

2863.

INSURANCE—RISKS OF OCEAN NAVIGATION—MAY BE SUBJECT OF RECIPROCAL INSURANCE — AUTHORITY, SECTIONS 9556-1 TO 9556-13 G. C.

SYLLABUS:

The risks of ocean navigation may be the subject of reciprocal insurance effected pursuant to the authority granted by Sections 9556-1 to 9556-13, inclusive, General Code.

Columbus, Ohio, October 8, 1940.

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

Dear Sir:

Your request for my opinion propounds the following question:

“Is it lawful for a domestic reciprocal insurance organization governed by Sections 9556-1 to 9556-13, General Code, to write ocean marine insurance?”

Section 9556-1, General Code, provides:

“Individuals, partnerships and corporations of this state, herein designated subscribers, are authorized to exchange reciprocal or inter-insurance contracts with each other, and with individuals, partnerships and corporations of other states, districts, provinces and countries, providing indemnity among themselves from any loss which may be insured against by any fire insurance company

or association under other provisions of the law. Such contracts and the exchange thereof and such subscribers, their attorneys and representatives shall be regulated by this act and by no other insurance law unless such law is referred to in this act, and no law hereafter enacted shall apply to them, unless they be expressly designated therein."

It will be noted that the reciprocal insurance authorized by this section is insurance against "any loss which may be insured against by any fire insurance company or association under other provisions of the law."

At the time the act of which Section 9556-1, General Code, supra, was a part was enacted, Section 9510, General Code, provided in part as follows:

"A company may be organized or admitted under this chapter to—

1. Insure houses, buildings and all other kinds of property in and out of the state against loss or damage by fire, lightning and tornadoes, and make all kinds of insurance on goods, merchandise and other property in the course of transportation, on land, water, or on a vessel, boat or wherever it may be."

On the same day on which the General Assembly passed the act of which Section 9556-1, General Code, is a part, it also passed an act which, among other things, amended Section 9607-2, General Code, so that it read in part as follows:

"A domestic mutual company may be organized by a number of persons, not less than twenty, to carry on the business of mutual insurance and to reinsure and to accept reinsurance as authorized by law and its article of incorporation. Such persons shall execute articles of incorporation which, if not inconsistent with the constitution and laws of this state and of the United States, shall be approved by the attorney-general and secretary of state, and such articles and the certificate of approval by the attorney-general shall be recorded by the secretary of state who shall deposit a copy thereof with the superintendent of insurance. A mutual or a stock insurance company may transact only the first kind of insurance, or may transact such as it may elect of the other kinds of insurance, following:

1. Fire insurance. Against loss or damage to property and loss of use and occupancy by fire, lightning, hail, tempest, flood, earthquake, frost or snow, explosion, fire ensuing, and explosion, no fire ensuing, except explosion by steam boiler or flywheels; against loss or damage by water caused by the breakage or leakage of sprinklers, pumps or other apparatus, water pipes, plumbing, or their fixtures, erected for extinguishing fires, and against accidental injury to such sprinklers, pumps, other apparatus, water pipes, plumbing or fixtures; against the risks of inland transportation

and navigation; upon automobiles, whether stationary or operated under their own power, against loss or damage by any of the causes or risks specified in this sub-section, including also transportation, collision, liability for damage to property resulting from owning, maintaining or using automobiles and including burglary and theft, but not including loss or damage by risk of bodily injury to the person."

Opinion No. 539 of the Opinions of the Attorney General for 1919, found in Volume I, at page 925, contains an elaborate discussion of the effect of the act which amended Section 9607-2, General Code, and the conclusion was reached therein by the then Attorney General that Section 9510, General Code, supra, had been partially repealed by implication by the amendment to Section 9607-2, General Code, supra, and that such amendment had the effect, among other things, of taking away from fire insurance companies the power to insure against the risks of ocean navigation. The then Attorney General reached this conclusion because he was of the view that the word "only" contained in Section 9607-2, General Code, restricted the powers of domestic fire insurance companies to those enumerated in the first paragraph of such section and he was of the opinion that any additional powers granted by Section 9510, General Code, supra, were necessarily in conflict with the provisions of Section 9607-2, General Code, and to such extent repealed.

