

OPINION NO. 75-031

Syllabus:

1. R.C. 3907.14(Q) authorizes a domestic life insurance company to invest up to five percent of its admitted assets in investments of a type not permitted elsewhere in the statute, or of an amount greater than that permitted under R.C. 3907.14 (O) (6).

2. A domestic life insurance company may have invested in the bonds, notes, debentures and stocks of a particular corporation, one percent of its admitted assets under R.C. 3907.14(O)(6), and an additional five percent of its admitted assets under R.C. 3907.14(Q).

To: Harry V. Jump, Director Dept. of Insurance, Columbus, Ohio
By: William J. Brown, Attorney General, May 15, 1975

I have before me your predecessor's request for my opinion concerning R.C. 3907.14, which governs the investments of "capital, surplus, and all accumulations of every domestic life insurance company." R.C. 3907.14 is an extremely long and complex statute. Subsection (O) refers to investments in corporate stocks, bonds, notes, and debentures. It provides, in part, for the following investments:

"(5) In common stocks or shares of any solvent incorporated company organized under the laws of the United States, or of any state, district, or territory thereof, or the Commonwealth of Puerto Rico, if (a) all the obligations and preferred stock, if any, of such corporation are eligible as investments under this section; (b) such corporation has paid cash dividends on such common stock or shares in at least three of the last five years preceding purchase; (c) such corporation has earned over the five fiscal years immediately preceding purchase an average amount per annum at least equal to four percent of the par value of its common stock (or, in the case of stock having no par value, of the issued or stated value of such stock) outstanding at the date of purchase; and (d) such common stock or shares other than of a bank, trust company, or insurance company are registered on a national securities exchange, as provided in an act of congress of the United States, known as the "Securities Exchange Act of

1934," 48 Stat. 881, 15 U.S.C. 358 and amendments thereto. No domestic company shall invest in common stock or shares under this division (O) (5) and division (Q) of this section a sum exceeding in the aggregate ten per cent of its admitted assets on the preceding thirty-first day of December;

"(6) No domestic life insurance company shall, except for investments authorized under divisions (O) (7) and (Q) of this section, at any time have invested a sum exceeding one per cent of its admitted assets as of the preceding thirty-first day of December in the bonds, notes, debentures, and stocks of a particular corporation, nor at any time own more than twenty-five per cent of the outstanding stock of any corporation;

"(7) In the stocks of insurance, financial and investment corporations, except its own stock, but no domestic life insurance company shall invest in such stocks under division (O) (7) of this section a sum exceeding fifty per cent of its earned surplus as of the preceding thirty-first day of December unless the approval of the superintendent of insurance is first obtained. Whenever the superintendent has reason to believe that the retention, investment or acquisition of the stock of any such corporation substantially lessens competition generally in the business of insurance or creates a monopoly therein he shall proceed under section 3901.13 of the Revised Code to cause such domestic insurance company to divest itself of such stock; * * *."

Subsection (Q) provides an exception to the rigorous requirements of the rest of R.C. 3907.14. It reads as follows:

"(Q) Any domestic legal reserve life insurance company may loan or invest its funds, to an extent not exceeding in the aggregate five per cent of its total admitted assets, in loans or investments not permitted under this section. In the event that subsequent to being made under provisions of this division (Q) of this section, an investment is determined to have become qualified as an investment for a domestic life insurance company as provided for in this section, the company may consider such investment as held under the applicable provisions of the foregoing divisions (A) to (P) of this section and such investment shall no longer be considered as having been made under the provisions of this division (Q) of this section; * * *"

Note that R.C. 3907.14(O) (6) limits investments in the bonds, notes, debentures, and stocks of a particular corporation, by a life insurance company, to one percent of that insurance company's "admitted assets." I am informed that the term "admitted" refers to those assets which are qualified investments under R.C. 3907.14. The funds invested in some way not authorized by that Section are considered by the Department of Insurance to be "non-admitted" assets. The larger an insurance company's "admitted assets," the more the company can invest under limitations such as that contained in R.C. 3907.14(O) (6).

Investments made pursuant to division (Q) are exempt from the one percent limitation of division (O) (6), under the plain terms of the latter. Under division (Q), a company may invest up to five percent of its admitted assets in "loans or investments not permitted under this section [R.C. 3907.14]."

