Midwest Federal Savings and Loan Association of Lakewood, are returned herewith to be filed by you as a part of the permanent records of your department, except the copy of the charter which the law provides shall be filed by you with the Secretary of State. The law further provides that such filing with the Secretary of State shall be within ten days after the requirements of said section 9660-2 have been complied with by The Midwest Savings and Loan Company, Lakewood, and that your approval shall be endorsed on the copy so filed. You will find on the copies of the charter, form of approval for your signature.

Respectfully,

JOHN W. BRICKER,

Attorney General.

5916.

INSURANCE—PERSONS AGREEING TO INDEMNIFY EACH OTHER FOR LOSS OF PROPERTY RESULTING FROM COLLISION—MUST COMPLY WITH INSURANCE LAWS.

SYLLABUS:

Owners of property may not legally exchange reciprocal contracts with each other to indemnify each other for losses to their property or property in their custody as a result of collision, fire, theft or wind, without complying with Sections 9556-1, et seq., General Code.

COLUMBUS, OHIO, July 31, 1936.

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

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

> "We have been approached by a representative of a group of truck owners and operators in northern Ohio, inquiring as to whether they may mutually contract with each other to indemnify for losses to their trucks or cargoes, as a result of collision, fire, theft, or wind, without complying with the insurance laws of this state.
>
> We enclose a sample copy of the proposed contract.
>
> May such a group of owners of property mutually contract with each other to indemnify each other for losses to their property, or property in their custody, as a result of collision,

fire, theft, or wind, without complying with the insurance laws of this state?"

The copy of the proposed contract which you submitted with your letter reads as follows:

"This memorandum of agreement made and concluded at Cleveland, Ohio, by and between JOHN JONES, residing at ...., hereinafter called the party of the First Part, and HARRY SMITH, OSWALD BROWN, OLIVER TUCKER, etc., residing at ...., hereinafter called the parties of the Second Part,

WITNESSETH:

WHEREAS, the parties hereto, being private citizens and residents of this state, who desire to provide indemnity among themselves from fire loss or other casualty, by exchange of private contracts for protection only and not for profit,

NOW, THEREFORE, in consideration of the First Party assuming a like obligation to and toward the Second Parties, the Second Parties do hereby promise and agree to indemnify the First Party, in any amount not less than Ten Dollars ($10.00) nor more than one thousand dollars ($1,000.00), for any loss which the First Party may suffer to his truck and/or cargo of livestock as the result of collision, fire, theft, wind and/or explosion from gas, the said amount of indemnification to be determined by any three of the said parties of the Second Pact acting as an arbitration committee.

In order to prevent delay in the indemnification of losses sustained by the First Party, and in consideration of like contracts and like payments on the part of the parties of the Second Part, the First Party does hereby, concurrently with the execution of this agreement, pay into the hands of John Smith, Trustee, (who shall be bonded in such amount as to protect adequately the parties hereto) the sum of Fifty Dollars ($50.00), which amount, together with like amounts paid into his hands by parties of the Second Part, shall constitute a total sum from which said Trustees shall pay out, to any party to this contract, such sum in indemnification of lossess sustained as shall be ordered by an arbitration committee constituted as above indicated.

Any unused portion of said Fifty Dollars ($50.00), so paid in as aforesaid, shall be returned, on a pro rata basis, to the

parties to this contract, upon the termination thereof, and no part of said Fifty Dollars ($50.00) shall be considered as being a premium nor be understood as limiting the liability of any party under this or similar contracts so written, but is to be placed in the hands of the said John Smith, Trustee, for convenience only and to expedite the carrying into effect of the provisions of this contract as aforesaid.

IN WITNESS WHEREOF, the parties hereunto have set their hands to duplicat originals as of the ....day of ...., ...

Signed in presence of:

....	....
....	......................"

Section 665, General Code, provides:

> "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.
>
> No person, firm, association, partnership, company and/or corporation shall publish or distribute, receive and print for publication or distribution any advertising matter wherein insurance business is solicited unless such advertiser has complied with the laws of this state regulating the business of insurance, and a certificate of such compliance is issued by the superintendent of insurance.
>
> Whoever violates the provisions of this section with reference to advertising, shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be fined not less than one hundred dollars nor more than five hundred dollars for each offense."

The last two paragraphs of this section were added by the amendment thereof in 1935 (116 O. L. 234).

