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1. INSURANCE—CERTIFICATE OF DEPOSIT OF PROPER OFFICER OF FOREIGN STATE FILED BY FOREIGN INSURANCE COMPANY WITH SUPERINTENDENT OF INSURANCE—DEPOSIT \$100,000.00 IN SECURITIES—FACE OF CERTIFICATE STATES SECURITIES ARE HELD FOR PROTECTION OF “LIABILITIES” OF COMPANY WHEN LAW OF FOREIGN STATE PROVIDES DEPOSITED SECURITIES ARE HELD “FOR THE PROTECTION OF ALL POLICYHOLDERS OF THE COMPANY”—COMPLIANCE WITH SECTION 9510-7 G. C.
2. CERTIFICATE OF DEPOSIT FROM PROPER OFFICER OF FOREIGN STATE—DEPOSITED AS OUTLINED—ACCEPTED IN LAW IF NOT IN FACT BY SUPERINTENDENT OF INSURANCE—PURPOSE OF SECTION 9510-7 G. C. COMPLIED WITH EVEN THOUGH NO EVIDENCE THAT SUPERINTENDENT ACCEPTED CERTIFICATE WHEN FILED.
3. SUPERINTENDENT OF INSURANCE SHOULD EXAMINE BOOKS OF FOREIGN STATE COMPANY AS OF DATE CERTIFICATE OF DEPOSIT WAS ACCEPTED IN ORDER TO DETERMINE IF INSURANCE COMPANY HAS SATISFIED ALL OBLIGATIONS AND LIABILITIES FOR WHICH DEPOSIT MADE TO SECURE HAVE BEEN PAID OR EXTINGUISHED.

SYLLABUS:

1. A certificate of deposit of the proper officer of a foreign state filed by a foreign insurance company with the Superintendent of Insurance of Ohio in order to draw down its deposit here, certifying that said company has on deposit \$100,000 in securities in which it is authorized to invest by the laws of the state of its incorporation, complies with Section 9510-7 of the General Code, even though on the face of said certificate it is stated that the securities referred to therein are held for the protection of the “liabilities” of said insurance company, when the law of the foreign state pursuant to which the certificate was issued specifically provides that the securities deposited thereunder are held “for the protection of all the policyholders of the company.”

2. Under the present facts and circumstances, it may be said that a certificate of deposit from the proper officer of a foreign state which complies with the provisions

of Section 9510-7 of the General Code, has been accepted in law, if not in fact, by the Superintendent of Insurance of Ohio, for purposes of said section even though there is no evidence that the Superintendent "accepted" the certificate when it was filed.

3. In order to determine whether or not a foreign insurance company has satisfied all the obligations and liabilities which its deposit with the Division of Insurance of the state of Ohio was made to secure have been paid or extinguished, the Superintendent of Insurance should examine the books of the company as of the date on which the certificate of deposit was accepted pursuant to Section 9510-7 of the General Code.

Columbus, Ohio, October 18, 1949

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

Dear Sir:

Your request for my opinion is as follows:

"An insurance company organized under the laws of the State of Indiana which is engaged in writing personal injury liability insurance has been, since 1916, and is currently authorized to do its appropriate insurance business in this state. In connection with its original application for a certificate of authority, on or about March 15, 1916, it deposited \$50,000 in bonds with the Superintendent of Insurance of Ohio 'to be held by him and his successors for the benefit and security of all the policyholders of the company' as provided for by Section 9510, paragraph 2, of the General Code of Ohio.

"On or about February 2, 1927, said company, with its annual statement of business for the year 1926, filed a certificate from the Commissioner of Insurance of the state of its organization reading as follows:

"I, Clarence C. Wysong, Commissioner of Insurance of the State of Indiana, do hereby certify that the.....
.....Company of, Indiana, organized under the laws of the State of Indiana, have fully complied with the laws of this state, and are authorized by this department to do business in Indiana; that they have on deposit with the Commissioner of Insurance, for the protection of their liabilities, approved securities amounting to one hundred thousand (\$100,000.00) dollars.'

"There is no evidence that any affirmative action was taken by the then (1927) Superintendent of Insurance of Ohio to show that he, under Section 9510-7 of the General Code, accepted the quoted certificate in lieu of the deposit of securities with him.

