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INSURANCE COMPANIES—DOMESTIC MUTUAL, FIRE OR CASUALTY—SECTION 9607-5 PARAGRAPH 3 G. C.—REQUIREMENT "ADMITTED ASSETS" NOT LESS THAN $50,000.00—AMOUNT NEED NOT BE CASH, MAY BE OTHER PROPERTY — PLEDGE—ENCUMBRANCE — LIABILITY—ADVANCES MUST BE ACTUAL CASH UNDER SECTION 9607-12 G. C.

SYLLABUS:

1. The provisions of paragraph 3 of Section 9607-5, General Code, do not require $50,000 "admitted assets" mentioned therein to be cash, but such $50,000 admitted assets may consist of other property in which domestic mutual fire or casualty insurance companies are authorized by law to invest their capital, accumulations or surplus.

2. Paragraph 3 of Section 9607-5, General Code, does not prohibit domestic mutual fire or casualty insurance companies from pledging or encumbering their admitted assets, but such section does require such companies to have $50,000 in admitted assets over and above their liabilities before issuing policies or effecting insurance.

3. The advances authorized by Section 9607-12, General Code, and mentioned therein, must be in actual cash.

COLUMBUS, OHIO, March 8, 1939.

HON. JOHN A. LLOYD, *Superintendent, Division of Insurance, Columbus, Ohio.*

DEAR SIR: I have your letter of recent date in which you request my opinion, as follows:

> "Section 9607-5, General Code, sets forth certain requirements which must be met by domestic mutual fire and casualty insurance companies before they can be licensed by the Superintendent of Insurance to issue policies or effect insurance. Para-

graph 3 of this Section requires such companies to have admitted assets of not less than $50,000.

Section 9607-12, General Code, authorizes advances to such a company by any director, officer, member or other person for the purposes of the company's business or to enable it to comply with any requirement of law. This Section contains the terms, 'sum or sums of money', 'cash guarantee fund', and 'such monies.'

In view of the fact that these two sections of the Code relate to the same general subject matter, I am in doubt as to their proper construction, and therefore, request your opinion on the following questions:

1. Do the provisions of Paragraph 3 of Section 9607-5, General Code, require the $50,000 admitted assets to be in cash, or may they consist of other property in which such a company is authorized to invest its capital or accumulations?

2. Do the provisions of Section 9607-5, General Code, Paragraph 3, require the $50,000 admitted assets to be free and clear of all encumbrances? In other words, may such companies borrow the initial amount of capital in the regular course of business, without taking advantage of the provisions of Section 9607-12 and in filing their first financial statement as a basis for issuing their original license, show a proper liability for said borrowed money, thereby not showing any surplus?

3. Does Section 9607-12, General Code, authorize the advances or contributions therein mentioned to be made in securities in which such company is authorized to invest its capital or accumulations, or must such advances or contributions be made in actual cash?"

Section 9607-5, General Code, as amended in 1937, reads as follows:

"No such domestic company shall issue policies or effect insurance until the superintendent of insurance has, by his license, authorized it to do so; nor shall such license be issued or renewed unless the company shall comply, as to each kind of insurance which it shall effect, with the following conditions:

1. It shall hold bona fide applications for insurance upon which it shall issue simultaneously, or it shall have in force, at least twenty policies to at least twenty members for the same kind of insurance upon not less than one hundred separate risks, each within the maximum single risk described herein.

2. 'The maximum single risk' shall not exceed twenty per cent of the admitted assets or three times the average risk or one

per cent of the insurance in force, whichever is the greater, any re-insurance taking effect simultaneously with the policy being deducted in determining the maximum single risk.

3. It shall have collected a premium upon each application, which premium shall be held in cash or securities in which insurance companies are authorized to invest and shall be equal, in case of fire insurance to not less than twice the maximum single risk assumed subject to one fire, and in any other kind of insurance to not less than five times the maximum single risk assumed, *nor shall the admitted assets in any case be less than fifty thousand dollars, but this requirement of admitted assets of not less than fifty thousand dollars, shall not apply to the renewal of licenses of any companies now organized under section 9607-2 and licensed by the superintendent of insurance.*" (Italics the writer's.)

I have italicized that part of the section which was added thereto by the amendment.

The answer to your first question depends upon the meaning of the term "admitted assets" as used in said section. My research has failed to disclose a definition of the term in our General Code or in the decision of any Ohio court. However, in 1 Words and Phrases (Third Series) 284, a definition of the term as enunciated by the Supreme Court of Pennsylvania in the National Life Insurance Company vs. Haines, 255 Pa. 599 is quoted as follows:

> "'Admitted assets' of a casualty insurance company are such investments as are authorized for such companies, cash, and other items which may be regarded as the equivalent of cash. They are such assets as will be 'admitted' by the insurance commissioner as legal investments of the capital and surplus of such company in determining solvency. Any other property or investments which it may hold are termed 'non-admitted assets'."

Sections 9518 and 9518-1, General Code, prescribe the securities in which a domestic mutual fire or casualty insurance company may invest its capital and Section 9519, General Code, sets forth the securities in which it may invest its accumulations and surplus. In addition, Section 9536, General Code, permits such a company to purchase and hold such real estate as is requisite for its convenient accommodation in the transaction of its business.

Investments made under the authority of these statutes would, of necessity, be approved by the Superintendent of Insurance in making any examination of the company required by law and would, therefore, be "admitted assets" within the meaning of the term as defined by the Pennsyl-

vania court. This definition appears to be correct and you are, therefore, advised that the provisions of paragraph 3 of Section 9607-5, General Code, do not require the $50,000 admitted assets to be in cash, but may consist of other property in which such a company is authorized to invest its capital, accumulations or surplus.

