

OPINION NO. 70-155**Syllabus:**

In the absence of any Ohio law expressly authorizing such activity, Section 3905.42, Revised Code, prohibits a company from engaging in the business of guaranteeing the shareholdings of any individual member of a credit union against losses.

To: Fred B. Smith, Supt. Dept. of Insurance, Columbus, Ohio
By: Paul W. Brown, Attorney General, November 18, 1970

I have before me your joint request for my opinion concerning a corporation whose purpose clause, as disclosed by its recently-filed articles of incorporation, reads as follows:

"To use the full extent of its powers, authority and resources to provide for the liquidity of its members and to guarantee the shareholdings of any individual member of a credit union to an amount not to exceed \$20,000."

With respect to this corporation, you ask the following question: if the corporation, pursuant to its articles of incorporation as stated above,

- (1) provides for the liquidity of its members and
- (2) guarantees the shareholdings of any individual member of a credit union to an amount not to exceed \$20,000,

is it engaging either directly or indirectly in this state in the business of insurance, or entering into any contracts substantially amounting to insurance, or in any manner aiding therein, or engaging in the business of guaranteeing against liability, loss, or damage, as contemplated in Section 3905.42 of the Ohio Revised Code?

Section 3905.42, Revised Code, provides that:

"No company, 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.
(Emphasis added)

This section of the code has been interpreted rather broadly in several past opinions of this office involving questions concerning whether certain activities of companies resulted in their engaging either directly or indirectly in this state in the business of insurance or their entering into contracts substantially amounting to insurance:

Opinion No. 2897, Opinions of the Attorney General for 1958;
Opinion No. 1039, Opinions of the Attorney General for 1946;
Opinion No. 3104, Opinions of the Attorney General for 1938.

However, the situation described in your request for my opinion appears to be covered more specifically by the other language which I have emphasized in Section 3905.42, supra, in that the company is guaranteeing against loss of shareholdings. Such a protection plan for depositors is similar to that authorized for bank depositors in Section 1107.04, Revised Code, and for participants in building and loan associations in Section 1151.41 and 1151.80 et seq., Revised Code.

However, a search of the Revised Code discloses that there is no Ohio law which would authorize a company to engage in the business of guaranteeing the shareholdings of individual members of credit unions against losses. The absence of such an enabling statute causes this company to be covered by the prohibition in Section 3905.42, supra, because its business is not "expressly authorized by the laws of this state."

I understand that a recent federal law, not yet effective, will authorize such protection for shareholdings of members of federal credit unions and that such protection may be available to shareholders in state credit unions on a permissive participation basis. If and when this federal law is effective and the Ohio Legislature authorizes the Ohio credit unions to engage in such a program by the passage of legislation similar to that cited earlier regarding banks and building and loan associations, then the prohibition of Section 3905.42, supra, may well not apply.

Accordingly, it is my opinion and you are hereby advised that in the absence of any Ohio law expressly authorizing such activity, Section 3905.42, Revised Code, prohibits a company from engaging in the business of guaranteeing the shareholdings of any individual member of a credit union against losses.