"The company is now seeking to withdraw said deposit of \$50,000.00 in securities and has filed an affidavit of its president and secretary that 'all obligations and liabilities of any nature whatsoever, of the said Company, under policies of insurance issued by the said Company in the State of Ohio prior to February 2, 1927, have been paid or extinguished.'

"The company has requested that I examine its books, pursuant to Section 9510-10 of the General Code, in order that I may certify that all obligations and liabilities which the deposit was made to secure have been paid or extinguished, and permit the requested withdrawal.

"It may be of interest to you to know that the Commissioner of Insurance of the State of Indiana has advised that the insurance company concerned was organized and incorporated under an Act of 1903 which may be found in BURNS Annotated Indiana Statutes 1926, Section 9044, and that the deposit referred to herein was made and held pursuant to the same act which may also be found in BURNS, Section 9049.

"In view of 1937 Opinion of the Attorney General of Ohio No. 775 (page 1403), I will appreciate receiving your opinion on three questions:

- "1. Does the quoted certificate comply with Section 9510-7 of the General Code?
- "2. If your answer to question 1 is in the affirmative, did the filing of February 2, 1927, meet the requirements of Section 9510-7 of the General Code?
- "3. If your answers to 1 and 2 are in the affirmative, shall I examine the books of the company only for unpaid and unextinguished obligations that arose prior to February 2, 1927?"

You place in issue interpretation of Section 9510-7 of the General Code of Ohio, which reads as follows:

"An insurance company which is required by the provisions of paragraphs two and five 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 paragraphs two and five of Section 9510, General Code, and such company shall not then be required to maintain the deposit in this state provided for in said paragraphs two and five of Section 9510."

Your first question is, does the certificate from the Commissioner of Insurance of Indiana, which you quote in full in your letter, comply with the requirements of the above section. These requirements appear to be reasonably clear and may be set forth as follows:

1. That the amount of the deposit be one hundred thousand dollars in securities in which the company is authorized to invest in its state of incorporation.
2. That the deposit be made with the Superintendent of Insurance or other officer designated or permitted by the laws of such state to receive such deposit.
3. That the deposit be made for the benefit and security of all its policyholders.

Referring back to the certificate in question, requirements one and two are readily seen to have been complied with; however, requirement three presents some difficulty. The Ohio law, quoted above, requires that the deposit shall be "for the benefit and security of all its policyholders," while the certificate states that the securities are on deposit "for the protection of their liabilities."

In view of the difference between the requirement of the Ohio law and the language found in the certificate, the question interjects itself as to whether or not you are bound by the language of the certificate. In my opinion the most that can be said of the certificate is that it is prima facie evidence of the facts or conclusions stated therein. This is consistent with the general rule concerning the effect of certificates of administrative officers, stated as follows in 20 Am. Jur., *Evidence*, Section 1033, at page 871:

"It is a well settled general rule that the existence and contents of documents or records in the custody of a public officer cannot be proved merely by the officer's certificate of the substance, contents, or legal effect of such documents or records.

* * *

I think it appropriate, therefore, to refer to the statute pursuant to which the certificate in question was issued and the securities were deposited and held in Indiana. The pertinent provision of the Indiana Code, in effect on February 2, 1927, reads as follows:

Burns Annotated Indiana Statutes 1926, Vol. 2, at page 1842

"Section 9049. * * * In the event any such company shall be required by the law of any other state, country or province, as a requirement prior to doing an insurance business therein, to deposit with the duly appointed officer of such other state, country or province or with the auditor of state of this state, any securities or cash in excess of the said deposit of seventy-five thousand dollars, hereinbefore mentioned, such company, at its discretion, may deposit with the auditor of state securities of the character authorized by this act or cash sufficient to enable it to meet such requirement. *The auditor of state is hereby authorized and directed to receive such deposit and to hold it exclusively for the protection of all policyholders of the company.* Any deposit so made to meet the requirements of any such other state, country or province shall not be withdrawn by the company except upon filing with the auditor of state evidence satisfactory to him that the company has withdrawn from business, and has no unsecured liability outstanding in any such other state, country or province by which such additional deposit was required, and, upon the filing of such evidence, the company may withdraw such additional deposit at any time. (As amended, Acts 1909, p. 281.)" (Emphasis added.)

