

1940

INSURANCE COMPANY, FOREIGN—MADE A DEPOSIT OF \$50,000.00 IN THIS STATE IN 1902—REVISED STATUTES, SECTION 3641b—SUPERINTENDENT OF INSURANCE—AUTHORIZED BY SECTION 9510-7 G. C. TO ALLOW WITHDRAWAL OF DEPOSIT—ALL CONDITIONS IMPOSED BY STATUTE MUST BE MET—ALL OBLIGATIONS AND LIABILITIES MUST BE PAID OR EXTINGUISHED—SECTION 9510-10 G. C.

SYLLABUS:

Where a foreign insurance company making a deposit of \$50,000 in this state in 1902 pursuant to Section 3641b, Revised Statutes, desires to withdraw said deposit, the Superintendent of Insurance is authorized by Section 9510-7, General Code, to allow such withdrawal, assuming all other conditions imposed by that section to have been met; and, provided the Superintendent of Insurance is satisfied that all the obligations and liabilities which the deposit was made to secure have been paid or extinguished as provided for in Section 9510-10, General Code.

Columbus, Ohio, October 9, 1952

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

Dear Sir:

Your request for my opinion reads as follows:

"A foreign insurance company, licensed to do business in this state, is applying to this Division for the release of a deposit made with this Division on June 24, 1902, in compliance with Section 2641b, Revised Statutes. Release of the deposit is sought under the authority of Section 9510-7, Ohio General Code, which under certain conditions, authorizes the withdrawal of deposits made in accordance with paragraphs 2 and 5 of Section 9510.

"My question is whether, assuming all other conditions imposed by Section 9510-7 to have been met, said section authorizes the withdrawal of a deposit made pursuant to Section 3641b, Revised Statutes."

Section 3641b, Revised Statutes, read, in part, and so far as pertinent at the time (1902) of the deposit referred to in your letter, as follows:

"A company heretofore organized or that may hereafter be organized to do business under clause two of section 3641, chapter 11, title 2, of the Revised Statutes of Ohio, may make insurance to indemnify employers against loss or damage for personal injury or death resulting from accidents to employes, or persons other than employes, subject, however, to the restrictions in said section provided; and provided, that any company incorporated by or organized under the laws of any other state, * * * that is now doing business in this state by virtue of original section three thousand six hundred and forty-one b, shall, on or before the first day of April after the passage of this act, and any company incorporated by or organized under the laws of any other state or government that may desire to do business in this state, shall, before being authorized to transact such business, deposit with the superintendent of insurance, for the benefit and security of the policy-holders residing in this state, a sum not less than fifty thousand dollars, in bonds of the United States or the state of Ohio, or of any city, county, township or other municipality in the state of Ohio * * *, the securities so deposited may be exchanged from time to time for other like securities; so long as the company so depositing continues solvent

and complies with the laws of this state it shall be permitted by the superintendent to collect the interest or dividends on such deposits. Said deposit shall be held by the superintendent of insurance for the benefit, security and protection of the policy-holders of the company residing within this state; and it shall be stipulated by the company that such deposit is made, and such sum set aside from the general assets for that purpose, the same to be held until all claims of policy-holders within this state are adjusted." (91 O. L. 352, passed May 19, 1894.)

This section then, required a deposit of \$50,000 to be made by certain foreign insurance companies for the benefit of Ohio policy-holders.

Section 3641b, Revised Statutes, as quoted above was repealed April 25, 1904, 97 O. L. 407, and a new section, namely, Section 3641, Revised Statutes, was enacted, which section contained the principal provisions found in former Section 3641b. As enacted in 1904, Section 3641, Revised Statutes, read, in part, as follows:

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

"2. * * * make insurance to indemnify employers against loss or damage for personal injury or death resulting from accidents to employes or persons other than employes * * *, provided that any company of another state, territory, district or country admitted to transact said last named business of indemnifying employers * * * shall, in addition to any other deposit required by other laws of this state, deposit with the superintendent of insurance *for the benefit of all its policyholders* fifty thousand dollars in bonds of the United States or of the state of Ohio, or 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, and so long as the company so depositing continues solvent and complies with the laws of this state it shall be permitted by the superintendent to collect the interest on such deposits." (Emphasis added.)

Thus the substance of former Section 3641b, Revised Statutes, was placed in Section 3641, paragraph 2, Revised Statutes. It will be noted, however, that Section 3641, paragraph 2 above states that a deposit is "for the benefit of *all its policy-holders*," whereas Section 3641b stated that the deposit "shall be held * * * for the benefit, security and protection of the policy-holders of the company residing within this state; * * *". This *appears* to be a fundamental change; yet it is more apparent than real,

for in the case of *State, ex rel. Turner v. Union Casualty Insurance Co.*, 8 Ohio App., 285, the Ohio court, in construing Section 9510, paragraph 2, General Code, (the successor statute to Section 3641, paragraph 2, Revised Statutes) held that such deposit is required to be held for the primary benefit of *Ohio* policy-holders, even though the statute reads: "for the benefit and security of all its policy-holders."