The act of which Section 9556-1, General Code, supra, is a part, was, as has been noted hereinbefore, passed March 21, 1917, on which same day the act which amended Section 9607-2, General Code, supra, was also passed. The General Assembly adjourned on the same day it passed these acts. The Governor did not approve or disapprove either of such acts but filed with the Secretary of State the act which amended Section 9607-2, General Code, one day prior to filing the act of which Section 9556-1, General Code, is a part. It may be that in view of the provisions of Section 1c of Article II of the Constitution of Ohio, Section 9607-2, General Code, supra, became effective one day before the provisions of Section 9556-1, General Code, although the provisions of Section 16 of this same article would seem to indicate that both of such sections became effective at the same time. In any event, the powers granted to fire insurance companies by Section 9510, General Code, to insure against the risks of ocean navigation were repealed at the time Section 9556-1, General Code, became effective and at such time reciprocal insurance associations organized under authority of Section 9556-1,

General Code, did not have the power to insure against the risks of ocean navigation.

In 1929, Section 9556, General Code, was amended so as to grant to fire insurance companies the power, among other things, to insure "vessels, boats, cargoes, goods, merchandise, freights and other property and interest therein against loss or damage by all or any of the risks of navigation and transportation." Fire insurance companies now unquestionably have the power to insure against the risks of ocean navigation and the only question to be determined is whether the amendment to Section 9556, General Code, applies to reciprocal insurance.

Section 9556-1, *supra*, authorizes reciprocal insurance against "any loss which may be insured against by any fire insurance company or association under other provisions of the law." No specific statute or section of the law is mentioned but only the law generally with reference to the risks against which fire insurance companies may insure. In 37 O. Jur., at pages 341 and 342, Section 49, it is said:

" * * * However, the general rule in other states is that when the adopting statute makes no reference to any particular statute or part of statute by its title or otherwise, but refers to the law generally which governs a particular subject, the reference in such a case includes not only the law in force at the date of the adopting act, but also, all subsequent laws on the particular subject referred to—so far, at least, as they are consistent with the purposes of the adopting act. The latter rule has been followed in Ohio in a case in which the reference was to general laws then in force, or which might thereafter be enacted, and in a case in which the reference was generally to an original act and to supplementary and amendatory acts."

Likewise, in *Sutherland on Statutory Construction*, Second Edition, 789, Section 405, it is said:

"There is another form of adoption wherein the reference is, not to any particular statute or part of a statute, but to the law generally which governs a particular subject. The reference in such case means the law as it exists from time to time or at the time the exigency arises to which the law is to be applied. The supreme court of Illinois says: 'Where, however, the adopting statute makes no reference to any particular act by its title or otherwise, but refers to the general law regulating the subject in hand, the reference will be regarded as including, not only the law in force at the date of the adopting act, but also the law in force when action is taken, or proceedings are resorted to.'"

Substantially the same rule is stated in 59 C. J., 1058, 1059, Section 624. In *State, ex rel. Timken Roller Bearing Company, v. Industrial Commission of Ohio*, 136 O. S., 148, at page 152, it was said in the opinion by Myers, J.:

“Where the form of adoption is general, that is, where the reference is not to any particular statute or part of a statute but to the law generally which governs a particular subject, the reference in such case means the law as it exists from time to time or at the time the exigency arises to which the law is to be applied.”

The principles enunciated in these authorities impel the conclusion that the powers granted to fire insurance companies by the amendment to Section 9556, General Code, in 1929 are also available in effecting reciprocal insurance, unless the application of such rule to Section 9556-1, General Code, is prevented by the last sentence of such section which reads as follows:

“Such contracts and the exchange thereof and such subscribers, their attorneys and representatives shall be regulated by this act and by no other insurance law unless such law is referred to in this act, and no law hereafter enacted shall apply to them, unless they be expressly designated therein.”

