5913.

APPROVAL—BONDS OF CHARDON COMMUNITY VILLAGE SCHOOL DISTRICT, GEAUGA COUNTY, OHIO, $60,000.00.

COLUMBUS, OHIO, July 29, 1936.

Industrial Commission of Ohio, Columbus, Ohio.

5914.

WORKMEN'S COMPENSATION INSURANCE—MAY BE WRITTEN TO COVER PERSONS ENGAGED TO WORK SOLELY OUT OF OHIO.

SYLLABUS:

Section 1465-101, General Code, does not prohibit insurance companies authorized by the Superintendent of Insurance to do business in this state and whose charters and licenses permit them to write workmen's compensation insurance from making contracts which insure Ohio employers against loss or liability for death, injury or occupational disease occasioned in the course of such workmen's employment where such workmen are employed to do specified work in another state, no part whereof is to be performed in Ohio, nor does said section make such contracts of insurance void.

COLUMBUS, OHIO, July 29, 1936.

HON. ROBERT L. BOWEN, *Superintendent of Insurance, Columbus, Ohio.*

DEAR SIR: This acknowledges receipt of your communication which reads as follows:

> "We would appreciate receiving your opinion on the following questions:
>
> In view of the Resolution of the Industrial Commission of Ohio, dated October 15, 1935, copy of which is attached, and the provisions of G. C. 1465-101, may an insurance company, authorized by this office to do insurance business in Ohio, and whose charter and license would permit it to write workmen's compensation insurance, write such insurance for Ohio employers to cover employees whose work is to be performed entirely

outside of Ohio, although the contracts of hire are made in Ohio? If authorized insurance companies may write such insurance, would such contracts be void, in view of the provisions of G. C. 1465-101?"

The resolution dated October 15, 1935, to which you refer, vacates the resolution of August 2, 1927, which read as follows:

"Mr. Gregory moved that in all cases where employers who are located in Ohio have in their service traveling salesmen any place in the United States, under contracts of hire made in Ohio, and who are supervised from and are under the direction of the Ohio office of the employer, and the employer includes the salaries and commissions of such salesmen in the payroll reports to this department and pays the department the premium thereon, based on the rate fixed for the class of employes to which such salesmen belong, the Commission will recognize all metritorious claims arising from injuries to any of such salesmen received in the course of their employment any place in the United States."

The pertinent portion of Section 1465-101, General Code, reads as follows:

"All contracts and agreements shall be absolutely void and of no effect which undertake to indemnify or insure an employer against loss or liability for the payment of compensation to workmen or their dependents, for death, injury or occupational disease occasioned in the course of such workmen's employment, or which provide that the insurer shall pay such compensation, or which indemnify the employer against damages when the injury, disease or death arises from the failure to comply with any lawful requirement for the protection of the lives, health and safety of emplayes, or when the same is occasioned by the wilful act of the employer or any of his officers or agents, or by which it is agreed that the insurer shall pay any such damages. No license or authority to enter into any such agreements or issue any such policies of insurance shall be granted or issued by any public authority in this state. * * *."

The following portion of Section 1465-69, General Code, is also pertinent:

"* * * * * * * * *

And provided further, that such employers who will abide by the rules of the industrial commission of Ohio and as may be of sufficient financial ability to render certain the payment of compensation to injured employes or the dependents of killed employes, and the furnishing of medical, surgical, nursing and hospital attention and services and medicines, and funeral expenses equal to or greater than is provided for in sections 1465-78 to 1465-89, General Code, and who do not desire to insure the payment thereof or indemnify themselves against loss sustained by the direct payment thereof, may, upon a finding of such fact by the industrial commission of Ohio, elect to pay individually such compensation, and furnish such medical, surgical, nursing and hospital services and attention and funeral expenses directly to such injured or the dependents of such killed employes; * * *."

This section was held to be constitutional in the case of Thorton v. Duffy, et al., 99 O. S. 120. Referring to this provision in Section 1465-69, which limits its application to those employers "who do not desire to insure the payment thereof or indemnify themselves against loss sustained by the direct payment thereof," the court said:

"This added condition precedent to the exemption of certain employers from the general provisions of the act is not only clearly within the power of the general assembly, but it is in furtherance of the purpose and intent of the constitution and the law, to create and maintain one insurance fund, to be administered by the state, out of which fund compensation shall be paid to workmen and their dependents for death, injuries, or occupational diseases occasioned in the course of employment.