It is contended by persons interested in this plan of insurance that since the first paragraph of Section 665 refers only to companies, corporations and associations, the provision of said paragraph does not

apply to individuals. It could be contended with equal force that said paragraph does not apply to firms or partnerships since they are not expressly named as they are in the second paragraph of said section. However, Section 670, General Code, reads as follows:

> "The provisions herein relating to the superintendent of insurance shall apply to all persons, companies and associations, whether incorporated or not, engaged in the business of insurance."

This is broad enough to include individuals and every type of association or company, whether incorporated or not.

Section 670 and the first paragraph of Section 665 were a part of the same section in the Revised Statutes (Section 289), and were contained in section 25 of the act which established the Division of Insurance. 69 O. L. 32. This section read as follows:

> "The provisions of this act shall apply to individuals and parties, and to all companies and associations, whether incorporated or not, now or hereafter engaged in the business of insurance. It shall be unlawful for any company, corporation or association, whether organized in this state or elsewhere, either directly or indirectly, to engage in the business of insurance, or to enter into any contracts substantially amounting to insurance, or in any manner to aid therein, in this state, without first having complied with all the provisions of this act."

Consequently, Section 670 should be read in connection with Section 665. Furthermore, all the sections referring to the powers and duties of the Superintendent of Insurance are *in pari materia* and must be construed together. The following is said in Brand v. Safford, 118 O. S. 56:

> "It is our opinion that the various sections of the General Code defining the powers and duties of the superintendent of insurance are *in pari materia,* and that it is the duty of the superintendent of insurance, and of this court, not only to so construe them as to give force to all, but also that recourse may be had to the several sections for the purpose of arriving at a correct interpretation of any one of such sections."

It would be an unreasonable construction which might affect the validity of these statutes to say that companies, corporations and associations must comply with the insurance laws of the state but that indi-

viduals could carry on the business of insurance without any regulation whatever. Such a construction would tend to defeat the very purposes for which the insurance laws were passed.

In the case of State, ex rel. v. Conn, 115 O. S. 607, it was held that the statutes designed to regulate the business of insurance are remedial in their nature and must be liberally construed to effect the purposes to be served. Moreover, under this proposed plan, the parties to the contract associate themselves together for the purpose of insuring each other against certain risks, appointing a common trustee for the purpose of carrying into effect the provisions of the contracts. Consequently, such a group could quite properly be considered as an association as that term is used in Section 665.

Joyce on Insurance, 2d Edition, Vol. I, Section 336a, refers to the case of Mississippi v. Alley, infra, which holds that the parties to such an arrangement form a voluntary association "which more nearly comes under the classification of a 'mixed' company or association".

The plan you refer to is what is termed reciprocal insurance, also sometimes referred to as inter-insurance or inter-indemnity. It is generally defined as that system whereby persons, firms or corporations engaged in a similar line of business agree to indemnify each other against a certain kind or kinds of losses by a mutual exchange of insurance contracts whereby each member separately becomes both an insured and an insurer with several liability. This is usually done through the medium of a common attorney-in-fact appointed for that purpose for each of the underwriters, especially where that becomes necessary by reason of the fact that the subscribers are scattered over a large territory. Re Minnesota Insurance Underwriters, 36 Fed. (2d) 371; Wysong v. Auto Underwriters, 204 Ind. 498; Thomas Canning Co. v. Canners Exchange Subscribers, 219 Mich. 214; Company v. Harding, 348 Ill. 454.

This plan has almost universally been held to constitute doing the business of insurance. Joyce on Insurance, 2nd Ed., Vol. I, Section 336a; Mosteiko v. Inter-insurers Corp., 229 Ill. App. 153.

It was classified as insurance in Re Minnesota Underwriters, supra, for the court said:

> "Were it not for section 3314, General Statutes of Minnesota, 1923, which provides 'it shall be unlawful for any person, firm or corporation to solicit or make or aid in the soliciting or making of any contract of insurance not authorized by the laws of this state,' no law would be required for the exchange of such contracts of indemnity."

Referring to such a plan of insurance, the court in the case of Thomas Canning Co. v. Canners Exchange Underwriters, supra, said:

"By whatever methods or words it may be differentiated defendants' system of cooperative indemnity is insurance."

In the case of Mississippi v. Alley, 96 Miss. 720, the plan comprehended an exchange of contracts between lumbermen whereby their mill properties would be protected against loss from fire. Owing to the number of contracts thus written, the exchange of contracts was accomplished through a medium of an attorney-in-fact. It was contended that this was not insurance and was not within the statutes regulating the business of insurance. The court said:

"Though the organization be called by any of the names specified in the statute, such as 'company, corporation, association,' etc., if in truth it is such and is doing the business which makes it subject to our statutes on insurance, the absence of the name can operate as no charm to wrest it out of the control of the insurance department."

