

OPINION NO. 70-134**Syllabus:**

1. An insurance company is not required by Section 3941.02, Revised Code, to be empowered by its articles of incorporation to transact both division (A) insurance and one or more of the kinds of insurance described in divisions (B) through (G) of that Section as a prerequisite to applying for a certificate of authority.

2. A certificate of authority is issued for all the risks and hazards included in the appropriate division or kind of insurance rather than just for a portion of that division.

3. A certificate of authority may not be issued which authorizes the transaction of one or more kinds of insurance described in divisions (A) through (G) of Section 3941.02, Revised Code, by reinsurance only.

4. An insurance company may limit the insurance it transacts, and the certificate of authority, to division (D) of Section 3941.02, Revised Code, which is broad enough to include equivalent risks in division (A) of that section.

5. Burglary insurance can be authorized under divisions (A), (D) and (G) of Section 3941.02, Revised Code; the divisions under which glass insurance could be authorized would depend on the

hazards and risks against which the glass is to be insured, but would most probably fall under Section 3941.02 (G), Revised Code.

To: Fred B. Smith, Director, Ohio Dept. of Insurance, Columbus, Ohio
By: Paul W. Brown, Attorney General, September 21, 1970

I have before me your request for an opinion which poses the following questions:

"1. As a prerequisite for any insurance company to be issued a certificate of authority under section 3941.02 of the Ohio Revised Code, must its articles of incorporation (1) empower it to transact the kind of insurance described in division (A) of section 3941.02 regardless of whether the company actually intends to apply for a certificate of authority to write the kind of insurance so described, and (2) empower it to transact at least one or more of the kinds of insurance described in divisions (B) to (G), inclusive, of section 3941.02 regardless of whether the company actually intends to apply for a certificate of authority to write the kind or kinds of insurance so described? In any case, it is assumed that an insurance company will be issued a certificate of authority to transact only the kind or kinds of insurance authorized by its articles of incorporation and which the company makes application to the superintendent for a certificate of authority.

"2. May an insurance company be issued a certificate of authority which authorizes it to transact only a portion of the kind of insurance described in division (A) of section 3941.02?

"3. May an insurance company be issued a certificate of authority which authorizes it to transact the business of reinsurance only of one or more of the kinds of insurance described in divisions (A) through (G) of section 3941.027.

"4. If an insurance company is authorized by its certificate of authority to transact the kind of insurance described in division (D) of section 3941.02, may it write the equivalent of the portion of the kind of insurance described in division (A) of said section pertaining to automobiles without being authorized further under division (A) in its certificate of authority?

"5. If an insurance company desires to write

the coverages of burglary and glass insurance, under which division or divisions of section 3941.02 must it be so authorized in its certificate of authority?"

Section 3941.02, Revised Code, provides in part that:

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"If the articles of incorporation of a domestic, foreign or alien, mutual or stock insurance company empower it, or if the power of attorney or subscribers' agreement empowers the attorney in fact of a reciprocal or interinsurance exchange to transact the kind of insurance described in division (A) and one or more kinds of insurance described in divisions (B) and (G), inclusive, of section 3941.02 of the Revised Code, such company or attorney may apply to the superintendent of insurance for the appropriate license or certificate of authority, as provided in sections 3925.11, 3927.01, 3931.10 or 3941.06 of the Revised Code, which application shall state which of the kinds of insurance, as above described, it proposes to transact, and the superintendent shall act thereon in the manner prescribed by said section[s].

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(Emphasis added.)

Section 1.02 (H), Revised Code, provides that: "'And' may be read 'or,' and 'or' may be read 'and' if the sense requires it." The sense of Section 3941.02, supra, requires that the word "and" should be read as either "and" or "or". Since many of the risks covered by division (A) are also covered in divisions (B) through (G), such a reading would serve to prevent the necessity of authorizing coverage of certain risks more than once in the articles of incorporation.

Also, consider that part of Section 3941.02, supra, which provides that:

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"A domestic, foreign, or alien mutual or stock insurance company, other than a life insurance company, organized or admitted under the insurance laws of this state or created by a special act or acts of the general assembly, * * * may directly, or by ceding or assuming reinsurance, transact any one or more or all of the kinds of insurance described as follows:

* * * * *

This paragraph is followed by a listing of divisions (A) through (G). Thus this section allows a company to limit its actual business to just one division of insurance. It is only reasonable, therefore, that the company be able to limit authorization by its articles of incorporation to just one division of insurance.

