

3437.

INSURANCE—DULY CERTIFIED AGENT OF DOMESTIC CASUALTY COMPANY—MAY SOLICIT WITHOUT BEING LICENSED BY SUPERINTENDENT OF INSURANCE.

SYLLABUS:

1. Any person duly certified by a domestic casualty insurance company as its agent, to the superintendent of insurance of Ohio as required by Section 654-1, General Code, is authorized to solicit insurance for such company in Ohio without further license or evidence of authority.

2. Section 644, General Code, confers no authority upon the superintendent of insurance in reference to the licensing of agents for domestic casualty companies.

COLUMBUS, OHIO, July 16, 1931.

HON. CHARLES T. WARNER, *Superintendent of Insurance, Columbus, Ohio.*

DEAR SIR:—This acknowledges receipt of your recent request for my opinion, reading as follows:

“The Department of Insurance would be pleased to have your construction and interpretation of Section 654-1 and Section 644 of the General Code of Ohio, in the following particulars, to-wit:

1. Does the Superintendent of Insurance have jurisdiction to license agents for Domestic Casualty Companies under Section 654-1, or is his authority limited only to revoking certificates of agents for causes enumerated in said section?

2. What application, if any, has Section 644 to the question of licensing agents for Domestic Casualty Companies?”

Section 644 of the General Code of Ohio (107 O. L. 699) provides:

“No person shall procure, receive, or forward applications for insurance unless a resident of this state and duly licensed by the superintendent of insurance. Upon written notice by an insurance company authorized to transact business in this state of its appointment of a person to act as its agent the superintendent of insurance shall, if he is satisfied that the appointee is a suitable person, and intends to hold himself out in good faith as an insurance agent, issue to him a license which shall state, in substance, that the company is authorized to do business in this state and that the person named therein is the constituted agent of the company in this state for the transaction of such business as it is authorized to transact therein. Such notice shall be upon a form furnished by the superintendent of insurance and shall be accompanied by a statement under oath by the appointee which shall give his name, age, residence, present occupation, his occupation for the five years next preceding the date of the notice, and such other information, if any, as the superintendent of insurance may require, upon a blank furnished by him. The superintendent of insurance after the granting of such license, for cause shown, and after a hearing may determine any person so appointed, or any person heretofore appointed as agent, to be unsuitable to act as such agent, and shall thereupon revoke such license and notify both the company and

the agent of such revocation. Unless revoked by the superintendent of insurance, or unless the company by written notice to the superintendent cancels the agent's authority to act for it, such license and any other license issued to an agent or any renewal thereof shall expire on the last day of February next after its issue. But any license issued and in force when this act takes effect or thereafter issued, may, in the discretion of the superintendent, be renewed for a succeeding year or years by a renewal certificate without the superintendent's requiring the detailed information required by this act (G. C. Secs. 644 to 644-5). A foreign company shall pay a fee of two dollars for every such license and for each renewal thereof. While such license remains in force, a foreign company shall be bound by the acts of the person named therein within his apparent authority as its acknowledged agent."

Section 654-1, General Code (111 O. L. 126), provides:

"Every insurance company organized under the laws of this state and transacting the business of casualty insurance, shall certify under the hand of one of its principal officers or of its duly authorized officer or agent, to the superintendent of insurance of this state, the names and addresses of the persons authorized by it, as its agents, to solicit or place insurance. The authority of such agent shall continue until cancelled by the company by like certificate filed with the superintendent of insurance, unless the authority of the agent shall be revoked by the superintendent of insurance.

The superintendent of insurance shall record the names and addresses so certified in such manner that duly authorized agents and their respective companies may conveniently be inspected.

No person shall act as agent for such company in soliciting or placing insurance, unless the unrevoked certificate of his authority is so filed with the superintendent of insurance.

Upon conviction of any such insurance agent, for the violation of any insurance law of this state, the superintendent of insurance may revoke the authority of such agent for not more than one year and cancel his name on the records of the superintendent of insurance, and notify the agent and his company or companies of such revocation; and thereafter, such agent shall not act as an insurance agent or transact any insurance business for or on behalf of any insurance company until new certificate or certificates of his authority, by the company or companies thereafter appointing him, shall be duly filed with and approved by the superintendent of insurance.

No other license or evidence of authority of such insurance agent shall be required, and there shall be no fee or other expense in connection with such certificates of authority."

It is clear from an examination of the provisions of the respective sections of the General Code hereinabove quoted that Section 644, General Code, applies to the agents of insurance companies generally, i. e. agents of foreign or alien casualty companies and to domestic, foreign and alien fire insurance companies. Section 654-1, General Code, by its terms is confined in its application to the agents of domestic casualty insurance companies. I have carefully read the briefs and memoranda submitted to you by counsel representing interested parties, but am unable to agree with the contentions made therein that there is such a

conflict between the provisions of these two sections as to warrant the conclusion that there is a repeal by implication of either. It was the obvious intent of the legislature in enacting and later amending Section 654-1, General Code, to except from the provisions of Section 644, General Code, agents of domestic casualty insurance companies. As said in the case of *State ex rel. Crawford v. McGregor*, 44 O. S. 628, at p. 631:

"This is in accordance with the established rule of construction, where the general provisions of a statute are varied by the special provisions of the same or another statute relative to the subject. The courts presume an intention in the legislature to be consistent in the making of laws; and also to have had a purpose in each enactment and all its provisions. Special circumstances often create a necessity for appropriate special provisions, differing from the general rule upon the same subject; and so, where such provisions are found in a statute, different from the general provisions that would apply to the case, the courts must assume that the special provisions were made for adequate reasons, and give them effect by construing them as exceptions to the general rule contained in the general provisions of the statute. In this way, without disregarding any of its provisions, effect is given to each and all the provisions of a statute. *Potter's Dwarris*, 272; *Sedgwick Stat. Law*, 423."

I am therefore of the opinion in answer to your first question, that any person duly certified by a domestic casualty insurance company as its agent, to the superintendent of insurance of Ohio as required by Section 654-1, General Code, is authorized to solicit insurance for such company in Ohio without further license or evidence of authority.

Since Section 654-1, General Code, defines the agents of domestic casualty insurance companies as excepted from the provisions of section 644, General Code, I am of the opinion in answer to your second question, that said Section 644, General Code, confers no authority upon the superintendent of insurance in reference to the licensing of agents for domestic casualty companies.

Respectfully,

GILBERT BETTMAN,
Attorney General.

3438.

SECURITIES—SHARES OF COMMON LAW TRUST—SHOULD BE
QUALIFIED IN ACCORDANCE WITH BLUE SKY LAW.

SYLLABUS:

Under the Ohio Securities Act, certificates of beneficial interest or shares of a common law trust should be qualified in accordance with the provisions of such act before being sold in Ohio by a licensed dealer in securities.

COLUMBUS, OHIO, JULY 17, 1931.

HON. THEO. H. TANGEMAN, *Director of Commerce, Columbus, Ohio.*

DEAR SIR:—Your letter of recent date is as follows:

"An application for qualification for sale under the Ohio Securities