

789.

APPROVAL, BONDS OF SPRINGFIELD TOWNSHIP RURAL SCHOOL DISTRICT, CLARK COUNTY, \$8,413.60, TO FUND CERTAIN EXISTING INDEBTEDNESS.

COLUMBUS, OHIO, OCTOBER 5, 1923.

Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.

790.

APPROVAL, BONDS OF GREEN TOWNSHIP RURAL SCHOOL DISTRICT, CLARK COUNTY, \$706.82, TO FUND EXISTING INDEBTEDNESS.

COLUMBUS, OHIO, October 5, 1923.

Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.

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INSURANCE—NO STATUTORY AUTHORITY FOR ADMISSION OF AN UNINCORPORATED ASSOCIATION COMMONLY CALLED LLOYDS.

SYLLABUS:

There is no statutory authority in the insurance laws of Ohio for the admission of an unincorporated association, commonly called Lloyds, partaking of the nature of a limited partnership.

COLUMBUS, OHIO, October 5, 1923.

HON. HARRY L. CONN, *Superintendent of Insurance, Columbus, Ohio.*

DEAR SIR!—This will acknowledge receipt of your letter requesting my opinion as follows:

“Application has been made to this department for the admission of an Inland Lloyds Company.

This class of company has never been admitted to Ohio, and before making a ruling, will you kindly advise whether, in your opinion, this department is authorized to license such a company?

So that you may have the claim of the applicant, I am enclosing letter from Mr. E. C. Kohlsaas, setting forth fully his arguments in support of such admission.”

An examination of the articles of association of the company applying for admission to Ohio discloses in part the following:

ARTICLES OF ASSOCIATION. The subscribers hereto being desirous of engaging in the business of insurance as individual subscribers under the title INLAND LLOYDS for the purpose of severally becoming underwriters upon policies upon the "Lloyds" plan as provided in Section 304 of the Insurance Laws of the State of New York, and for the purpose of facilitating the management and prosecution of such business and protecting the interest of the several parties who have or shall become underwriters under the plan herein contemplated, hereby adopt these articles of association, each for valuable consideration paid, receipt of which is hereby acknowledged, severally agreeing with the others who have signed or hereafter may sign these presents, that: FIRST:—The general scope of the business to be conducted shall be as defined in the power of attorney executed by each of the subscribers, a copy of which is hereto attached and made a part hereof. Each subscriber shall share in the fortune of such business in like proportion to his total subscription hereto, as evidenced by the amount or amounts set opposite the name of such subscriber hereon."

Reference is made to Section 304 of the Insurance laws of the state of New York, which is the domiciliary state of the applicant company. We find the first sentence of said section 304 as follows:

"General provisions affecting Lloyds and inter-insurance associations organized after July first, nineteen hundred and eleven. On and after July first, nineteen hundred and eleven, twenty-five or more persons, partnerships or corporations which have the requisite authority by their charters may engage in the business of such insurance as is specified in sections one hundred and ten and one hundred and fifty of this chapter as Lloyds or inter-insurers upon receiving a certificate of authority from the superintendent of insurance to do."

The classes of insurance referred to in the above mentioned section are Fire and Marine.

We find no similar provisions for Lloyds in the Insurance Laws of Ohio.

An examination of the power of attorney which the subscribers to this form of insurance are required to sign, and which is indicative of the character of the contract, among other things provides as follows:

"provided, however, that my said attorney-in-fact shall in no case or event issue any policy or contract wherein or whereby I may become jointly liable with any other subscriber to said articles of association or which shall make me liable in any manner for the agreements or contracts of any other such subscriber, or which shall bind or affect me otherwise than by a several and individual liability to the amount separately insured by me or in my name by said policy; and provided that no such insurance shall be made in my name or for my account unless a like insurance or reinsurance on the same risk be made at the same time and for the same proportionate amount for and in the name of each and every other subscriber at Inland Lloyds who shall at that time be in good standing, and the names of all such subscribers shall be contained in and made a part of each policy or contract issued for such insurance or reinsurance; provided further that every policy or contract of insurance issued by my said attorney-in-fact bearing my name, shall contain a clause

providing that my total liability on all policies in force so subscribed in my name shall not exceed my total subscription as set forth in the articles of association, and a clause providing that service of a summons or other legal process on my attorney-in-fact named herein or otherwise designated and appointed as my attorney-in-fact to receive notice of process, shall be equivalent to the personal service of such process on me."

We call your attention to the case of *The State of Ohio ex rel J. K. Richards, Attorney General, vs. Ackerman et al.*, 51 O. S. 163, which was an action in quo warranto against C. F. Ackerman and ninety-nine other persons, who were transacting the business of guarantee and accident insurance in this state under the name of the "Guarantee and Accident Lloyds, New York," to oust them from carrying on that business because they had not complied with the laws of our state, or received any authority from it to do a business of that kind. The character of that organization and its plan of operation were quite similar to the applicant company in the present case.

The petition among other things recites:

"and on said third day of May, 1891, they made application to Hon. W. H. Kinder, Superintendent of Insurance of the state of Ohio, for a license or certificate of authority to carry on in said state, the business of guarantee and accident insurance, in accordance with the articles of agreement above set forth. The license and authority to do such insurance business was refused by the said superintendent of insurance; whereupon the defendants in this suit, acting as relators, instituted proceedings in mandamus in this court, asking the court to compel the Superintendent of Insurance of the state of Ohio to issue such license and authority.

"Upon the final hearing of said action in mandamus, this court denied the application and refused the writ of mandamus prayed for, and rendered judgment against the relators for costs; but notwithstanding the refusal of the superintendent of insurance to issue to the defendants a license or certificate of authority as requested, and notwithstanding the decision of this court sustaining the superintendent in so refusing, the defendants, acting under and in pursuance of the articles of agreement and powers of attorney aforesaid, and while so associated, have been and are transacting the business of guarantee and accident insurance in the state of Ohio, without having complied with the requirements of the laws of the state of Ohio regulating insurance, and without having been licensed or authorized to do such business by the Superintendent of Insurance of Ohio."

In a very full and complete consideration of the claims of the company, as well as the rights of the state on pages 195 and 196, the court in sustaining the action in Quo Warranto uses the following language:

"It is claimed, however, that the laws of Ohio do not apply to the defendants, because they are not an organized corporation, company or association, or acting as such, but that, in making contracts of insurance, each individual acts for himself. A careful consideration of their plan of business, as shown by the articles of agreement and powers of attorney executed by the defendants, has brought us to a different conclusion. They have associated themselves together in a business undertaking, under a company name, in which, viz.: 'Guarantee and Accident Lloyds, New York,' all of their policies are issued. Each subscriber to the articles has contributed an equal amount to the capital stock of the concern, which is placed in the control of a board of managers, called an advisory committee, to meet losses

arising on the policies. This board of managers is chosen by the subscribers, like the directors of a corporation, and invested with powers quite as plenary. All the subscribers have executed powers of attorney to the same individuals, investing them with the business management of the insurance under the supervision of the advisory board. The powers conferred on the attorneys in fact, are analogous to those of the executive officers of a corporation. They execute the policies, keep accounts of the business and expenses, which are open to the inspection of the advisory board, adjust all losses, and prosecute and defend all suits growing out of the business. Each member of the association stipulated with the others that no policy shall be issued, unless it is executed in behalf of all and yet that his liability shall be several only, and limited to the amount contributed to the fund, or authorized by him; so that, if some of the members become insolvent, and their contribution is exhausted in losses or otherwise, the policy shall be enforceable against the others, only for an aliquot part equal to the proportion of the solvent to the insolvent members. The liability of a stockholder of a corporation is not more restricted. Then the interest of each member in the concern is made transferable; a member who wishes to withdraw being authorized to procure another to take his place, and the representative of a deceased member may transfer the latter's share in like manner, and, in that way, the organization may be made as enduring as it is possible for any corporation to be. The association has the appearance, and some of the characteristics of a corporation formed for the purpose of doing a general insurance business in its line, and its form of policies, and mode of conducting its business are calculated to impress one who does not make a critical examination, with the belief that it is a corporation, conforming to the usages of such companies. The character of the organization under which the defendants are operating, and their method of business, bring them, we think within the purview of that clause of section 6760, of the Revised Statutes, which authorizes an action in *quo warranto* to be brought 'against an association of persons who act as a corporation within this state without being legally incorporated.' To be within the operation of that provision, it is not necessary that the association, or persons composing it, avow a purpose to act as a corporation, or assume to do so; it is sufficient that the acts are such as appertain to corporations, or are done after the manner of corporations."

And again the court on page 198 adopted the following language:

"Were we to hold that these respondents can do, without any legislative authority, what they here assume to do, our insurance laws ought to be repealed; for individuals, then, by organizing in this manner, could escape both individual and corporate liability beyond the amount of assets they might choose to place in the hands of their trustees as the basis of their liability. No public officer could investigate whether the amount is in fact paid in, how it is invested, or how secured, and the public would thus have practically no protection against dishonest companies. These respondents, if they will carry on the business of insurance, must either openly act upon their responsibility as individuals, or they must become incorporated, and subject themselves to the laws governing such corporations."

It will be observed that the applicant is not a corporation, neither is it a partnership.

It claims that it is a Limited Partnership.

There is no statutory authority in Ohio for the admission of insurers of this character.

We conclude therefore that you are without authority to grant the application for admission of the above mentioned associations.

Respectfully,
C. C. CRABBE,
Attorney-General.

792.

SCHOOLS—WHAT CONSTITUTES A FRATERNITY OR SORORITY AS
CONTEMPLATED BY SECTION 12906 G. C.

SYLLABUS:

An organization which uses Greek letters in the designation of its name, which has initiation ceremonies, which pledges students to membership and which holds secret meetings, constitutes a fraternity or sorority as contemplated by section 12906 G. C.

COLUMBUS, OHIO, October 8, 1923.

HON. VERNON M. RIEGEL, *Director of Education, Columbus, Ohio.*

DEAR SIR:—I am in receipt of your recent communication as follows:

“Section 12906 reads as follows:

‘Whoever, being a pupil in the public schools, organizes, joins or belongs to a fraternity, sorority or other like society composed of or made up of pupils of the public schools, shall be fined not less than ten dollars nor more than twenty-five dollars for each offense.’

Your opinion is desired as to what constitutes a fraternity or sorority, as mentioned in the foregoing section. Does an organization which uses Greek letters in the designation of its name, which has special initiation ceremonies, which pledges students to membership, and which holds secret meetings constitute a fraternity or sorority as contemplated by the above section?”

Section 12906, General Code of Ohio, provides as follows:

“Whoever, being a pupil in the public schools, organizes, joins or belongs to a fraternity, sorority or other like society composed of or made up of pupils of the public schools, shall be fined not less than ten dollars nor more than twenty-five dollars for each offense.”

This section prohibits pupils of the public schools from joining or belonging to a fraternity, sorority or like society composed or made up of pupils of the public schools.

In this connection it becomes necessary to determine what is a fraternity or sorority.

Webster's Dictionary defines “fraternity” as follows: