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TITLE GUARANTEE AND TRUST COMPANIES—AUTHORIZED TO WRITE TITLE INSURANCE—WHEN ENGAGED IN BUSINESS IN STATE PRIOR TO AUGUST 6, 1941—SECTION 9510 G. C.—FOREIGN TITLE INSURANCE COMPANY SEEKING ADMISSION TO STATE SHOULD HAVE APPLIED AGAINST IT, RETALIATORY PROVISIONS OF SECTION 658 G. C.

SYLLABUS:

Since title guarantee and trust companies organized and engaged in business in this state prior to August 6, 1941, are authorized under Section 9510, General Code, to write title insurance, a foreign title insurance company seeking admission to this state should have applied against it the retaliatory provision set forth in Section 658, General Code of Ohio.

Columbus, Ohio, February 20, 1945

Hon. Walter Dressel, Superintendent of Insurance
Columbus, Ohio

Dear Sir:

This will acknowledge receipt of your letter which reads as follows:

“A title insurance company organized under the laws of the State of Missouri and domiciled in that State is asking admission to be authorized to do title insurance business in the State of Ohio.

Under the laws of the State of Missouri, before a title insurance company, domiciled in Ohio, could be admitted to do business in Missouri, a deposit of certain securities would have to be made by the company with the insurance supervisory authority in Missouri.

Under the provisions of Section 658 of the General Code of Ohio, the so-called ‘retaliatory law’ should I require a similar deposit of securities from the Missouri company before authorizing it to business in Ohio?

In view of the decision in *State ex rel. v. Insurance Company* 49 Ohio State 440, I feel that I should inform you that neither I

nor my predecessors have issued any license to any Ohio company to write such insurance in this State. Nevertheless, there are operating in Ohio title guarantee companies under the provisions of Sections 9850 et seq. of the General Code of Ohio, not under the supervision of this office.

I will appreciate receiving your opinion on the question."

Section 9510, General Code, as amended effective August 6, 1941, reads in part as follows:

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

5. Insure titles to property in this state against loss by reason of defects, encumbrances or other matters, and insure the correctness of searches for instruments, liens, charges or other matters affecting the title to property within this state. A company organized or admitted to transact the business of insuring titles to property as aforesaid, shall deposit with the superintendent of insurance for the benefit and security of all of 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 of such deposits.

Provided, however, that a title guarantee and trust company organized and now engaged in business in this state under and by virtue of sections 9850 to 9855 of the General Code, both inclusive, and having on deposit with the treasurer of state the sum of \$50,000.00, as provided in section 9851 of the General Code, in addition to its present powers, may, write title insurance without making an additional deposit therefor."

Prior to August 6, 1941, such companies were not permitted to operate in Ohio. See Attorney General's Opinions for 1932, No. 4024.

It is stated in your letter that "neither I nor my predecessors have issued any licenses to any Ohio company to write such insurance in this state." It is further stated in your letter that "there are operating in Ohio title guarantee companies under the provisions of Section 9850 et seq. of the General Code of Ohio, not under the supervision of this office."

Section 9850, General Code, is found in Division 5, Special Corporations, Chapter 2 (Title Guarantee and Trust Companies), and said section provides as follows:

"A title guarantee and trust company may prepare and furnish abstracts and certificates of title to real estate, bonds, mortgages and other securities, and guarantee such titles, the validity and due execution of such securities, and the performance of contracts incident thereto, make loans for itself or as agent or trustee for others, and guarantee the collection of interest and principal of such loans; take charge of and sell, mortgage, rent or otherwise dispose of real estate for others, and perform all the duties of an agent relative to property deeded or otherwise entrusted to it."

It has been held in the opinions of one of the former Attorneys General that such a company is not an insurance company. See Opinions of the Attorney General for 1917, Vol. II, page 1157, from which opinion I wish to quote beginning on page 1158:

"The guaranty of a title is the same thing in legal effect as would be the insurance of it, so far as the benefit to accrue to the guarantee or policyholder is concerned, but as to the company itself a guaranty company is not an insurance company. * * *"

The same situation is true in the case of a guarantee title and trust company. The business in which these companies engage is primarily that of making abstracts of title. As incidental to that business they insure the correctness of their work, or, more correctly speaking, guarantee such correctness. They do not guarantee titles generally or to persons or in instances otherwise than where they have furnished such abstracts, and are not therefore considered to be in insurance business or under the regulations of the insurance department of the State of Ohio. * * *"

This same problem was again before the same Attorney General, as reported in the same volume of his opinions on page 1681, wherein is found the following syllabus:

"Under Section 9850, General Code, a title guarantee and trust company may not do the business of insuring titles generally, but when it gives an abstract or certificate as to a title it may then guarantee such title to be perfect."

The above decisions were given by the Attorney General before Section 9510 was amended in 1941 to provide as previously indicated. It

now definitely appears that title insurance companies may be organized in Ohio or foreign title insurance companies admitted to Ohio and also that those title guarantee and trust companies organized and now engaged in business in this state under and by virtue of Sections 9850 to 9855 of the General Code may write title insurance. We do have Ohio companies, therefore, authorized to write title insurance in Ohio.

Section 658, General Code, the retaliatory statute, reads as follows :

“When by the laws of any other state, district, territory or nation, any taxes, fines, penalties, license fees, deposits of money, securities, or other obligations, or prohibitions are imposed on *insurance companies of this state* doing business in such state, district, territory or nation, or upon their agents therein, the same obligations and prohibitions shall be imposed upon insurance companies of such other state, district or nation doing business in this state and upon their agents.” (Emphasis added.)

It has been held in *State ex rel. v. Insurance Company*, 49 O. S., 440, that :

“To make a case for the application of the retaliatory provisions of section 282, Revised Statutes, against an insurance company of another state, doing business in this state, it must be made to appear that an Ohio company has been formed in this state to do substantially the same kind and lines of insurance; and would, by the laws of that state, be precluded from transacting the same therein, or be subjected to burdens not imposed by the laws of this state on such foreign company.”

At the time of the above decision, Revised Statute 282 was in force and effect and so far as material to your question was the same as the present retaliatory Section 658, General Code. Assuming the necessity for an Ohio company formed in this state to do substantially the same kind of insurance as the Missouri company seeking admission to Ohio, I think that requirement has been met by reason of the fact that the title guarantee and trust companies organized in Ohio and now doing business here are now authorized to write title insurance and could apply for admission to the state of Missouri to write title insurance.

I am therefore of the opinion that since there exists in Ohio title guarantee and trust companies authorized to insure titles under the statutes

of Ohio, a foreign title insurance company seeking admission to this state should have applied against it the retaliatory provisions set forth in Section 658 of the General Code of Ohio.

Respectfully,

HUGH S. JENKINS,

Attorney General