Your questions involve the proper interpretation of division (Q). First, does "loans or investments not permitted under this section" refer only to investments in a type of stock, bond, real estate, etc., not permitted under R.C. 3907.14; or does it also refer to those investments of a permitted type but of too large an amount to qualify under the other provisions? If the latter is correct, may a company qualify an investment of one percent of its assets in stocks of a corporation under, for example, division (O) (5), and a further investment in the stocks of the same corporation under division (Q), in spite of the one percent limitation expressed in division (O) (6)?

The first question can be answered rather simply. The proper construction of a proviso depends upon the legislative intent of the statute as a whole. See Wert v. Clutter, 37 Ohio St. 347 (1881). The purpose of R.C. 3907.14 is obviously to regulate the investments of domestic life insurance companies, so that they do not endanger their assets and their policyholders' rights by imprudent investments. Those types of investments listed in R.C. 3907.14(A) through (P) are deemed safer than any types not listed--therefore, such types of investments have been given legislative approval. To read division (Q) to authorize only those types of investments deemed unworthy of mention in the foregoing provisions would directly contravene the protective purpose of the statute. It would mean that an insurance company could not invest five percent of its admitted assets under that division in a type of investment deemed safe by R.C. 3907.14, but could invest in the more speculative types not listed. Such a construction would be unreasonable, contrary to the rule of statutory construction set forth in R.C. 1.47(C). Moreover, there is nothing in the language of the statute which would indicate that "loans or investments not permitted under this section" is not equally applicable to investments which exceed percentage limitations as well as to those kinds of investments not specifically described. Therefore, I conclude that division (Q) authorizes not only those types of investments not covered by divisions (A) through (P), but also investments of the type authorized by those divisions but in sums too large to qualify under the one percent limitation of division (O) (6).

Your second question requires an analysis of division (O) (6), which reads as follows:

"No domestic life insurance company shall, except for investments authorized under divisions (O) (7) and (Q) of this section, at any time have invested a sum exceeding one percent of its admitted assets as of the preceding thirty-first day of December in the bonds, notes, debentures, and stocks of a particular corporation, nor at any time own more than twenty-five percent of the outstanding stock of any corporation."

The phrase "except for investments authorized under divisions (O) (7) and (Q) of this section" was added in 1967 (132 Ohio Laws 1322). It creates an exemption from the one percent limitation of division (O) (6) for investments made pursuant to division (Q). Thus the

legislative purpose in adding this phrase was to make the one percent limitation inapplicable to such investments.

I have determined that investments of the type permitted by divisions (A) through (P) may be made pursuant to division (Q). Your question, specifically, is whether an insurance company may invest one percent of its admitted assets in the bonds, notes, debentures or stocks of a particular corporation under division (O) and invest a further amount, up to five percent of its admitted assets, in the bonds, etc. of the same corporation, pursuant to division (Q).

I invite your attention to a clause in division (A) (5), which reads as follows:

"* * * except for investments authorized under divisions (A) (1), (A) (2), (A) (3), and (A) (4) of this section, no domestic life insurance company shall invest in real estate under this division (A) (5) and division (Q) of this section a sum exceeding in the aggregate ten percent of its admitted assets on the preceding thirty-first day of December." (Emphasis added.)

Similar language is contained in division (O) (5). Note the difference between this language and that of division (O) (6), which states that no domestic life insurance company shall, "except for investments authorized under divisions (O) (7) and (Q) of this section," invest more than one percent of its admitted assets in the bonds, etc. of a particular corporation. While the limitation in division (O) (5) expressly includes investments made under division (Q), that in division (O) (6) expressly exempts such investments.

I conclude, therefore, that investments made under division (Q) are not counted for purposes of the one percent limitation of division (O) (6). Consequently, a domestic life insurance company may invest one percent of its admitted assets in the bonds, etc. of a particular corporation under division (O) (6) and up to five percent of its admitted assets in the bonds, etc. of the same corporation pursuant to division (Q). Therefore a life insurance company could, conceivably, invest a total of six percent of its admitted assets in the bonds, etc. of a particular corporation, although if it did so it would not be able to make any other investments under division (Q), having used up its entire five percent allowance.

In specific answer to your questions, it is my opinion and you are advised that:

1. R.C. 3907.14(Q) authorizes a domestic life insurance company to invest up to five percent of its admitted assets in investments of a type not permitted elsewhere in the statute, or of an amount greater than that permitted under R.C. 3907.14 (O) (6).
2. A domestic life insurance company may have invested in the bonds, notes, debentures and stocks of a particular corporation, one percent of its admitted assets under R.C. 3907.14(O) (6), and an additional five percent of its admitted assets under R.C. 3907.14(Q).