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INSURANCE, DEPARTMENT—DOMESTIC LIFE COMPANY—PREMIUM LIMIT OF §3917.02 R.C., CONDITION OF CORPORATE EXISTENCE UNDER OHIO LAW—FRANCHISE SUBJECT TO FORFEITURE—ASSURANCE OF FINANCIAL STABILITY TO PROTECT OHIO POLICYHOLDERS—FOREIGN COMPANY FRANCHISE MAY BE FORFEITED FOR ACTIONS OUTSIDE OHIO DETRIMENTAL TO OHIO POLICYHOLDERS.

SYLLABUS:

1. The requirement in Section 3917.02, Revised Code, that no domestic life insurance company shall issue any policy of group life insurance at a premium "which is less than" the formula therein provided is a condition of corporate existence under favor of Ohio law; is designed, as an exercise of the police power, to assure the financial stability of such a company as a whole as a measure of protection of the Ohio policyholders of such insurer; and the franchise represented by such corporate existence under favor of Ohio law is subject to forfeiture where such domestic company fails to conform its operations outside Ohio to such requirement.

2. The provision in Section 3917.02, Revised Code, that "a foreign life insurance company which does not conduct its business in accordance with such requirements shall not do business in this state" is similarly a condition of admission to operate in Ohio, is similarly designed, as an exercise of the police power, to assure the financial stability of such foreign life insurance company as a whole as a measure of protection of the Ohio policyholders of such insurer; and the franchise represented by the privilege of operating in Ohio is subject to forfeiture where such foreign company fails to conform its operations outside Ohio to such requirement.

Columbus, Ohio, May 11, 1958

Hon. Arthur I. Vorys, Superintendent of Insurance
Department of Insurance, Columbus, Ohio

Dear Sir:

Your request for my opinion reads as follows:

"Section 3917.02, Revised Code, reads:

"No domestic life insurance company shall issue any policy of group life insurance, the premium for which is less than the net premium based on the commissioners 1941 standard ordinary mortality table with interest at three per cent per annum, plus a loading, the formula for the computation of which shall be determined by the superintendent of insurance. A foreign life insur-

ance company which does not conduct its business in accordance with such requirements shall not do business in this state. However, any such policy may provide for a readjustment of the rate based on experience at the end of the first or any subsequent year of insurance, which readjustment may be made retroactive for such policy year only.'

"The loading formula referred to in the above Section was determined by the Superintendent of Insurance and published in Departmental Bulletin dated September 10, 1951, which reads as follows:

"TO ALL LIFE COMPANIES WRITING GROUP INSURANCE IN THE STATE OF OHIO:

"Your company has been furnished with a copy of Amended Substitute House Bill No. 337, making certain changes as regards the writing of Group Life Insurance in the State of Ohio.

"The Division of Insurance will adopt the following rules which supersede any previous bulletin on the subject.

"The Superintendent of Insurance of the State of Ohio has ruled that according to Section 9426-1 (4), no life insurance company authorized to do business in this state shall hereafter issue, as provided herein, within or without this state, any policy of group life insurance on which the premium shall be less than the minimum gross premium described below:

"The minimum gross annual yearly renewable term premium shall be equal to the net C.S.O. 3% premium loaded 10%.

"Gross annual yearly renewable term premium equals 1.10 times 1000 qx (C.S.O. Table) Times $V\frac{1}{2}$ (at 3% .985329).

"Gross semi-annual premium equals 1.0075 times gross annual premium divided by 2.

"Gross quarterly premium equals 1.01 times gross annual premium divided by 4.

"Gross monthly premium equals 1.015 times gross annual premium divided by 12.

"No policy on Group Life Insurance shall be issued or delivered in this state coming within the provisions of the Statute as now amended until it has been approved and filed by the Division of Insurance of the State of Ohio. Please govern yourself accordingly.

"Kindly acknowledge receipt of this letter at your earliest convenience.

"Yours truly,
/s/ Charles T. Werner
Charles T. Werner
Actuary'

"1. In applying Section 3917.02, Revised Code, should the Superintendent of Insurance require a foreign life insurance company doing business in this state to charge a premium which is not less than the net premium based on the Commissioner's 1941 standard ordinary mortality table with interest at 3% per annum, plus the loading required by the Departmental bulletin, on all policies of group life insurance issued by such company in Ohio or anywhere else? In other words, does the language of Section 3917.02 reading 'a foreign life insurance company which does not *conduct its business* in accordance with this requirement shall not do business in this state' refer to the conduct of business in Ohio only or to the conduct of business generally, whether in Ohio or outside of Ohio?

"2. In applying Section 3917.02, Revised Code, should the Superintendent of Insurance require a domestic life insurance company to charge a premium which is not less than the net premium based on the Commissioners' 1941 standard ordinary mortality table with the interest at 3% per annum, plus the loading required by the Departmental bulletin, on all policies of group life insurance issued by such company in Ohio or elsewhere? In other words, does the language of Section 3917.02 relating to a domestic life insurance company refer only to policies issued in Ohio or to all policies, whether issued in Ohio or outside of Ohio?"

The basic question here presented is such that we may properly consider initially the state's power of regulation of insurance operations, and the purpose of such regulation. This general power of such regulation is stated in 29 American Jurisprudence, 59, 60, as follows:

"It is now generally recognized that the business of insurance is one that is affected with a public interest, and that it is a proper subject of regulation and control by the state by virtue of the exercise of its police power in the interest of public convenience and the general good of the people. In the exercise of that power, the legislature may lawfully confine the business to corporations, and a state has the right to prescribe reasonable conditions prerequisite to the carrying on of such business by individuals as well as by corporations, provided there is no discrimination between citizens of equal merit within or without the state.

