

You have also submitted an encumbrance estimate bearing No. 3474, dated March 12, 1928, from which it appears that there are unencumbered balances legally appropriated in an amount sufficient to pay the rental for the period from March 15, 1928, to December 31, 1928, both inclusive.

You have also submitted evidence that on March 6, 1928, at a meeting of the Controlling Board, said board authorized transfers of \$35,000.00 from C-11 Badges to F-9 Rent and \$3,000.00 from C-11 License Plates to F-9 Rent.

Finding said lease, encumbrance estimate and action of Controlling Board in proper legal form, I hereby approve the same, subject to your execution of the lease on behalf of the State of Ohio and the acknowledging of said lease by an officer of the lessor.

I am returning the above mentioned lease to you, together with all the papers submitted in this connection.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1844.

APPROVAL, BONDS OF THE VILLAGE OF BEXLEY, FRANKLIN COUNTY
—\$128,950.00

COLUMBUS, OHIO, March 14, 1928.

Industrial Commission of Ohio, Columbus, Ohio.

1845.

INSURANCE—CONTRACT TO RENDER SPECIFIED SERVICES TO OWNERS OF AUTOMOBILES FOR DEFINITE PERIOD OF TIME AND FOR CERTAIN SPECIFIED SUMS—NOT INSURANCE CONTRACT.

SYLLABUS:

Where a company contracts to render specified services to the owner of automobile tires or other parts of an automobile, or for services connected therewith, for a given period of time and in consideration of a specified sum for the services when rendered, the contract is not one substantially amounting to insurance under the laws of Ohio.

COLUMBUS, OHIO, March 14, 1928.

HON. WILLIAM C. SAFFORD, *Superintendent of Insurance, Columbus, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent communication requesting my opinion as follows:

"The enclosure is a copy of a letter dated March 1, 1928, received from the Dayton Better Business Bureau. We also send a copy of a contract which our correspondent provided.

At your convenience, will you kindly advise the Division of Insurance whether the project of Inter-State Tire Service constitutes an insurance business."

Accompanying your letter and to which you refer is one from the Dayton Better Business Bureau as follows:

"Mr. Wm. C. Safford,
State Insurance Superintendent,
Columbus, Ohio.

Re: Inter-State Tire Service, 1130-31, Third Nat'l. Bldg., Dayton, Ohio.

Dear Sir:

We are herewith enclosing what the above-named concern is pleased to call a 'Purchaser' Contract'. This contract is sold by the Inter-State Tire Service to retail tire dealers for which the dealer pays \$1.00 per year per tire.

This company seems to be owned and controlled entirely by Thomas H. Horobin. It seems to be a side-line with him, inasmuch as he devotes considerable of his time to promoting the sale of lots in sub-divisions and the construction of houses.

In an interview with Mr. Horobin he admits that this company has 500 shares of stock outstanding, of no par value. All of this stock is owned by Mr. Horobin. He claims, however, that he has placed behind it his personal responsibility, although there is no contract or memorandum in writing to this effect. The contract is self-explanatory.

We are submitting this to you for an opinion as to whether or not this memorandum comprises an insurance contract, and if, in your opinion, the sale of such contracts comes within the jurisdiction of your Department.

Inquiries that we are receiving indicate that this is a new proposition being offered through the use of salesman in Dayton and neighboring towns.

Yours very truly,

Dayton Better Business Bureau
George S. Langland,
Manager."

The copy of the contract accompanying the letter of your correspondent, is as follows:

"Purchaser Contract
Inter-State Tire Service
Incorporated
Dayton, Ohio.

Date.....

Received of..... Address..... the sum of
..... Dollars as advance deposit for 12 months tire service

as furnished by the Inter-State Tire Service, Dayton, Ohio, and_____agree to make a further minimum deposit as stated herein, as follows:

Jan. _____ April _____ July _____ Oct. _____
Feb. _____ May _____ Aug. _____ Nov. _____
Mar. _____ June _____ Sept. _____ Dec. _____

_____ further agree that said service shall be governed by conditions as set forth on the back of this Contract, and said service shall begin at once.

INTER-STATE TIRE SERVICE
Incorporated

Representative Purchaser

The language printed on the back of said contract reads as follows:

"1. THAT WHEREAS the Inter-State Tire Service as the party of first part is organized for the purpose of merchandising tire business and the party of the second part is desirous of obtaining that service.

2. It is hereby agreed that the Inter-State Tire Service shall give and furnish unto the party of the second part its merchandising service to those who shall be named and designated by the party of the second part, and acceptable to party of the first part.

3. Party of the second part agrees to cause the party of the first part service or cause to be serviced a minimum of tires to the minimum of_____ dollars per month, at a minimum of \$1.00 per tire, or at the rate of five per cent of the wholesale cost where the cost exceeds the minimum. (It is understood the words 'wholesale cost' as used herein, specifically means the 'Standard dealers cost sheet or price.')

4. The party of the second part understands and agrees that the said Service Certificates shall be of the following classes and issued only as follows:

Class 'A' will be issued for a twelve month period upon all applications for service on first line Tires of Standard manufacture to be used on pleasure type vehicles only.

Class 'B' will be issued for a nine month period upon all applications for service on second line tires of Standard manufacture to be used on pleasure type vehicles only.

