

2. Township trustees are limited in the granting of partial and temporary relief to the poor, to persons who reside in the territory within the township which lies outside the corporate limits of cities."

I am enclosing herewith copies of these two opinions. If, after reading these opinions, you have further questions that you desire to present, I will be glad to answer the same.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*

1562.

INSURANCE—UNLICENSED FOREIGN ACCIDENT COMPANY—NO PENALTY FOR ADVERTISING POLICIES IN OHIO NEWSPAPER.

*SYLLABUS:*

*The penal provisions of Section 654-11, General Code, making it unlawful for any unauthorized life insurance company, association or organization to offer for sale by advertisement, a policy of life insurance within this state, does not extend to an accident corporation, association or organization. It is therefore not unlawful for an unlicensed foreign accident association to advertise in an Ohio newspaper the terms and conditions of its policies for accident insurance, there being no statute similar in its terms to Section 654-11, supra, relating to accident insurance companies and policies.*

COLUMBUS, OHIO, January 11, 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 a newspaper clipping in which is displayed the advertisement of the National Protective Insurance Association of Kansas City, Mo. We respectfully ask your opinion regarding this advertisement.

The insurance company mentioned is without license in Ohio and we desire to know whether you consider that this advertisement, on the part of the unauthorized insurer, is an unlawful solicitation of insurance."

The newspaper clipping accompanying your letter, and to which you refer, was from a newspaper published and circulated in Toledo, Ohio, and is the words and figures following, to-wit:

"ONE CENT A DAY BRINGS \$100 A MONTH

Thousands Taking Advantage of Liberal Insurance Offer. Policy Sent Free for Inspection.

Accident insurance at a cost of one cent a day is being featured in a policy issued by the National Protective Insurance Association.

The benefits are \$100 a month for 12 months—\$1,200 to \$1,800 at death. The premium is only \$3.65 a year or exactly one cent a day. Of the thousands of applications received many have come from the agent and executives of other insurance companies. The offer is limited to 100,000 policies.

Women, as well as men, are eligible for this remarkable policy. It also applies to children who are 10 years of age or over. No medical examination is required.

#### SEND NO MONEY

To secure 10 days' free inspection of policy send no money. Mail to the National Protective Insurance Association, 1176 Scarritt Building, Kansas City, Mo., the following information: Name, age, address, beneficiary's name and relationship.

After reading the policy you may either return it without obligation or send \$3.65 to put policy in force.—Advertisement."

You state in your letter that the company in question is without license in Ohio. The company not being licensed would, therefore, not be amenable to the provision of our insurance laws authorizing the cancellation of its license upon a non-compliance therewith.

It has been repeatedly held that the state has the right to impose such conditions and limitations upon the privileges given to a company doing business within its borders as it sees fit. Subject to certain limitations imposed by the Federal Constitution, the power of the state to regulate business to which a public interest attaches, when transacted within its borders by a foreign corporation is absolute and sovereign.

With the exception of Section 654-11, General Code, which became effective July 11, 1925, and provides as follows:

"It shall be unlawful for any person or the officer, manager, owner, agent or representative, of any corporation, association, partnership or firm to offer within this state in person or by advertisement, poster, letter, circular, or otherwise, to sell, procure, or obtain policies, agreements, or applications for life insurance *for or on behalf of any life insurance corporation, association or organization not lawfully authorized to transact business within this state*, or on behalf of any spurious, fictitious, non-existing, dissolved, inactive, liquidated or liquidating, or bankrupt life insurance corporation, association or organization." (Italics the writer's.)

I find no statute making it a crime to offer by advertisement to sell an insurance policy; and it will be observed that the provisions of the foregoing section are limited to policies of life insurance issued by *life insurance corporations, associations or organizations*.

Section 654-12, General Code, provides a penalty for the violation of the above mentioned section of a fine of not less than twenty-five dollars nor more than five hundred dollars or imprisonment for not less than six months or both.

It is too well settled to require the citation of authorities that penal statutes must be strictly construed and if the acts complained of do not come clearly within the prohibition of the statute, its scope will not be extended to include other offenses than those which are clearly described and provided for. If there is a fair doubt as to whether the act in question is embraced within a statute of this nature, that doubt is to be resolved in favor of the defendant.

It is generally recognized that a life insurance policy is something distinct and apart from an accident insurance policy although accident insurance has been said to be "akin to life insurance." 1 C. J. 404.

37 C. J. 359 defines a life insurance contract as one by which the

"insurer for a certain sum of money or premium proportioned to the age, health, and other circumstances of the person, whose life is insured, engages that, upon the death of such person, within the period limited in the policy, insurer shall pay the sum specified in the policy, according to the terms thereof, to the person in whose favor the policy is granted."

In defining accident insurance, in 1 C. J. 407, it is said that:

"Accident insurance is a contract whereby the insurer agrees to pay, in case the insured receives any personal injury through accident, a weekly amount for the period of disability resulting from such accident, or a fixed amount in case of certain specified injuries, or of injuries resulting in the death of the insured."

A concise statement of the distinction between the two kinds of insurance is contained in the case of *Jones vs. Prudential Insurance Co.*, 208 Mo. A. 679, 687; 236 S. W. 429, in which it was said:

"In an ordinary life policy the insurer contracts to pay a certain sum of money when satisfactory proof is made that the insured has died. Death is the contingency which must happen that will create liability under the contract. Liability attaches under such a policy when death occurs and the policy is in good standing irrespective of the cause of the death, whether it be brought about by natural causes, by intention, or by accident, and in the broad sense any life insurance policy is accident insurance if perchance the death is occasioned by reason of an accident. On the other hand the primary contingency insured against in an accident insurance policy is that no accident will befall the insured under the terms of the policy and in such time as the policy is kept alive. To be sure, a policy of accident insurance is life insurance in the broad sense, in that the insurer contracts to pay a certain sum of money when satisfactory proof is made that the insured has died as a result of an accident."

Applying the rule of strict construction in the instant case, it is my opinion that the advertisement under consideration does not come within the prohibition of Section 614-11 above quoted, for the reason that such advertisement is in substance and effect an offer by advertisement to sell a policy for accident insurance for and on behalf of an accident insurance association or organization and not an offer to sell a policy for life insurance for or on behalf of a life insurance association or organization.

Specifically answering your question, therefore, it is my opinion that the publication of the advertisement set out herein as taken from the Toledo newspaper is not an unlawful solicitation of insurance under the insurance laws of Ohio.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*