annuity contract customarily sold by an insurance company. It is not an insurance contract in that its payment or maturity is unaffected by the death of the annuitant or other casualty. Neither does the contract, although coupons are attached thereto, have the characteristics of a bond or of other securities ordinarily sold by investment dealers. A somewhat similar contract, which was termed an endowment certificate, was considered by this office in an opinion appearing in Opinions of the Attorney General for the year 1926, p. 169, the holding being that the sale of such endowment certificates constituted the issuing company a bond investment company within the meaning of Section 697, General Code.

It is accordingly my opinion that your inquiry should be answered in the affirmative.

Respectfully,
GILBERT BETTMAN,
Attorney General.

4453.

INSURANCE—MUTUAL PROTECTIVE ASSOCIATION—AUTHORIZED TO ISSUE CLOSED CONTRACTS OF INSURANCE WHERE LEGAL RESERVE MAINTAINED.

SYLLABUS:

A mutual protective association or company organized under the provisions of sections 9427, et seq., General Code, has the authority to issue closed contracts of insurance, that is, contracts which provide for the payment of stipulated premiums and which are not subject to additional assessments, provided that such association or company maintains as to each of such contracts the reserve required to be maintained by legal reserve companies.

COLUMBUS, OHIO, June 24, 1932.

HON. CHARLES T. WARNER, *Superintendent of Insurance, Columbus, Ohio.*

DEAR SIR:—I acknowledge receipt of your communication which reads as follows:

> "A certain domestic insurance company, organized under Section 9427, and subsequent sections of the Ohio Statutes, governing mutual protective life, health and accident companies, advertises that their contracts are closed. In other words, that the rates cannot be changed, nor can any extra assessments be levied against the policyholders. They point to the provisions of Section 9427-2 as giving them the right to issue a closed contract.
>
> This company issues certificates, or policies, in which there is no provision for cash values. Against their contracts they maintain a reserve, and the company advertises itself as a legal reserve company.
>
> There has been a distinction here for years between an old line legal reserve life insurance company and other companies writing life insurance. Such a company issues a standard contract which requires standard provisions, and does not allow the four standard prohibitions. The contract

of the company in question does not follow the standard provisions, and, therefore, cannot be looked upon as an old line legal reserve company.

This Department has consistently answered inquiries to the effect that this company is an assessment company, and has the right to change its contract, both as to rates and provisions. The company emphatically denies this, and the question has been one of controversy between the company and this Department for several years.

We respectfully ask an opinion from you on this question."

Section 9427, General Code, reads as follows:

> "A company or association may be organized to transact the business of life or accident or life and accident insurance on the assessment plan, for the purpose of mutual protection and relief of its members, and for the payment of stipulated sums of money to the families, heirs, executors, administrators, or assigns of the deceased members of such company or association, as the member may direct, in the manner provided in the by-laws. The company also may receive money either by voluntary donation or contribution, or collect it by assessments on its members, and may accumulate, invest, distribute and appropriate such money in such manner as it deems proper. All accumulations and accretions thereon shall be held and used as the property of the members, and in the interest of the members, and not be loaned to, used, appropriated, or invested for the benefit of any officer or manager of such company or association. No company or association shall issue a certificate for a greater amount than it is able to pay from the proceeds of one assessment. Such company or association shall be subject to the provisions of this chapter."

Theoretically, pure assessment insurance means that when a loss is suffered, an assessment is levied upon the surviving members of the association to meet such loss and to pay the expenses of administration. Vance on Insurance, page 38. And this is what the law, as formerly worded, contemplated. As stated in the third branch of the syllabus of the case of *Ohio, ex rel.*, vs. *Life Insurance Company* 58 O. S. 1:

> "However, what constitutes the transaction of the business of life insurance on the assessment plan within the meaning of that term as used in said section 3630e, should be determined by the laws of this state; and according to those laws, that phrase should be held to contemplate a scheme of insurance conducted for the sole benefit of the policy holders of a concern, the principal source of revenue of which must arise from post-mortem assessments intended to liquidate specific losses."

See also *State, ex rel.*, vs. *Monitor Fire Association*, 42 O. S. 555.

The distinction between insurance on the assessment plan and what is commonly termed "old line insurance" has gradually become less marked. The court in the case of *Ohio, ex rel.*, vs. *Life Insurance Company, supra*, said:

> "That the two plans have been steadily drawing nearer to each other in recent years, that some of their distinctive features have become

obliterated is true; and doubtless the causes that have produced that result are still in active operation."

The amendment of 1925, sections 9427-1 to 9427-8, both inclusive, seems to recognize these evolutions. Section 9427-1 reads in part as follows:

> "On and after January 1, 1926, every association transacting business under the provisions of this act (G. C. §§ 9427-1 to 9427-8) shall hold and maintain upon every contract of insurance thereafter issued, assets in excess of other liabilities, to provide for reserves of not less than the minimum reserves prescribed herein."

Section 9427-2 reads as follows:

> "Under any contract providing, in addition to the regular contributions, for the payment currently of additional contributions to the extent needed to pay its share of claims and expenses and to maintain the tabular reserves required by this act (G. C. §§ 9427-1 to 9427-8), or requiring any such additional amount to be charged as an indebtedness not exceeding the tabular reserves on the contract and providing for terminating the contract whenever such charges shall equal the tabular reserves, no liability shall be charged in any valuation for any deficiency in future contributions so long as such payments are actually collected or such charges are actually made.
>
> If any contracts are issued on or after January 1, 1926, which do not contain the above provisions, the association shall maintain as to such contracts the reserve required by sections 9362 and 9363 of the General Code."