The underscored portion of the above quotation is particularly pertinent. There appears immediately a conflict between what is said in the certificate as to the purpose of the one hundred thousand dollar deposit, and what the Indiana law says is the purpose of such deposit. Under such circumstances, I believe it is clear that the provisions of the law govern. In other words, I am of the opinion that in determining the sufficiency of the certificate under Section 9510-7 of the General Code of Ohio, it would be proper to look behind the language of the certificate to determine whether or not the securities held in the foreign state are being held for the benefit and security of all the policyholders of the company. Further, I am of the opinion that the language of the Indiana statute to the effect that the deposit is held "exclusively for the protection of all policyholders of the company" is substantially the same as the requirement in the Ohio law that the deposit be held "for the benefit and security of all of its policyholders."

Therefore, in answer to your first question, I am of the opinion that the certificate quoted in your letter complies with the requirements of Section 9510-7 of the General Code of Ohio, even though said certificate states that the securities referred to therein are held for the protection of the insurance company's "liabilities" since the law of the foreign state pursuant to which the certificate was issued provides that the deposit which it represents is held for the protection of all the policyholders of the company.

I believe your second question is prompted by the fact there is no evidence in the files of the Division of Insurance that any affirmative action was taken in 1927, when the certificate was filed, accepting the certificate in lieu of the securities deposited by the insurance company in accordance with paragraph two of Section 9510 of the General Code. For whatever evidentiary value they may be, I should like to refer to two letters dated March 12 and March 16, 1935, from the division of insurance of Ohio to the insurance company concerned, which have been called to my attention. The first of these letters noted that the insurance company had failed to file with its annual report for the year ending December 31, 1934, the certificate of deposit *required by Section 9510-7 of the General Code*; and the later letter asked that its first letter be ignored since the certificate referred to had been inadvertently misplaced and was now in the possession of the division of insurance.

The provision of Section 9510-7 of the General Code placed in issue by your second question reads as follows:

"* * * 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 paragraphs two and five of Section 9510, General Code, * * *".

I think the use of "shall accept" in the above quotation indicates a legislative intent to place a mandatory duty upon the superintendent of insurance of Ohio to accept the certificate in lieu of the deposit when the certificate satisfies the requirements of the law.

Therefore, in view of the finding that the certificate is adequate and there is no question that it was filed with your division on February 2, 1927, I believe it would be proper to say that there was an acceptance of

the certificate in law, if not in fact, in accordance with Section 9510-7 of the General Code.

I believe your third question is answered by Opinion No. 775, Opinions of the Attorney General for 1937, Vol. II, page 1403. The syllabus of said opinion reads as follows:

“Where a foreign insurance company making a deposit of \$50,000 in this state as required by Section 9510, General Code, desires to withdraw this deposit, the Superintendent of Insurance under the provisions of Section 9510-10, General Code, is required to be satisfied that all obligations and liabilities existing at the time he accepts a certificate of the Superintendent of Insurance or other officer of the state where the foreign insurance company is incorporated that a deposit of \$100,000 as required by Section 9510-7, General Code, is made, are paid and extinguished.”

Applying the holding of the above syllabus to your question, I am of the opinion that you should examine the books of the company concerned only for unpaid and unextinguished obligations which arose prior to February 2, 1927.

In conclusion, I am of the opinion that:

1. A certificate of deposit of the proper officer of a foreign state filed by a foreign insurance company with the Superintendent of Insurance of Ohio in order to draw down its deposit here, certifying that said company has on deposit \$100,000 in securities in which it is authorized to invest by the laws of the state of its incorporation, complies with Section 9510-7 of the General Code, even though on the face of said certificate it is stated that the securities referred to therein are held for the protection of the “liabilities” of said insurance company, when the law of the foreign state pursuant to which the certificate was issued specifically provides that the securities deposited thereunder are held “for the protection of all the policyholders of the company.”

2. Under the present facts and circumstances, it may be said that a certificate of deposit from the proper officer of a foreign state which complies with the provisions of Section 9510-7 of the General Code, has been accepted in law, if not in fact, by the superintendent of insurance of Ohio for purposes of said section even though there is no evidence that the superintendent “accepted” the certificate when it was filed.

3. In order to determine whether or not a foreign insurance company has satisfied all the obligations and liabilities which its deposit with the Division of Insurance of the state of Ohio was made to secure have been paid or extinguished, the Superintendent of Insurance should examine the books of the company as of the date on which the certificate of deposit was accepted pursuant to Section 9510-7 of the General Code.

Respectfully,

HERBERT S. DUFFY,
Attorney General.