"Even in the absence of a reservation of the right to amend or repeal the charter of an insurance company, the state may without violating any provision of the Federal Constitution, provide that it shall be restrained from doing further business, when to permit it to do so would operate to the detriment of the public.

* * *

One of the chief purposes of regulation of insurance companies, as well as other financial institutions, is to assure as nearly as may be their financial stability as a matter of protection of the public whose funds are entrusted to them. Accordingly, the regulation of rates, premiums, reserves, investments, *etc.*, is nearly universal in the several American jurisdictions, and this regulation as an exercise of the police power of the state cannot be regarded now as subject to question.

As to foreign insurance companies, the same right of exclusion is applicable as in the case of foreign corporations generally. On this point, in 29 American Jurisprudence, 70, 71, it is said:

“As is true with respect to foreign corporations generally, a state may entirely exclude foreign insurance companies from the transaction of business within its boundaries, or may prescribe such conditions of admission not in conflict with applicable provisions of the Federal and state Constitutions as it desires. No exception to this rule arises from the fact that the company excluded is engaged in marine insurance. Furthermore, a state has power to discriminate between its own domestic corporations and those of other states desirous of transacting business within its jurisdiction. As to the nature or degree of discrimination, it belongs to the state to determine, subject only to such limitations on its sovereignty as may be found in the fundamental law of the Union. A state also has the power to discriminate between foreign corporations generally and foreign insurance companies seeking admission.

“No insurance company has the right to sell insurance in a state without complying with the statutes embodying such conditions of admission. As a condition of its admission to do an insurance business within the state, a foreign insurance company may, for example, be required to secure a license or certificate allowing it to carry on such business; to possess a specified amount of capital paid-up and unimpaired; to have additional assets sufficient to offset its liabilities, including reserves on its risks; to deposit security for the performance of its obligations within the state; or to appoint a state official or a local or statutory agent to receive service of process.* * *”

Now it must clearly be conceded that a state statute may not be given extra-territorial effect in the sense that it could prohibit, in a sister state, an act which is lawful under the laws of such state. This does not mean, however, that the state may not, in the exercise of the police power to protect its own citizens against financial instability of foreign corporations, refuse to admit them to transact business in Ohio where in the judgment

of the General Assembly their lawful operations in sister states will lead or tend toward such instability, for the exercise of the police power to protect citizens against financial loss is entirely valid under the constitution. See 10 Ohio Jurisprudence 2nd, 476. Quite clearly the state's power to exclude, or to deny initial admission, embraces as well the power to oust, by way of quo warranto, or other appropriate proceedings, where it is found that any such foreign insurer is violating a lawful condition attached to its admission to operate within the state. Such ouster would not be the denunciation as illegal such insurer's operations outside Ohio, but instead, is merely the withdrawal of a privilege from one found not to qualify therefor.

In 3 Couch on Insurance, 1861, Section 583, it is indicated that premium rates should be fixed sufficiently high to enable the insurer to assume the risk; and it seems clear that when the premium is fixed too low for this purpose, continued operations will tend to financial instability. Is this the object, then, of the statute here in question? In pertinent part the statute, Section 3917.02, Revised Code, reads:

“No domestic life insurance company shall issue any policy of group life insurance, the premium for which *is less than* the net premium based on the commissioners 1941 standard ordinary mortality table with interest at three per cent per annum, plus a loading, the formula for the computation of which shall be determined by the superintendent of insurance. A foreign life insurance company which *does not conduct its business in accordance with such requirement* shall not do business in this state.* * *

(Emphasis added)

The form of the initial prohibition, *supra*, using the expression “not less than,” quite clearly indicates, not an effort to prevent extortionate rates, but rather one to promote financial stability of the insurer. There could be no other possible purpose, in my opinion, for a requirement of *minimum* premium rates than to assure, as nearly as this may be done, the financial stability of the insurer for the benefit of those who are insured; and I conclude that such is indeed the purpose of Section 3917.02, Revised Code.

All that has thus far been said is equally applicable to your second question relative to the extra-state operations of domestic insurers. Here it is as fully important as in the case of foreign insurers that the financial stability of the insurer be maintained, and it equally is obvious that this

cannot be done by a requirement that rates charged in Ohio alone be sufficient to justify the assumption of the risk, while operations in a sister state, or in a foreign country, are conducted at rates which are not sufficient to assure the financial stability of the company as a whole. Here, too, the State of Ohio is prescribing a condition of corporate existence under favor of Ohio law, a franchise in no essential respect different from the franchise given a foreign insurer to transact business in this state.

Accordingly, in specific answer to your query, it is my opinion:

1. The requirement in Section 3917.02, Revised Code, that no domestic life insurance company shall issue any policy of group life insurance at a premium "which is less than" the formula therein provided is a condition of corporate existence under favor of Ohio law; is designed, as an exercise of the police power, to assure the financial stability of such a company as a whole as a measure of protection of the Ohio policyholders of such insurer; and the franchise represented by such corporate existence under favor of Ohio law is subject to forfeiture where such domestic company fails to conform its operations outside Ohio to such requirement.

2. The provision in Section 3917.02, Revised Code, that "a foreign life insurance company which does not conduct its business in accordance with such requirements shall not do business in this state" is similarly a condition of admission to operate in Ohio, is similarly designed, as an exercise of the police power, to assure the financial stability of such foreign life insurance company as a whole as a measure of protection of the Ohio policyholders of such insurer; and the franchise represented by the privilege of operating in Ohio is subject to forfeiture where such foreign company fails to conform its operations outside Ohio to such requirement.

Respectfully,

WILLIAM SAXBE

Attorney General