The court also said:

"The use of the word 'company' in section 2606, prohibiting any 'fire insurance company' from doing business in this state until, etc., is defined in section 2562 to mean 'all corporations, associations, partnerships, or individuals,' etc., thus again showing that the provisions of the statute apply to insurance associations in the broadest possible way."

The court in this case also held that the fact that such plan operates without profit and insures against loss on only one kind of insurance is immaterial.

In the case of State ex rel. v. Revelle, 257 No. 529, it was held:

"The essential elements of a contract of insurance are an agreement, oral or written, whereby for a legal consideration the promisor undertakes to indemnify the promisee if he suffer a specified loss."

In that case the statute which permitted reciprocal contracts and declared that the making thereof shall not constitute the business of insurance and shall not be subject to the laws relating to insurance, was held to be unconstitutional. The court, holding that the exchange of such contracts does constitute the business of insurance, said:

"In the exercise of its power to regulate insurance contracts the General Assembly must make the same regulation as to all members of any particular class, and impose equal conditions and burdens upon them. The Constitution does not permit any discrimination between individuals comprising a class of natural persons engaged in any trade or calling the prosecution of which affects the public welfare or between the members of a class of corporate insurers."

With the increase in importance and number of such exchanges have come legislative permission and regulation in a considerable number of states. The following is said in re Minnesota Insurance Underwriters, supra:

"It is a well-known fact that reciprocal or interinsurance exchanges existed in this country prior to enactment of laws authorizing them. Certain groups of individuals had found this plan an economical and practical method of providing indemnity. One man might not be sufficiently strong financially to bear the risk of loss alone, but he and a number of his friends and acquaintances, or others engaged in the same line of business, could form a group or association abundantly able to act as their own insurers, and thus procure insurance at or near its actual cost. This scheme of insurance was peculiarly attractive to those owning what are generally known in the insurance world as 'preferred risks,' where the danger of loss is small. Its growth and popularity resulted in the uniform acts which are now found in most of the state statutes."

In Ohio an act was passed in 1917 "Authorizing and regulating the the exchange of reciprocal or interinsurance contracts among individuals, partnerships, and corporations; empowering corporations to enter into such contracts; regulating process in suits on such contracts; providing for fees, taxes and licenses; and providing penalties." This act is Contained in Sections 9556-1 to 9556-13, both inclusive, General Code. Section 9556-1 reads as follows:

"Individuals, partnerships and corporations of this state, herein designated subscribers, are authorized to exchange reciprocal or inter-insurance contracts with each other, and with individuals, partnerships and corporations of other states, districts, provinces and countries, providing indemnity among themselves from any loss which may be insured against by any fire insurance company or association under other provisions of the law. Such

> contracts and the exchange thereof and such subscribers, their attorneys and representatives shall be regulated by this act (G. C. sections 9556-1 to 9556-13) and by no other insurance law unless such law is referred to in this act, and no law hereafter enacted shall apply to them unless they be expressly designated therein."

The only reciprocal insurance which is authorized by this section is insurance against "any loss which may be insured against by any fire insurance company or association under other provisions of the law" and in effecting the kind of reciprocal insurance therein authorized the laws relating thereto must be complied with. There is no authority in this state for this type of insurance against any other loss than such as may be insured against by a fire insurance company or association.

In State, ex rel. v. Gearheart, 103 O. S. 236, the court said:

> "The expression through the word 'reciprocal' of the right of reciprocity, as to fire insurance, clearly excludes the right of reciprocity as to all other insurance, unless expressly and 'especially designated therein.'"

However, the risks authorized to be insured against by fire insurance companies by paragraph 1 of Section 9510 and paragraph 1 of Section 9607-2, General Code, seem to include the risks mentioned in your letter. The amendment of 1929 to Section 9556, which broadens the risks which fire insurance companies may insure against, probably would apply to reciprocal insurance since reciprocal contracts or the exchange thereof are not expressly designated therein as required by Section 9556-1.

Answering your question, therefore, I am of the opinion that owners of property may not legally exchange reciprocal contracts with each other to indemnify each other for losses to their property or property in their custody as a result of collision, fire, theft, or wind, without complying with Sections 9556-1, et seq., General Code.

Respectfully,

JOHN W. BRICKER,

Attorney General.