

as required by Section 12 of House Bill No. 502 of the 87th General Assembly. In addition you have submitted a contract bond, upon which the National Surety Company appears as surety, sufficient to cover the amount of the contract.

You have further submitted evidence indicating that plans were properly prepared and approved, notice to bidders was properly given, bids tabulated as required by law and the contract duly awarded. Also it appears that the laws relating to the status of surety companies and the workmen's compensation have been complied with.

Finding said contract and bond in proper legal form, I have this day noted my approval thereon and return same herewith to you, together with all other data submitted in this connection.

Respectfully,
 EDWARD C. TURNER,
Attorney General.

2877.

INSURANCE — CONTRACT TO INDEMNIFY MEMBERS AGAINST DAMAGES FROM CERTAIN FELONIES IS INSURANCE BUSINESS.

SYLLABUS:

Under the provisions of Section 665, General Code of Ohio, an association which contracts, among other things, to indemnify its members against loss or damage resulting from certain felonies therein defined, is transacting an insurance business.

COLUMBUS, OHIO, November 14, 1928.

HON. WILLIAM C. SAFFORD, *Superintendent of Insurance, Columbus, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent communication, requesting my opinion as follows:

“Herewith I hand you letter from The Cleveland Better Business Bureau, Inc., dated October 24th, and specimen contract of the Detective Guaranty Association, of Dayton, Ohio.

After your reading of this instrument, will you kindly give us your opinion as to whether this certificate conflicts with the insurance laws of Ohio?

The Detective Guaranty Association is not a licensee of the Division of Insurance.”

The pertinent parts of the specimen contract referred to in your letter, and accompanying it, are as follows:

“CERTIFICATE OF MEMBERSHIP
 \$3,000.00
 in

The Detective Guaranty Association
 (a non-profit corporation).

Home Office: Miami Jacobs Building, Dayton, Ohio.

This Certifies, That.....
 Business..... Address.....
 City..... County.....
 State....., has been admitted to membership in The

Detective Guaranty Association, Inc., for one year from the date hereof. The Detective Guaranty Association, Inc., hereinafter shall be known as the Association and hereinafter shall be known as the Member.

Witness: That in consideration of an annual Membership Fee of \$100.00 paid by the Member and assessments hereinafter provided to be paid by the Member, the Association shall indemnify the Member, contingent upon the assessments collected, for loss resulting from any felony herein defined being committed against the Member, on or within the premises protected by this Certificate, not to exceed THREE THOUSAND DOLLARS in the aggregate, during the term of Membership.

FELONY DEFINED:

1. LARCENY or EMBEZZLEMENT of money or personal property of the Member, by any of the Member's employees.
2. HOLD-UP or ROBBERY of the Member or any of the Member's employees, on or within the premises herein defined or while transporting money or property of the Member, to or from the premises protected by this Certificate, from or to any place within a radius of ten (10) miles thereof.
3. SAFE contents and damages thereto, through the forcible opening thereof, by use of explosives or tools.
4. FRAUDULENT CHECKS, money orders, drafts or counterfeit currency accepted in exchange for merchandise or merchandise and money, service or services and money; not paid upon presentation to the Bank or Depository upon which such checks, drafts, or orders are drawn or purported to be drawn, whether fictitious, forged, overdraft or counterfeit.
5. BURGLARY or ROBBERY of open stock, from the premises protected by this Certificate after business hours.
6. FELONY or FRAUD of any other nature except, loss resulting from the sale or conversion of any leased or consigned property or the sale, conversion or removal from the State any mortgaged property.

* * *

5. The Association as soon as practicable after the Member has filed a proper proof of loss, shall indemnify the Member as herein provided, but shall not be bound to pay such indemnity prior to thirty days after proof of loss has been filed by the Member or until such investigation as the Association deems advisable, has been completed.

6. Upon the payment of indemnity to the Member, the Member will subrogate to the Association all rights of the Member against any other party, and the Member will upon request of the Association execute all necessary papers to effectuate this purpose; and the Member will furnish the Association any information or evidence in Member's possession to assist the Association in recovering any property or money for which the Association has indemnified the Member, or in the apprehension and conviction of the perpetrators of such felony, for which Member has been indemnified."

There are a number of other conditions and specifications named in the certificate which are not necessary to be considered for the purpose of this inquiry.

In Volume 32 Corpus Juris, p. 975, insurance is defined as follows:

"Broadly defined, insurance is a contract by which one party, for a compensation called the premium, assumes particular risks of the other party and promises to pay to him or his nominee a certain or ascertainable sum of money on a specified contingency. *United States' Physicians Defense Company vs. Cooper*, 199 Fed. 576-579; *State vs. Amazon Ins.*, 1 O. C. C. (N. S.) 4; 24 O. C. C. 387."

Section 665, General Code, provides as follows:

"No company, corporation or association, whether organized in this state or elsewhere, shall engage either directly or indirectly in this state in the business of insurance, or enter into any contracts substantially amounting to insurance, or in any manner aid therein, or engage in the business of guaranteeing, against liability, loss or damage, unless it is expressly authorized by the laws of this state, and the laws regulating it and applicable thereto, have been complied with."

It is apparent upon examination of the certificate of membership that the said association is transacting, among other things, an insurance business.

It was said by the court in the case of *First National Bank vs. National Surety Company*, 228 N. Y. 469, reversing 182 App. Div. 262, 169 N. Y. S. 774, that:

"The primary requisite essential to a contract of insurance is the presence of a risk of loss."

Also in *Dover Glass Works Co. vs. Ins. Co.*, 1 Marv. (Del.) 32, 29 Atl. 1039; 65 Am. St. Rep. 264:

"An insurance in relation to property is a contract whereby the insurer becomes bound, for a definite consideration, to indemnify the insured against loss or damage, to a certain property named in the policy, by reason of certain perils to which it may be exposed."

The contract contained in the certificate of membership in the instant case is clearly one of indemnity.

Specifically answering your question, therefore, it is my opinion that this association, among other things, is transacting a business substantially amounting to insurance.

Respectfully,

EDWARD C. TURNER,
Attorney General.

2878.

GRADE CROSSING—RELOCATION OF STATE HIGHWAY—WHEN AUTHORITY OF COURT IS REQUIRED.

SYLLABUS:

Where, in the relocation or realignment of a state highway, it is proposed to change the location of a crossing at grade between such highway and the tracks of a railroad, it is necessary to secure the authority of the Court of Common Pleas by virtue of the provisions of Sections 8897, et seq., General Code.

COLUMBUS, OHIO, November 14, 1928.

HON. HARRY J. KIRK, *Director of Highways, Columbus, Ohio.*

DEAR SIR:—This will acknowledge your letter of November 5, 1928, as follows: