

the provisions of this act, to revoke the license of the company, or agent, so offending, and no license shall be granted to such company, or agent, for one year after such revocation."

And then proceeding to answer the question, "Was it within his discretion to refuse the license, in view of the facts alleged in his answer, and admitted by the demurrer?" and to decide the case, says:

"By the explicit terms of this section, it would have been the duty of the superintendent to revoke the license, if one had been issued, and he would, at the time of the application, have been without authority to grant another. His refusal being in accordance with the manifest spirit of the statute, and in furtherance of its obvious purpose, was within his discretion, if not within his imperative duty."

"There is nothing alarming in the term discretionary power. It has a legal meaning, with safe limitations. The intendment of a law which grants it, whether expressly or by implication, is that the discretionary decision shall be the outcome of examination and consideration; in other words, that it shall constitute a discharge of official duty, and not a mere expression of personal will. An arbitrary disapproval of a license, for example, determined upon without an examination of relevant facts, and expressing nothing but the mood of the officer, would not be, in contemplation of law an exercise of the power granted. It would constitute, on the contrary, a neglect and refusal to perform his official functions, and would expose him to the interference of this court by the writ of mandamus, *U. S. v. Douglass*, 19 D. C. 99, 109 *Corpus Juris* Vol. 18, p. 1138."

The qualifications prescribed for agents' license in sections 644 and 644-4 G. C. are not required of agents of life insurance companies.

While as a means to the proper regulation of the insurance business, and independently of sections 644 to 644-4 of the General Code, inclusive, there may be vested in the Superintendent of Insurance of Ohio, authority to exercise a reasonable discretion in the matter of passing upon the qualifications for, and issuing licenses to, agents of foreign life insurance companies transacting business in Ohio, yet he may not reject an applicant because of non-residence alone, unless compelled to do so by the provisions of our retaliatory statute above mentioned.

Respectfully,

C. C. CRABBE,

Attorney General.

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APPROVAL, BONDS. OF VILLAGE OF GROVEPORT, FRANKLIN COUNTY, OHIO, \$4,000.00. REFUNDING BONDS.

COLUMBUS, OHIO, July 25, 1923.

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