The word “regulate” has many broad and varied meanings. In Webster’s New International Dictionary it is *inter alia* defined as follows: “to adjust or control by rule, method, or established mode; to direct by rule or restriction; to subject to governing principles or laws.” In 53 C. J., 1172, 1173, a great many definitions of the word are set forth, among which I find: “to control the manner in which a thing is to be done;” “to direct the mode in which a matter or transaction shall be concluded;” “to fix the manner in which a thing is to be done.” I incline to the view that the word “regulated” as used in Section 9556-1, General Code, *supra*, has to do with prescribing the manner in which the powers granted by such action shall be conducted or exercised and does not refer to the extent of the power itself. The subsequent sections of the act providing for reciprocal insurance provide how contracts shall be executed, what fees shall be paid to the Superintendent of Insurance, what papers, reports and documents filed, the amount of reserve funds which shall be maintained and numerous other provisions which provide the manner and method in which reciprocal insurance shall be carried on. These are, in my opinion, examples of what the General Assembly meant when it used the word “regulated.”

When, therefore, Section 9556, General Code, was amended in such manner as to give to fire insurance companies the power to insure against the risks of ocean navigation, this power was also extended to reciprocal insurance and did not constitute regulation thereof.

However, Section 9556-1, General Code, also contains a provision that no law hereafter enacted shall apply to them (meaning contracts and the exchange thereof and the subscribers, their attorneys and representatives) unless they be expressly designated therein. If this language stood alone it could very plausibly be urged that no law enacted after the effective date of Section 9556-1, General Code, could operate in any manner upon reciprocal insurance to increase the scope of the risks which might be insured against thereby. However, the word "apply" is used in the same sentence and in close association with the word "regulated" and its meaning should be ascertained with reference to the context. In other words, the word "apply" should not be given the broadest possible meaning, but its definition should be ascertained by considering it with reference to the word "regulated." This is the doctrine of *noscitur a sociis*, concerning which it is said in 37 O. Jur., 558, Section 298:

"It is a familiar rule in the construction of terms of a statute to apply the meaning naturally attaching to them from their context. *Noscitur a sociis*, as a rule of construction, is applicable to the interpretation of statutes. The meaning of a word may be ascertained by reference to the meaning of words associated with it."

Applying this doctrine, the language "no law hereafter enacted shall apply to them," contained in Section 9556-1, General Code, means that no law regulating insurance companies, that is to say, no law prescribing the method and manner in which they shall exercise their powers, shall apply to reciprocal insurance.

Since it is provided by general language and not by reference to any specific statute or act that any risk which may be insured against by fire insurance companies may be the subject of reciprocal insurance and since the last sentence of Section 9556-1, General Code, refers only to laws which prescribe the method and manner of carrying out powers and not to powers themselves, it follows that the power granted to fire insurance companies by Section 9556, General Code, *supra*, to insure against the risks of ocean navigation, may also be the subject of reciprocal insurance.

In Opinion No. 5916 of the Opinions of the Attorney General for the year 1936, found in Volume II, at page 1192, of the Opinions for such year, the then Attorney General, at page 1199, said:

“The amendment of 1929 to Section 9556, which broadens the risks which fire insurance companies may insure against probably would apply to reciprocal insurance since reciprocal contracts or the exchange thereof are not expressly designated therein as required by Section 9556-1.”

This statement is ambiguous and difficult of interpretation. It may be that the word “not” was inadvertently omitted after the word “would” and before the word “apply.” With this word inserted, the quoted statement would be at variance with the reasoning and conclusions herein expressed and I would be unable to acquiesce in it. However, the statement quoted was not at all necessary to the conclusion reached in that opinion and is not supported by any of the reasoning contained therein.

In consonance with the foregoing, I am of opinion that the risks of ocean navigation may be the subject of reciprocal insurance effected pursuant to Sections 9556-1 to 9556-13, inclusive, General Code.

Respectfully,

THOMAS J. HERBERT,
Attorney General.