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INSURANCE COMPANIES OTHER THAN LIFE, BOTH STOCK AND MUTUAL— SECTION 9607-2 G. C. MEASURE OF AUTHORITY WITH RESPECT TO KINDS OF INSURANCE THEY MIGHT EFFECT — AMENDED SECTION 9607-2 G. C IN 1917 REPEALED BY IMPLICATION SECTIONS 9510, 9511 G. C. AS TO CONFLICT WITH SECTION 9607-2 G. C.

ACT OF 1941 WHICH AMENDED SECTIONS 9510, 9511 G. C. DID NOT MAKE SECTION 9510 G. C. THE MEASURE OF POWERS OF STOCK INSURANCE COMPANIES, OTHER THAN LIFE AND TITLE INSURANCE COMPANIES TO EFFECT INSURANCE — POWERS GOVERNED BY SECTION 9607-2 G. C.

## SYLLABUS:

The amendment to Section 9607-2, General Code, in 1917 repealed by implication the provisions of Sections 9510 and 9511, General Code, in so far as they were in conflict with Section 9607-2, General Code, as so amended, and thereafter the provisions of said Section 9607-2, General Code, were the measure of the authority of insurance companies other than life, both stock and mutual, with respect to the kinds of insurance they might effect. The Act of 1941, which amended Section 9510, General Code, by adding thereto paragraph numbered 5 and the paragraph immediately following thereafter, and which also amended Section 9511, General Code, by inserting the word "five" therein in place of the word "four," but which left said sections otherwise unaffected, did not have the effect of making the provisions of Section 9510, General Code, the measure of the powers of stock insurance companies, other than life and title insurance companies, to effect insurance, and the powers of such insurance companies, other than life and title, to effect insurance continue to be governed by Section 9607-2, General Code.

Columbus, Ohio, June 9, 1944

Hon. Edward J. Hummel, Secretary of State  
Columbus, Ohio

Dear Sir:

You have submitted for my approval certificate of amendment to articles of incorporation of Ohio Farmers Indemnity Company. This has necessitated a consideration of the provisions of several sections of the General Code not only in their present form but as they previously existed, and since the considerations involved in a solution of the question are rather complex, I have decided to render an opinion setting forth my reasons for the conclusion which I have reached.

Ohio Farmers Indemnity Company was organized in 1929 under authority of Chapter 1, Subdivision II, Division III, Title IX, Part Second, General Code, which provides for the incorporation and organization of stock insurance companies other than life. This corporation never has been and does not now seek to be authorized to engage in the fire insurance business.

It is proposed by the amendment to amend the purpose clause of the articles so that they read as follows:

"The purpose or purposes for which it is formed are: To make insurance against loss, expense and liability resulting from

the ownership, maintenance or use of any automobile or other vehicle, provided no policies shall be issued against the hazard of fire alone; against loss, expense or liability by risk of bodily injury or death by accident, disability, sickness or disease suffered by others for which the insured may be liable or have assumed liability including workmen's compensation; against bodily injury or death by accident, and disability by sickness; against loss or liability to persons or property resulting from explosions or accidents to boilers, containers, pipes, engines, fly wheels, elevators and machinery in connection therewith and against loss of use and occupancy caused thereby and to make inspections and issue certificates of inspection thereon; against loss from interruption of trade or business which may be the result of any accident or casualty; against loss or damage resulting from cause other than fire or lightning; against loss resulting from burglary, robbery, larceny, embezzlement, conversion and theft; and to guarantee the fidelity of persons holding places of public or private trust who are required to or in their trust capacity do receive, hold, control, disburse public or private moneys or property; to guarantee the performance of contracts other than insurance policies and to execute and guarantee bonds and undertakings required or permitted in all actions or proceedings, or by law allowed."

At the time this corporation was organized, Sections 9510 and 9511, General Code, respectively provided:

Section 9510:

"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.

2. Make insurance on the health of individuals and against personal injury, disablement or death, resulting from traveling or general accidents by land and water; make insurance against loss or damage resulting from accident to property, from cause other than fire or lightning; guarantee the fidelity of persons holding places of public or private trust, who are required to, or, in their trust capacity do receive, hold, control, disburse public or private moneys or property; guarantee the performance of contracts other than insurance policies, and execute and guarantee bonds and undertakings required or permitted in all actions or proceedings, or by law allowed; make insurance to indemnify employers against loss or damage for personal injury or death resulting from accidents to employes or

persons other than employes and to indemnify persons and corporations other than employers against loss or damage for personal injury or death resulting from accidents to other persons or corporations. But a company of another state, territory, district or country admitted to transact the business of indemnifying employers and others, in addition to any other deposit required by other laws of this state, shall deposit with the superintendent of insurance for the benefit and security of all 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 on such deposits.

3. Make insurance on the lives of horses, cattle or other live stock against loss by death caused by accident, disease, fire or lightning, and against loss by theft and damage by accident. But such companies shall have a capital of one hundred thousand dollars, with at least twenty-five per cent of the capital stock paid up.

