

3593

INSURANCE COMPANIES—NOT PROHIBITED FROM WRITING SICKNESS AND ACCIDENT INSURANCE ON FRANCHISE PLAN, GROUP PLAN OR BLANKET PLAN—EMPLOYEES INSURED FOR ACCIDENTS AND SICKNESS COMPENSABLE UNDER OHIO WORKMEN'S COMPENSATION LAW—SECTION 4123.82 RC.

SYLLABUS:

Section 4123.82, Revised Code, Section 1465-101, G. C., relative to prohibiting the writing of employers' liability insurance insuring those employers amenable to the Workmen's Compensation Act, does not prohibit insurance companies, otherwise authorized, from writing sickness and accident insurance on the franchise plan, group plan or blanket plan insuring employees for accidents and sickness compensable under the Ohio Workmen's Compensation Law.

Columbus, Ohio, March 15, 1954

Hon. Walter A. Robinson, Superintendent of Insurance
Columbus, Ohio

Dear Sir:

I have your request for my opinion which reads as follows:

"Your advice is requested as to whether, in view of the provisions of Section 1465-101 of the General Code of Ohio, insurance companies authorized to transact in this state the business of insurance against bodily injury or death by accident and disability by sickness are authorized to issue group or blanket sickness and accident policies or sickness and accident policies on the franchise plan, such policies providing benefits to the insured employees for accidents or sicknesses compensable under the laws of Ohio relating to workmen's compensation, such benefits being supplementary and in addition to the benefits payable under said laws."

It should hardly be necessary to point out that "sickness and accident insurance" which is provided for and regulated under Sections 3923.01 to 3923.99, Revised Code, is in an entirely different category from "workmen's compensation" which is provided for in Article II, Section 35 of the Ohio Constitution, and under Sections 4123.01 to 4123.99, Revised Code.

A policy of sickness and accident insurance is defined in Section 3923.01, Revised Code, as follows:

“As used in sections 3923.01 to 3923.22, inclusive, of the Revised Code, ‘policy of sickness and accident insurance’ includes any policy or contract of insurance against loss or expense resulting from the sickness of the insured, or from the bodily injury or death of the insured by accident, or both.”

On the other hand, the fundamental concept of workmen’s compensation is set forth in Article II, Section 35 of the Ohio Constitution as follows:

“For the purpose of providing compensation to workmen and their dependents, for death, injuries or occupational disease, occasioned in the course of such workmen’s employment, laws may be passed establishing a state fund to be created by compulsory contribution thereto by employers, and administered by the state, determining the terms and conditions upon which payment shall be made therefrom. Such compensation shall be made in lieu of all other rights to compensation, or damages, for such death, injuries, or occupational disease, and any employer who pays the premium or compensation provided by law, passed in accordance herewith, shall not be liable to respond in damages at common law or by statute for such death, injuries or occupational disease. * * *”

Reference is made in your request to the transaction of sickness and accident insurance on the franchise plan, group plan or blanket plan. The writing of sickness and accident insurance on these various plans is provided for by Sections 3923.11, 3923.12 and 3923.13, Revised Code, respectively. It would serve no useful purpose to set out these lengthy sections.

Suffice it to say that these sections in general authorize the issuance of sickness and accident policies covering employees of an employer, for the benefit of the employees and/or dependents and families of the employees. The policy is generally issued to the employer, for the benefit of others. These sections do not in any way prohibit the writing of sickness and accident insurance on those individuals or groups of individuals who may also be employees of employers amenable to the workmen’s compensation law. Therefore, an employee injured in the course of and arising out of his employment may receive sickness and accident benefits under a sickness and accident policy provided by himself or his employer, and may also receive benefits under the workmen’s compensation laws. Both

the sickness and accident insurance and the workmen's compensation compensate an employee for his injury or disability, but only the workmen's compensation is aimed at indemnifying or insuring *the employer* against loss or liability for payment of compensation to the workman or his dependents.

Your inquiry, however, is specifically directed as to whether in view of Section 4123.82, Revised Code, the writing of such sickness and accident insurance is authorized. Section 4123.82, Revised Code, provides in part as follows:

“(A) All contracts and agreements are void which undertake to indemnify or insure an employer against loss or liability for the payment of compensation to workmen or other dependents for death, injury, or occupational disease occasioned in the course of such workmen's employment, or which provide that the insurer shall pay such compensation, or which indemnify the employer against damages when the injury, disease, or death arises from the failure to comply with any lawful requirement for the protection of the lives, health, and safety of employees, or when the same is occasioned by the willful act of the employer or any of his officers or agents, or by which it is agreed that the insurer shall pay any such damages. * * *”

It should be noted that this section provides that all contracts and agreements are void which undertake to “indemnify or insure an employer.” Sickness and accident policies do not in any way indemnify or insure an employer, but rather insure individuals or certain groups of individuals. I fail to see anything in this section which would prohibit group accident insurance contracts covering employes for occupational accident.

In the case of *The Midvale Coal Co. v. Cardox Corp.*, 152 Ohio St., 437, our Supreme Court, in the first branch of the syllabus, held:

“Section 1465-101, General Code, was enacted to prevent competition with the state insurance fund and is not applicable to a contract which does not constitute an agreement which undertakes to indemnify or insure an employer against loss or liability for the payment of compensation to workmen or their dependents.”

In conclusion, therefore, it is my opinion that Section 4123.82, Revised Code, Section 1465-101, G.C., relative to prohibiting the writing of employers' liability insurance insuring those employers amenable to the Workmen's Compensation Act, does not prohibit insurance companies,

otherwise authorized, from writing sickness and accident insurance on the franchise plan, group plan or blanket plan insuring employes for accidents and sickness compensable under the Ohio Workmen's Compensation Law.

Respectfully,

C. WILLIAM O'NEILL

Attorney General