With the enactment of the General Code, effective February 15, 1910, Section 3641, Revised Statutes, became Section 9510, General Code. The portion of Section 9510, paragraph 2, General Code, material to this opinion reads as follows:

"* * * 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 * * *."

This is substantially the same wording found in Section 3641, paragraph 2, Revised Statutes. That was the statutory picture at the time Section 9510-7, General Code, referred to in your request, was enacted in 1923, providing for certain foreign insurance companies depositing \$100,000 in its own state in lieu of the \$50,000 deposit in Ohio.

That section reads as follows:

"An insurance company which is required by the provisions of paragraph two of Section 9510, General Code, to deposit fifty thousand dollars of bonds with the superintendent of insurance may, in lieu of such deposit, make a deposit of one hundred thousand dollars, in securities in which the company may be permitted to invest its assets by the laws of the state in which it is incorporated, with the superintendent of insurance or other officer of another state designated or permitted by the laws of such state to receive such deposit, for the benefit and security of all its policyholders. When the superintendent of insurance of this state is satisfied by the certificate of such superintendent of insurance or other officer of such other state that such deposit has been made as provided herein, he shall accept such certificate in lieu of the deposit required of such company by paragraph two of Section 9510, General Code, and such company shall not then be required to maintain the deposit in this state provided for in said paragraph two of Section 9510."

The purpose of the above section is, as evidenced by the title of the Act (110 O. L. 3), "To provide that an insurance company required by Section 9510, General Code, to deposit \$50,000 of bonds in this state, may, in lieu thereof, deposit \$100,000 in its own state * * *." It will be noted that there is no reference to Section 3641b, Revised Statutes, any where in Section 9510-7, General Code.

The question as to whether or not Section 9510-7, General Code, applies to insurance companies doing business in Ohio prior to the effective date of said section's enactment was determined by our Supreme Court in the case of *Continental Casualty Co. v. Safford*, 117 Ohio St., 412. In this case, the Superintendent of Insurance contended that the above section was not effective to relieve companies doing business in this state at the time the law became effective of the obligation to maintain a deposit in Ohio. The court in this case at page 418 said:

"The newly enacted statutes (Sec. 9510-7 to 9510-10, inclusive) apply to companies which hereafter may make such deposits *and* to companies now maintaining such deposits made in the state of Ohio prior to the enactment of March 23, 1923."
(Emphasis added.)

Though the court referred to deposits made pursuant to Section 9510, General Code on the books since 1910, the foregoing portion of this opinion has demonstrated that the Ohio Supreme Court's decision applies equally to deposits made prior to 1910 pursuant to Section 3641b, Revised Statutes, for the reason that in 1904 the substance of Section 3641b, Revised Statutes, was placed in Section 3641, paragraph 2, Revised Statutes, which in turn, upon enactment of the General Code in 1910, became Section 9510, paragraph 2, General Code.

The prevailing view in Ohio is that where a statute is repealed and all or some of its provisions are at the same time re-enacted, the re-enactment neutralizes the repeal, and the provisions of the repealed act, which are thus re-enacted, continue in force without interruption. *Re Allen*, 91 Ohio St., 315; *Re Hesse*, 93 Ohio St., 230; *State, ex rel. Taylor v. Cowen*, 96 Ohio St., 277; *State, ex rel. City Loan & Savings Co., v. Moore*, 124 Ohio St., 256. The part which remains unchanged is to be considered as having continued the law from the time of its original enactment, and the new or changed portion to have become the law only

at, and subsequent to, the passage of the amendment. Re Allen, 91 Ohio St., 315; Mendelson, ex rel. Cleveland v. Miller, 11 O. N. P. (N.S.) 586.

By the codification act, practically all of the sections of the Revised Statutes theretofore existing were repealed, and in the same act nearly all of them were re-enacted, with certain slight modifications, under changed classifications and with different numbering. State v. Habig, 106 Ohio St., 151.

Specifically answering your question, I am of the opinion that where a foreign insurance company making a deposit of \$50,000 in this state in 1902, pursuant to Section 3641b, Revised Statutes, desires to withdraw this deposit, the Superintendent of Insurance is authorized by Section 9510-7, General Code, to allow such withdrawal, assuming all other conditions imposed by Section 9510-7, General Code, to have been met. Of course, the Superintendent of Insurance must be satisfied that all the obligations and liabilities which the deposit was made to secure have been paid or extinguished as provided for in Section 9510-10, General Code.

Respectfully,

C. WILLIAM O'NEILL

Attorney General