

6978

INSURER — FRATERNAL BENEFIT SOCIETY — ORGANIZED UNDER SECTION 9462 ET SEQ., G. C. — INSURES MEMBERS AGAINST DISABILITY — MAY NOT REINSURE LIABILITY THEREBY INCURRED .

SYLLABUS:

A fraternal benefit society organized under Section 9462, et seq., General Code, which insures its members against disability, may not re-insure the liability it thereby incurs.

Columbus, Ohio, June 9, 1944

Hon. J. Roth Crabbe, Superintendent of Insurance
Columbus, Ohio

Dear Sir:

Your office has requested my opinion as follows:

“I am in doubt as to the legality of a proposed reinsurance transaction which I have been requested to approve.

A domestic fraternal benefit society, organized and operating under license from this Division pursuant to Chapter 4, Subdivision I, Division III, Title IX, Part Second of the General Code, proposes to write hospitalization insurance, a form of disability insurance authorized by Section 9466, General Code. The society further proposes to reinsure all of such disability insurance in a foreign stock casualty insurance company duly authorized to engage in the direct writing and reinsurance of disability coverages in this state. Under the proposed plan all disability premiums collected by the society would be paid to the reinsurer as the consideration for its agreement to reimburse the society for all losses and expenses which might arise by virtue of its disability certificates.

Since I find no provision of statute specifically authorizing fraternal benefit societies thus to reinsure risks undertaken by them and in view of the provisions of Section 9465, General Code, excepting such societies from the insurance laws generally, I am in doubt as to the power of the fraternal benefit society to enter into the proposed contract. Therefore I ask your opinion on this question.”

In considering your question, it is important to keep in mind the provisions of Section 9465, General Code, which provides:

“Except as herein provided, such societies shall be governed by this act, and shall be exempt from all provisions of the insurance laws of this state, not only in governmental relations with the state, but for every other purpose, and no law hereafter enacted shall apply to them, unless they be expressly designated therein.”

By reason thereof, the provisions of the insurance laws of this state which authorize certain insurance companies to enter into reinsurance contracts whereby risks are ceded to other companies, do not apply to fraternal benefit societies. Since this section was enacted prior to the General Corporation Act, the provisions of Section 8623-8, General Code, granting to corporations generally the capacity possessed by natural persons to perform all acts, have no application to such societies.

It has been decided by the Supreme Court in *Unione Fratellanza Oratinese v. Picciano*, 129 O. S., 466, that the provisions of such section do not apply to fraternal benefit societies and that they are still authorized to urge the doctrine of *ultra vires*.

I therefore believe that the powers of such societies are those expressly granted by Section 9462, et seq., General Code, and those which must necessarily be implied to carry out the powers expressly granted. There is no language in these sections expressly authorizing fraternal benefit societies to reinsure in another company any risks undertaken by such societies. Nor am I able to reach the conclusion that it is necessary for a fraternal benefit society to have the power to reinsure risks undertaken by it in order to carry out the powers expressly granted to it by law. It would therefore follow that such societies do not have such power to reinsure.

Moreover, it appears to me that independently of any other considerations Section 9470, General Code, requires me to reach this conclusion. This section provides:

“Subsection 1. Any society may create, maintain, invest, disburse and apply an emergency, surplus or other similar fund in accordance with its laws. Unless otherwise provided in the contract, such funds shall be held, invested and disbursed for the use and benefit of the society, and no member or beneficiary shall have or acquire individual rights therein or become entitled to any apportionment or the surrender of any part thereof, except as provided in subsection 2 of section 5 of this act. *The funds from which benefits shall be paid* and the funds from which the expenses of the society shall be defrayed, shall be derived from periodical or other payments by the members of the society and accretions of such funds; provided, that no society, domestic or foreign, shall hereafter be incorporated or admitted to transact business in this state, which does not provide for stated periodical contributions sufficient to provide for meeting the mortuary obligations contracted, when valued upon the basis of the National Fraternal Congress Table of Mortality as adopted by the National Fraternal Congress, August 23, 1899, or any higher standard, with interest assumption not more than four per cent, per annum, nor write or accept members for temporary or permanent disability benefits except upon tables based upon reliable experience, with an interest assumption not higher than four per cent. per annum.

Subsection 2. Deferred payments or installments of claims

shall be considered as fixed liabilities on the happening of the contingency upon which such payments or installments are thereafter to be paid. Such liabilities shall be the present value of such future payments or installments upon the rate of interest and mortality assumed by the society for valuation, and every society shall maintain a fund sufficient to meet such liability regardless of proposed future collections to meet any such liabilities.”

(Emphasis mine.)

This section requires a fraternal benefit society to pay benefits from funds derived from payments by the members of the society and accretions of such funds and it would be wholly inconsistent with the provisions thereof for a society to pay such benefits from funds derived on account of a policy of reinsurance.

For these reasons, you are advised that a fraternal benefit society organized under Section 9462, et seq., General Code, which insures its members against disability may not reinsure the liability it thereby incurs.

Respectfully,

THOMAS J. HERBERT

Attorney General