Class 'C' will be issued for a six month period upon all commercial applications for service on Commercial Vehicle pneumatic TIRES up to and including the 6-inch SIZE at the regular service rate as provided in paragraph 3 hereof.

All service Certificates issued for Commercial Vehicle pneumatic TIRES over and above the 6-inch SIZE will be serviced at a minimum \$3.00 per tire or at the rate of ten per cent of the standard dealers cost sheet, where the cost exceeds the minimum.

6. That all servicing may be done, as provided in the Certificate, by the party of the second part or his agents, and the party of the second part be reimbursed by the party of the first part, either by credit or check, on the 10th of each month following date of all invoices received at the office of the party of the first part up to and including the 27th day of the preceding month, for said service.

7. All invoices for service claims must be signed by consumer and mailed to the party of the first part's nearest office within three (3) days following date of service rendered.

8. The party of the second part will hold all adjusted casings as evidence of the transaction until inspected by an employee of the party of the first part.

9. Liability for failure to service tires will be governed by agent's cost price, and adjustments for section repairing will be at the rate of \$----- per cross section inch. Spot job repairing is not to exceed \$----- per cross sectional inch.

10. The retail price is to be determined by multiplying dealer's cost price by 35 per cent.

11. IT IS FURTHER AGREED that each thirty (30) days from the date hereof, if the total business turned in to the party of the first part does not equal the above minimum, the party of the second part shall pay to the party of the first part a sum equal to the amount short at the end of each and every month during the term hereof, and that at such time as the volume of business runs in excess of said minimum and the party of the first part shall credit the shortage paid them to the party of the second part, provided at such time the said party of the second part shall have caused the party of the first part to render above service to said above minimum for each month during term hereof.

12. The party of the second part, to show his good faith in carrying out the provisions of this contract will deposit with Inter-State Tire Service a sum of money equal to the amount of the monthly minimum of this contract, which is to be credited to the party of the second part on the last month of said contract. If the party of the second part fails to comply with all the provisions of this contract, it is agreed that the deposit is automatically forfeited, and such forfeiture does not relieve the party of the second part from any and all obligations contained in this contract. All checks are to be made payable to the Inter-State Tire Service, at their main office, Dayton, Ohio, and the receipt of deposit is hereby acknowledged.

13. This contract shall extend for a period of one (1) year, with the privilege of renewal at the same rate, or cancellable by the mutual consent of both parties."

Your inquiry and that of your correspondent is directed to the question of whether or not this service constitutes doing an insurance business or the entering into a contract substantially amounting to insurance.

Section 665, General Code, provides as follows:

"No company, corporation, or association, whether organized in this state or elsewhere, shall engage either directly or indirectly in this state in the business of insurance, or enter into any contracts substantially amounting to insurance, or in any manner aid therein, or engage in the business of guaranteeing against liability, loss or damage, unless it is expressly authorized by the laws of this state, and the laws regulating it and applicable thereto, have been complied with."

In Corpus Juris, Vol. 32, page 975, insurance is defined as follows:

"Broadly defined, insurance is a contract by which one party, for a compensation called the premium, assumes particular risks of the other party and promises to pay to him or his nominee a certain or ascertainable sum of money on a specified contingency."

In Cooley's second edition on the Law of Insurance, at page 6, the author gives the following definition:

"Insurance has been defined in general terms as a contract by which one party undertakes to indemnify another against loss, damage or liability arising from an unknown or contingent event."

It will be observed from an examination of the Purchaser Contract referred to above that the purchaser contracts "for twelve months tire service as furnished by the Inter-State Tire Service, Dayton, Ohio," and that said service shall be governed by conditions as set forth on the back of the contract furnished, which conditions are herein above copied.

An examination of the language of the above mentioned contract and the conditions on the back thereof fails to disclose a contract of indemnity substantially amounting to insurance. It appears to be a contract for tire service during a particular period and at a specified price. The price is not only specified for the mechanical services to be performed, but it also provides that the purchaser is to pay a given per centum of the cost price for replacement of tires. It thus does not amount to a contract of indemnity but rather a cost for services performed, and to be performed.

Specifically answering your question it is my opinion that where a company contracts to render specified services to the owner of automobile tires or other parts of an automobile, or for services connected therewith, for a given period of time and in consideration of a specified sum for the services when rendered, the contract is not one substantially amounting to insurance under the laws of Ohio, and would therefore not come within the jurisdiction of your Department.

Respectfully,

EDWARD C. TURNER,

Attorney General.

1846.

APPROVAL, CONTRACT BETWEEN THE DIRECTOR OF HIGHWAYS AND THE GALENA SHALE TILE & BRICK COMPANY FOR THE CONSTRUCTION OF AN UNDERPASS ACROSS THE COLUMBUS-WOOSTER ROAD IN DELAWARE COUNTY, OHIO, AT AN EXPENDITURE OF \$3,000.00—SURETY BOND EXECUTED BY THE AMERICAN SURETY COMPANY OF NEW YORK.

COLUMBUS, OHIO, March 14, 1928.

HON. GEORGE F. SCHLESINGER, *Director of Highways, Columbus, Ohio.*

DEAR SIR:—Receipt is acknowledged of your communication of March 13, 1928, enclosing for my consideration an agreement, in duplicate, by and between the Director