The first part of this section refers to assessment contracts and provides that no liability for any deficiency in future contributions shall be charged in any valuation, where the contract provides for additional contributions sufficient to pay its share of claims and expenses and to maintain the tabular reserves required by section 9427-1, provided such contributions are actually collected or charges for them made against the tabular reserves on the contract. There can be no doubt that this refers to open or assessment contacts .

The latter part of this section provides that where a contract makes no provision for additional contributions to pay its share of claims and expenses and to maintain the required reserves, as to such contract the association or company shall maintain the reserves required of legal reserve companies. In other words, if a contract is issued which is not subject to additional assessments, then the required reserve for such contract must be maintained by the association or company. This part of this section apparently refers to closed contracts, contracts not subject to extra assessments. It follows that this legislation contemplates that contracts might be issued which would not be subject to additional assessments.

The legislature evidently felt that if the reserves required of legal reserve companies provide a safe margin to meet losses, there would be no need for additional assessments so long as the association or company maintains such reserves as to all such contracts issued by it.

Section 9427-5, General Code, provides in part as follows:

"An association may provide in its contracts for stipulated premiums and death benefits also for cash surrender and loan values to an amount not exceeding the reserve, or for the equivalent paid up or extended term insurance based upon a rate of mortality not lower than and a rate of interest not higher than that used in determining the reserve provided herein."

By this section, mutual protective associations are now authorized to provide in their contracts for cash surrender and loan values. They are also authorized to provide for stipulated premiums. It is significant that the legislature used the word "premium." This word had not been used in the law with reference to mutual protective associations before the passage of this statute. A premium is a consideration for insurance and has a different meaning than the word "assessment."

"Where the consideration is fixed as to amount and time of payment, it is a premium as distinguished from an assessment." 32 C. J. 1192. "Stipulated" means "agreed" or "fixed."

"The ordinary meaning of the words stipulated price is an agreed or fixed amount." *Lonobe* vs. *Bransford,* 141 Ark. 18.

In the case of *Ohio, ex rel.,* vs *Life Insurance Company, supra,* speaking of insurance on the assessment plan, the court said:

"In this connection it should be held to mean something specifically different from premium, for it is used in contradistinction to the latter word. Our statutes do not define the word premium, nor do they declare the meaning of the phrase 'on the assessment plan.' But the general assembly should be deemed to have used these terms in the sense in which they were understood at the time the statute was enacted."

In discussing insurance on the assessment plan and insurance which is not on the assessment plan, the court said:

"The one class exacts premiums, or a fixed sum payable periodically in advance without reference to any specific loss, while the distinguishing feature of the other is an assessment of a sum, usually varying in amount, according to the sum to be raised to be ascertained and levied after the death of the insured. The reason, as we have seen, for this classification and for granting a license to a member of the 'assessment' class, on more liberal terms than one belonging to the 'premium' class, is that the former class does not necessarily pay its losses from a fund already in existence, but may raise it by a post mortem assessment, while the latter class must resort to a fund already accumulated, and which, for the security of policy holders, should be safely invested."

In authorizing such associations or companies to provide for stipulated premiums in their contracts, the legislature apparently intended to give them some authority they did not have before, and considering the meaning of the words "stipulated premiums" and the provisions contained in section 9427-2, I am of the view that the legislature intended to give such associations and companies the right

to issue contracts of insurance providing for the payment of stipulated payments at stipulated intervals, which contracts should not be subject to any additional assessments.

Answering your inquiry, therefore, I am of the opinion that a mutual protective association or company organized under the provisions of sections 9427, et seq., General Code, has the authority to issue closed contracts of insurance, that is, contracts which provide for the payment of stipulated premiums and which are not subject to additional assessments, provided that such association or company maintains as to each of such contracts the reserves required to be maintained by legal reserve companies.

Respectfully,
GILBERT BETTMAN,
Attorney General.

4454.

APPROVAL, NOTES OF WADSWORTH CITY SCHOOL DISTRICT, MEDINA COUNTY, OHIO—$9,000.00.

COLUMBUS, OHIO, June 25, 1932.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

4455.

PAROLE—GOOD CONDUCT LAW—HABITUAL CRIMINAL ELIGIBLE FOR PAROLE AT END OF FIFTEEN YEARS IMPRISONMENT—NOT ENTITLED TO DIMINUTION OF SENTENCE FOR GOOD BEHAVIOR —PERSON CONVICTED OF MURDER IN SECOND DEGREE ELIGIBLE FOR PAROLE AT END OF TEN YEARS.

SYLLABUS:

1. *Habitual criminals serving life sentences are eligible for parole at the expiration of fifteen years' imprisonment, as provided for by section 2210-1, General Code. However, such life termers are not entitled to any diminution of sentence for good behavior, as provided for by sections 2210 and 2210-1, General Code.*

2. *Persons serving life sentences for the crimes of kidnapping, rape, maiming with acid, burglary, bank robbery and larceny of an inhabited dwelling are eligible for parole at the expiration of fifteen years' imprisonment, as provided by section 2210-1, General Code.*

3. *The minimum time provided for in section 2210-1, General Code, in which a person serving a sentence of imprisonment for life for a crime other than treason or murder in the first degree can become eligible for parole, is not subject to the diminution of sentence for good behavior provided for in section 2210, General Code.*

4. *Life termers convicted and sentenced for the crime of murder in the second degree, prior to the enactment of section 2210-1, General Code, are eligible for*