4. Receive on deposit and insure the safekeeping of books, papers, moneys, stocks, bonds and all kinds of personal property; lend money on bottomry or respondentia, and cause itself to be insured against any loss or risk it has incurred in the course of its business, and upon the interest which it has in any property by means of any loan which it has made on mortgage, bottomry, or respondentia, and generally to do all other things proper to promote these objects."

Section 9511:

"No company shall be organized to issue policies of insurance for more than one of the above four mentioned purposes, and no company organized for either one of such purposes shall issue policies of insurance of any other. But companies organized under subdivision two of the preceding section, which do the business of guaranteeing the fidelity of persons, holding places of public or private trust, who are required to or in their trust capacity do receive, hold, control, disburse public or private property, and guaranteeing the performance of contracts other than insurance policies, and executing and guaranteeing bonds and undertakings required or permitted in actions, proceedings or by law allowed, may indemnify bank depositors against loss by reason of bank suspension and failure."

These two section had existed in substantially that form ever since 1904.

In 1917, the General Assembly amended Section 9607-2, General Code, so that it reads 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 articles 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 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. 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 subsection, including also transportation, collision, liability for damage to property resulting from owning, maintaining or using automobiles and including burglary and theft of automobiles and accessories, but not including loss or damage by risk of bodily injury to the person. To insure against loss resulting to the members of any mutual or stock company or association of any kind whatsoever from assessments levied against all members thereof in pursuance of the conditions of any policy of insurance, contract, statute or law.

2. Against loss, expense or liability by risk of bodily injury or death by accident, disability, sickness or disease suffered by others for which the insured may be liable or have assumed liability not including workmen's compensation.

3. Against bodily injury or death by accident, and disability by sickness.

4. Against loss, expense and liability resulting from the ownership, maintenance or use of any automobile or other vehicle, provided no policies shall be issued under this subsection against the hazard of fire alone.

5. Against loss or liability to persons or property resulting from explosions or accidents to boilers, containers, pipes, engines, flywheels, elevators and machinery in connection therewith and against loss of use and occupancy caused thereby and to make inspections and issue certificates of inspection thereon.

6. Against loss from interruption of trade or business which may be the result of any accident or casualty.

7. Against loss or damage by any hazard upon any risk not provided for in this section, which is not prohibited by statute or at common law from being the subject of insurance, excepting life insurance."

In Opinion No. 539 of the Opinions of the Attorney General for 1919, found in Vol. I, at page 925, the then Attorney General, after extremely careful consideration and elaborate discussion, reached the conclusion that Section 9510, General Code, as it then existed, had been partially repealed by implication by the 1917 amendment to Section 9607-2, General Code, and that insurance companies other than life, both stock and mutual, derived their powers from and were limited in their operations by the provisions of Section 9607-2, General Code, and not Section 9510, General Code. This conclusion I regard as sound, and I cited said opinion in my Opinion No. 2863, found at page 917 in Vol. II of the Opinions of the Attorney General for 1940.

In 1941, Section 9510, General Code, was amended by adding at the end thereof the following language:

"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."

By the same act, Section 9511, General Code, was amended by changing the word "four" in the first sentence thereof to the word "five."

The proposed amendment to the articles of incorporation empowers the company to effect certain kinds of insurance which are not authorized by Section 9510, General Code, and it is therefore necessary to determine whether the amendment and reenactment in 1941 of Sections 9510 and 9511, General Code, had the effect of making Section 9607-2, General Code, inapplicable thereafter to stock companies. In other words, do we now look to Section 9510, General Code, or Section 9607-2, General Code, to determine what powers a stock insurance company, other than life, may be authorized to exercise? If the provisions of Section 9510, General Code, are now controlling in this respect, the proposed amendment to the articles must be rejected because it purports to authorize the corporation to exercise powers not granted by Section 9510, General Code. On the other hand, if Section 9607-2, General Code, governs, most of the powers set forth in the purpose clause are clearly authorized.

From 1917 until 1941, Section 9510, General Code, was not regarded as measuring the powers of stock insurance companies, other than life, in respect to the kinds of insurance they might effect, since, as determined by the Attorney General in 1919, this section had been partially repealed by implication by the amendment to Section 9607-2, General Code. In Ohio, it is provided, inter alia, by Section 16 of Article II of the Constitution that "no law shall be revived, or amended unless the new act contains the entire act revived, or the section or sections amended, and the section or sections so amended shall be repealed." Sections 9510 and 9511, General Code, were amended in 1941 in conformity with this constitutional provision, that is, the old sections were repealed and the new ones enacted. As has been noted heretofore, the only change made in Section 9510, General Code, by such amendment was to add the paragraph numbered 5 and the paragraph following immediately thereafter. The only change made in Section 9511, General Code, was the insertion of the word "five" in place of the word "four" in the first sentence thereof. Was this reenactment of

the old matter in Section 9510, General Code, in effect a rebirth of such matter so as to make it controlling in spite of the language of Section 9607-2, General Code? The question is not without difficulty, and I have been unable to find any decisions of courts of this state which squarely decide it.

However, in *State, ex rel. Durr v. Spiegel*, 91 O.S., 13, 19, 20, the following quotation from Section 237 of 1 Lewis' *Sutherland on Statutory Construction* (2d Ed.) was made with approval:

"The constitutional provision requiring amendments to be made by setting out the whole section as amended was not intended to make any different rule as to the effect of such amendments. So far as the section is changed it must receive a new operation, but so far as it is not changed it would be dangerous to hold that the mere nominal reenactment should have the effect of disturbing the whole body of statutes *in pari materia* which had been passed since the first enactment. There must be something in the nature of the new legislation to show such an intent with reasonable clearness."

In 59 C. J., 926, Section 528, it is said:

"In so far as a later law is merely a reenactment of an earlier one, it will not repeal an intermediate act which qualifies or limits the first one, but such intermediate act will be deemed to remain in force, and to qualify or modify the new act in the same manner as it did the first."

In 1 Lewis' *Sutherland on Statutory Construction* (2d Ed.), 524, Section 273, the following statement of the rule applicable to this question is made:

"'A later law which is merely a reenactment of a former does not repeal an intermediate act which has qualified or limited the first one, but such intermediate act will be deemed to remain in force, and to qualify or modify the new act in the same manner as it did the first.'

\* \* \* Where a law is amended and re-enacted as amended, any intermediate law inconsistent with the new matter introduced, or change made by the amendment, will be repealed."

In addition to the authorities cited in *Corpus Juris* and Lewis' *Sutherland on Statutory Construction*, the following cases support the



rule stated:

Klemme v. Drainage District, 380 Ill., 221, 43 N. E. (2d), 966

In re Ferguson's Estate, 325 Pa., 34, 189 Atl., 289

In re Metcalf's Estate, 319 Pa. 28, 179 Atl., 587

George v. City of Asheville, (C. C. A. 4), 80 Fed. (2d), 50

It follows, therefore, that the simultaneous repeal and reenactment of the old matter contained in Sections 9510 and 9511, General Code, did not eliminate the modifying effect which Section 9607-2, General Code, had upon such matter in those two sections. It follows that Section 9607-2, General Code, is still the measure of the kinds of insurance contracts which insurance companies other than life, except title insurance companies, may issue, but, as to title insurance companies, the new matter contained in Section 9510, General Code, and other sections in the Act of 1941 which amended such section, is applicable and controlling.

The proposed amendment purports to authorize the corporation in question to engage in several of the kinds of insurance specifically authorized by Section 9607-2, General Code, and in some instances uses almost the identical language of such section. In other places in the proposed amendment, language is used which is apparently taken from Section 9510, General Code. As I have heretofore stated, I believe that Section 9510, General Code, is not the measure of the power of this company with respect to the kinds of insurance which it may effect, and such section is therefore no authority for the inclusion in the amendment of such language. However, the last paragraph of Section 9607-2, General Code, is broad enough in its scope to permit the inclusion of such language.

The proposed amendment also purports to authorize this corporation to issue contracts of insurance "against loss, expense or liability by risk of bodily injury or death by accident, disability, sickness or disease suffered by others for which the insured may be liable or have assumed liability *including workmen's compensation.*" You will have noted that the language of paragraph 2 of Section 9607-2, General Code, is substantially the same as the language which I have just quoted from the proposed amendment, except that the word "not" appears in the statute immediately before the words "including workmen's compensation," whereas, such word is omitted from the amendment to the articles.

However, Section 1465-101, General Code, provides in part:

“\* \* \* Provided that any corporation organized under the laws of this state to transact liability insurance as defined in paragraph 2 of section 9607-2 or as defined in paragraph 2 of section 9510 of the General Code may by amendment of its articles of incorporation or by original articles of incorporation, provide therein for the authority and purpose to make insurance in states, territories, districts and countries, other than the state of Ohio indemnifying employers against loss or liability for payment of compensation to workmen and employes and their dependents for death, injury or occupational disease occasioned in the course of the employment and to insure and indemnify employers against loss, expense and liability by risk of bodily injury or death by accident, disability, sickness or disease suffered by workmen and employes for which the employer may be liable or has assumed liability.”

This language authorizes Ohio corporations of this type to provide in their articles that they may do the business of workmen's compensation insurance in states other than Ohio. The proposed amendment to the articles, however, does not limit this activity to states other than Ohio, and for this reason, and for this reason only, I am unable to approve the amendment to the articles. In all other respects it appears to be not inconsistent with the Constitution or laws of the United States or of this state.

I am therefore returning the proposed certificate of amendment to you without my approval.

Respectfully,

THOMAS J. HERBERT

Attorney General