In your next question you inquire whether it is required that the $50,000 admitted assets be free and clear of all encumbrances, and you further inquire whether a domestic mutual fire or casualty insurance company can borrow the initial amount of its capital and in its first financial statement show a liability for borrowed money and thereby not show any surplus.

In the interpretation of a statute, it is necessary to keep in mind the legislative policy and the evil which it was trying to correct or the situation it was attempting to remedy. For many years Ohio has had a system of strict supervision over companies engaged in the business of insurance. The Legislature has prescribed definite conditions which must be met before such companies can commence business and has also provided for examinations and reports. In addition, the investments which a domestic insurance company may legally make have been definitely limited by statute. All this evidences a definite legislative policy to regulate insurance companies in such manner that those who deal with them will not suffer any loss as a result thereof. It may, therefore, be safely assumed that the Legislature enacted the amendment to Section 9607-5, supra, in pursuance of its established policy of safeguarding those who deal with insurance companies. In 37 O. J. at page 675, the following rule is stated:

> "In construing a law of doubtful meaning or application, the policy which induced its enactment, or which was designed to be promoted thereby, is a proper subject for consideration. Unless precluded by the language of the statute, it should be given effect in furtherance of the policy it was designed to introduce or assist. Accordingly, a construction should be avoided which would defeat the policy of the statute."

It is obvious that if an insurance company could borrow the entire initial amount of its capital and thereby show "admitted assets" and a corresponding equal liability, that the legislative policy of protecting the public would not be furthered and in fact, such business methods, if permitted, might very easily result in insolvency of the company. The statute should be so construed as to prohibit any such manner of doing business unless its provisions absolutely require a contrary construction.

In addition, it is also a sound rule of statutory construction that the Legislature will not be presumed to have intended its enactments to result in absurd or unreasonable results. In Moore vs. Given, 39 O. S. 661, it was held in the first paragraph of the syllabus:

> "It is the duty of courts in the interpretation of statutes, unless restrained by the letter, to adopt a view which will avoid absurd consequences, injustice or great inconvenience, as none of these can be presumed to be within the legislative intent."

Substantially the same rule is set forth in 37 O. J. at page 643.

If Section 9607-5, supra, were so construed as to permit a domestic mutual fire or casualty insurance company to borrow the initial amount of its capital and thereby show $50,000 admitted assets, the statute would be of no consequence. Absolutely no benefit to the public could result and the action of the Legislature would have been in vain. Such a construction would be ridiculous in the extreme and it should be avoided if at all possible.

The legislative purpose apparently was that such insurance companies should have $50,000 "admitted assets" over and above their liabilities. However, there can be no objection to an encumbrance placed upon part of such assets if a company still has a so-called "equity" of $50,000 or more in the assets. The legislative intent was that such a company should have $50,000 in assets available for its creditors, if necessary, and the pledging or encumbering of the assets by the company to a limited extent would not militate against the policy of the Legislature so long as the company had assets worth $50,000 over and above the encumbrances against the same.

However, in this connection I direct your attention to Section 9539, General Code, which reads as follows:

> "No such company shall borrow money or create a debt unless for the purpose of necessary office buildings, to continue beyond the period when such an assessment may be collected and applied to the payment thereof, and no member shall be assessed for liabilities incurred prior to his membership."

This section forbids any such company to create a debt except for the purpose of necessary office buildings, which debt shall continue beyond the time when assessments may be collected from the members and applied to the payment thereof.

You are, therefore, advised, in answer to your second question that the provisions of paragraph 3 of Section 9607-5, General Code, require domestic mutual fire or casualty insurance companies to have $50,000 in "admitted assets" over and above their liabilities and that such companies may not issue policies or effect insurance unless their "admitted assets" exceed their liabilities by $50,000.

Your third question involves a construction of Section 9607-12, General Code, which I quote as follows:

"Any director, officer or member of any domestic mutual insurance company or any other person, may advance to such company any sum or sums of money necessary for the purpose of its business, or to enable it to comply with any requirement of the law, or as a cash guarantee fund. Such moneys, and such interest thereon as may have been agreed upon, not exceeding eight per centum per annum, shall not be a liability or claim against the company, or any of its assets, except as herein provided, and shall be repaid only out of the surplus earnings of such company; and, except as otherwise approved and ordered by the superintendent of insurance, no part of the principal thereof shall be repaid until the surplus of the company remaining after such repayment is equal in amount to the principal of the money so advanced. Such advancement and repayment shall be subject to the approval of the superintendent of insurance, provided that this section shall not affect the power to borrow money which any such company possesses under other laws. No commission or promotion expenses shall be paid by the company, in connection with the advance of any such money to the company, and the amount of any such unpaid advance shall be reported in each annual statement."

It will be noted that this section at no place authorizes the advances therein mentioned to be in any form other than cash. The language used is "sum or sums of money" and "monies". The Legislature evidently intended to afford no opportunity for over-valuation or fraud. If these advances were permitted to be made in securities instead of cash, the company might be required, at some later date, to pay back a sum greater than the value of the securities actually received by it. Fraud on the part of directors in the management of corporations has not been so uncommon as to make this possibility unlikely. In line with its established policy of safeguarding the members of the public who deal with insurance companies, the Legislature apparently intended that no possibility of fraud in connection with the advances by the directors should ever present itself.

You are accordingly advised that the advances authorized by Section 9607-12, General Code, and mentioned therein must be in actual cash.

Respectfully,
THOMAS J. HERBERT,
Attorney General.