Therefore, in response to your first question, the sense of Section 3941.02, supra, requires that the "and" in question may be read as "and" or "or". Consequently, an insurance company is not required to be empowered by its articles of incorporation to transact both division (A) insurance and one or more of the kinds of insurance described in divisions (B) through (G) as a prerequisite to applying for a certificate of authority.

Your second question asks whether an insurance company may be issued a certificate of authority which authorizes it to transact only a portion of the kind of insurance described in division (A). That part of Section 3941.02, supra, which was set forth above, provides that the application for a certificate of authority shall state the kinds of insurance, "as above described," which it proposes to transact, and that the superintendent shall act thereon in the manner prescribed by said section[s]. This would indicate that division (A) through (G) are "kinds" of insurance for the purpose of the actual application for a license or certificate and the subsequent issue of such certificate, as well as for qualifying to apply. Thus, the certificate of authority would be issued for all the types of insurance risks included in the appropriate division or "kind" of insurance rather than just for a portion of the division.

The third question concerns the issuing of a certificate of authority authorizing a company to handle only reinsurance of one or more of the kinds of insurance described in divisions (A) through (G) of Section 3941.02, supra. As cited above, Section 3941.02, supra, provides that certain insurance companies:

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* * * may directly, or by ceding or assuming reinsurance, transact any one or more or all of the kinds of insurance described as follows:

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Thus, the statute gives the insurance company an option as to how it will transact the kinds of insurance described in divisions (A) through (G). That part of Section 3941.02, supra, set out earlier, which provides for the issuance of the certificate of authority, makes no provision for limiting the authorized activity to reinsurance, though it does provide that the certificate be limited as to the kinds of insurance transacted. Absent a provision allowing limitation of the certificate of authority to reinsurance only, the option granted to the company must be maintained by the certificate.

Regarding your fourth question, the requirement in Section 3941.02, supra, is that the application:

" * * * * * * * * *"

" * * * shall state which of the kinds of insurance, as above described, it proposes to transact, and the superintendent shall act thereon in the manner prescribed by said section[s].

" * * * * * * * * *"

This means that the application and certificate must state only those divisions of insurance which the company is proposing to transact. In addition, division (D) is broad enough to include all the equivalent risks (i.e., relating to automobiles) of division (A) with the exception of policies against the hazard of fire insurance only. Therefore, if a company wants to limit the insurance it transacts to division (D), which Section 3941.02, supra, authorized, then the certificate of authority should refer to division (D) only, which division is broad enough to include equivalent risks in division (A).

Your fifth question asks under what divisions of insurance would burglary and glass insurance be authorized by the certificate of authority. Regarding burglary insurance, division (A) includes insurance on automobiles against losses from burglary, as does division (D). Division (G) would cover burglary insurance on other forms of property. The division(s) under which glass insurance could be authorized include divisions (A), (D), (E) and (G) and would depend on the hazards and risks against which the glass would be insured.

Therefore, it is my opinion and you are advised that:

1. An insurance company is not required by Section 3941.02, Revised Code, to be empowered by its articles of incorporation to transact both division (A) insurance and one or more of the kinds of insurance described in divisions (B) through (G) of that Section as a prerequisite to applying for a certificate of authority.
2. A certificate of authority is issued for all the risks and hazards included in the appropriate division or kind of insurance rather than just for a portion of that division.
3. A certificate of authority may not be issued which authorizes the transaction of one or more kinds of insurance described in divisions (A) through (G) of Section 3941.02, Revised Code, by reinsurance only.
4. An insurance company may limit the insurance it transacts, and the certificate of authority, to division (D) of Section 3941.02, Revised Code, which is broad enough to include equivalent risks in division (A) of that section.

5. Burglary insurance can be authorized under divisions (A), (D) and (G) of Section 3941.02, Revised Code; the divisions under which glass insurance could be authorized would depend on the hazards and risks against which the glass is to be insured, but would most probably fall under Section 3941.02 (G), Revised Code.