If insurance is desired, the state will furnish it out of the fund created and maintained for that purpose; for it would not only be arbitrary, unfair, and without purpose, to permit some employers of labor to enter into contracts of insurance with private companies and compel all other employers to contribute to the state insurance fund, but it would also hinder and perhaps utterly demoralize the method and defeat the object and purpose of the creation of such a fund."

With reference to Section 1465-101, the court in the case of Steel Co. v. Furnace Co., 120 O. S. 394, said:

> "Nothing could be clearer than that the legislature, by the provisions of this section, indicated its intention to prevent the reimbursement of the employer for any amount paid pursuant to the provisions of the Workmen's Compensation Act to an injured employee."

Your question is whether this prohibition against insurance applies to contracts whereby an employer is insured against loss or liability for the payment of compensation to workmen or their dependents for death, injury or occupational disease occasioned in the course of such workmen's employment where such employes are hired to do specified work entirely outside of Ohio.

In the case of Industrial Commission v. Gardinio, 119 O. S. 539, the syllabus reads as follows:

> "The Ohio workmen's compensation fund is not available to an employee injured while engaged in the performance of a contract to do specified work in another state, no part whereof is to be performed in Ohio."

In that case it was held that the Workmen's Compensation Act does not apply to employes whose contracts of employment provide for the performance of services entirely in another state, even though the contracts of hire are made in Ohio. The court said:

> "It does not seem possible that it was the purpose of the legislature that the Ohio compensation fund should cover all persons with whom a contract of employment is entered into within this state, regardless of the location of the place where the service is to be rendered or the conditions surrounding the same, over which, of course, the Industrial Commission of this state could exercise no authority or control."

From this decision holding that the Workmen's Compensation Act does not have such extra territorial effect, it is apparent that the terms "employes, workmen and operatives" as used in the act and as defined in Section 1465-61, General Code, do not include those employes whose services are to be performed entirely outside of Ohio. It surely was not the intent of the legislature to prevent insurance companies from writing such insurance for Ohio employers for their employes who rendered services entirely outside of the state and which employers could not be insured therefor under the Workmen's Compensation Act, since such contracts do not interfere with the purpose of the act by entering into com-

petition with the workmen's compensation fund. To hold otherwise would endanger the validity of the statute as there could be no justification in denying to employers the right to obtain protection which could not be given under the Workmen's Compensation Act. Such a construction could not be said to be in furtherance of the purpose of Section 35 of Article II of the Constitution. Whether insurance companies may be prohibited in other states from making contracts of such insurance applicable to employers who are within the Workmen's Compensation Act of those states need not be considered here.

Answering your question, I am of the opinion that Section 1465-101, General Code, does not prohibit insurance companies authorized by the Superintendent of Insurance to do business in this state and whose charters and licenses permit them to write workmen's compensation insurance from making contracts which insure Ohio employers against loss or liability for the payment of compensation to workmen or their dependents for death, injury or occupational disease occasioned in the course of such workmen's employment where such workmen are employed to do specified work in another state, no part whereof is to be performed in Ohio, nor does said section make such contracts of insurance void.

Respectfully,

JOHN W. BRICKER,

Attorney General.

5915.

APPROVAL—PAPERS IN CONNECTION WITH THE CONVERSION OF THE MIDWEST SAVINGS AND LOAN COMPANY, LAKEWOOD, OHIO, INTO THE MIDWEST FEDERAL SAVINGS AND LOAN ASSOCIATION OF LAKEWOOD, OHIO.

COLUMBUS, OHIO, July 30, 1936.

HON. WILLIAM H. KROEGER, *Superintendent of Building and Loan Associations of Ohio, Columbus, Ohio.*

DEAR SIR: I have examined the various papers submitted by you in connection with the conversion of The Midwest Savings and Loan Company, Lakewood, Ohio, into the Midwest Federal Savings and Loan Association of Lakewood, and find the papers submitted and the proceedings of said The Midwest Savings and Loan Company, as disclosed thereby, to be regular and in conformity with the provisions of section 9660-2 of the General Code.

All papers, including two copies of the charter issued to the said