of the state to be exercised with a view to giving protection to policyholders, that permission to collect interest should be withdrawn when a company becomes insolvent, and therefore held that the receiver of an insolvent insurance company was not entitled to the interest. The court said:

"An so, of course, if the company becomes insolvent, and a receiver is appointed, the permission will be determined. It follows, we think, that after the permission is determined, the interest and dividends will accrue to the principal fund and follow its destination; that is to say, it will be applied along with the fund, first to the payment of the policyholders, and then, if there is any surplus, it will go to the receiver for the equal payment of the other creditors, and, after then, if anything remains, for the company."

In the case of *People* vs. *Insurance Company,* 147 N. Y. 25, where the provision of the statute with reference to the collection of interest was similar to the

provision contained in section 9510, General Code, a receiver of a casualty company which was dissolved by order of the court was denied the right to the interest collected after its dissolution on the deposit it had made with the superintendent of insurance for the benefit of its policyholders. The court said:

> "We see no reason why the interest must not follow the principal. By section 14 of the act the corporation, so long as it shall continue solvent and comply with the laws of the state, shall be permitted by the superintendent to collect the interest or dividends upon its deposits. This, doubtless, has reference to a solvent corporation still continuing active business. It has no application to a corporation that has ceased to exist and has been dissolved by a judgment of the court. Thereafter, the superintendent holds the deposits or securities under the trust created by the statute for the benefit of the policyholders, and as such is entitled to collect the interest thereafter accruing and treat it as a part and parcel of the trust in his hands."

Since the rights of the receiver of the International Re-Insurance Corporation in the deposit in question can be no greater than the rights of the Georgia Casualty Company had it not assigned said deposit, it follows that said receiver is not at this time entitled to the interest on said deposit, but said interest becomes a part of the deposit to be administered in accordance with section 641, et seq., General Code.

Respectfully,
JOHN W. BRICKER,
Attorney General.

2995.

APPROVAL—TRANSCRIPT OF PROCEEDINGS RELATING TO THE SALE OF A SMALL TRACT OF HOCKING CANAL LAND FOR THE PURPOSE OF CONSTRUCTING A CITY STREET IN LANCASTER, OHIO.

COLUMBUS, OHIO, August 4, 1934.

HON. T. S. BRINDLE, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—You have submitted for my examination and approval a transcript of your proceedings relating to the sale of a small marginal tract of Hocking Canal land which remained for proper disposition after the larger part of such canal lands in the City of Lancaster, Ohio, had been used by the municipality for the purpose of constructing thereon a city street as authorized and provided for in House Bill No. 417, enacted by the 89th General Assembly, 114 O. L. 536.

The parcel of Hocking Canal lands here in question is Marginal Tract No. 5, as shown by the plat of said canal property in the City of Lancaster and by the plats thereof in the office of the Governor and of the Superintendent of Public Works, and which parcel is more particularly described as follows: