

410.

TITLE GUARANTY AND TRUST COMPANY—RETURN OF DEPOSIT
MADE PURSUANT TO SECTION 9851, GENERAL CODE.

SYLLABUS:

Where a title guaranty and trust company ceases to do business in this state and demands the return of the deposit made by it with the treasurer of state, pursuant to Section 9851 of the General Code, it is the duty of the auditor of state to demand such proofs and make such examination of the affairs of such company as will satisfy him of the faithful performance or proper discharge of all guarantees entered into by such companies and, upon ascertaining such to be the fact, he should authorize the return of the amount so deposited.

COLUMBUS, OHIO, April 28, 1927.

HON. JOSEPH T. TRACY, Auditor of State, Columbus, Ohio.

DEAR SIR:—This will acknowledge your recent communication, enclosing a letter with reference to securing the return of the sum of \$50,000, deposited as security with the State Treasurer by The Abstract Title Guarantee and Trust Company, of Akron, Ohio. I quote the portion of the letter material to the inquiry you make, as follows:

“The business of The Abstract Title Guarantee & Trust Company was taken over by the Guarantee Title and Trust Company of Cleveland, Ohio, on February 8, 1926, since which date the former company has existed in name only. There are now outstanding and in effect approximately 100 policies of title insurance issued by The Abstract Title Guarantee & Trust Company, a great majority of which were issued in connection with mortgages made by the company, the policy of title insurance, of course, lapsing when the mortgage was satisfied. In order to secure a complete liquidation of the affairs of The Abstract Title Guarantee & Trust Company, it is obvious that the above mentioned deposit must be secured. The statute itself provides no method by which this may be done, but we think that it is only reasonable to say that if a Title Insurance Company has ceased to do business and has no liability upon any outstanding policies, it is entitled to its deposit of \$50,000 made with the State in order to do business. In order to secure this deposit, therefore, we propose to do the following:

First—To furnish a list of all outstanding policies issued by The Abstract Title Guarantee and Trust Company, this list to be in the form of an affidavit, duly sworn to by the president of the company.

Second—As to all policies issued in connection with mortgage loans, where the mortgage loans have been satisfied, to furnish affidavits or certificates of the proper County Recorder in each instance, showing the satisfaction and cancellation of the mortgage.

Third—As to all other outstanding policies, to produce and exhibit to you the canceled policy itself.”

In your inquiry you ask my opinion as to the procedure to be followed in releasing the amount of the deposit held by the state treasurer.

The deposit was made in compliance with the requirements of Section 9851 of the General Code, which is as follows:

"No such company shall do business until its capital stock amounts to at least one hundred thousand dollars fully paid up, and until it has deposited with the treasurer of state fifty thousand dollars in securities permitted by Sections ninety-five hundred and eighteen and ninety-five hundred and nineteen. Except such deposit, the capital shall be invested as the board of directors of such company prescribes."

The purpose of the deposit is set forth in the next succeeding section (Section 9852, General Code,) in the following language:

"The treasurer of state shall hold such fund or securities deposited with him as security for the faithful performance of all guarantees entered into and trusts accepted by such company, but so long as it continues solvent he shall permit it to collect the interest of, or dividends on, its securities so deposited, and to withdraw them or any part thereof, on depositing with him cash or other securities of the kind heretofore named so as to maintain the value of such deposit at fifty thousand dollars."

Under the facts recited in the letter above quoted, it appears that The Abstract Title Guarantee and Trust Company has sold all its business to The Guarantee Title and Trust Company of Cleveland, Ohio, and that for the purpose of liquidation it now desires to secure the return of the \$50,000 deposited with the treasurer.

As stated in the letter, the statutes prescribe no procedure whereby such a deposit may be released and leave us entirely in the dark as to the proper course to pursue. It is obvious, however, that a company of this character may go out of business and that, upon so doing, it is entitled to the return of the deposit provided the interests of its policy holders have been adequately protected.

The deposit having been made, in the language of Section 9852 of the General Code, "as security for the faithful performance of all guarantees entered into and trusts accepted by such company," it clearly is your duty to satisfy yourself that the company is entirely discharged from all further responsibility upon any of its guarantees. The information which it is proposed to furnish will apparently accomplish this. It is stated that the company will:

- (1) Furnish a list of all outstanding policies in affidavit form, sworn to by the president of the company;
- (2) Furnish affidavits or certificates of the proper county recorder showing satisfaction and cancellation of the mortgages as to policies issued in connection with mortgage loans, where such loans have been satisfied;
- (3) To exhibit the canceled policy as to all other outstanding policies.

I believe, however, that if this information is furnished, it should be supplemented by a special examination of the books and affairs of the company by your department, so that you may be satisfied that there does not remain any outstanding liability or possibility of liability against this company. Such examination is authorized by Section 710-171 of the General Code, which is as follows:

"Title guaranty and trust companies shall make such reports to the auditor of state as are required to be made by trust companies to the superintendent of banks, and shall be subject to like examination, penalties

and fees; such examination to be made by and such fees and penalties assessed by and paid to the auditor of state.

Fees so received by the auditor of state and by him paid into the state treasury to the credit of the general revenue fund are hereby appropriated for the express purpose of paying the cost of such examinations."

Under the provisions of Section 710-153 of the General Code, the superintendent of banks has the right to examine the books and affairs of any trust company and hence, under the terms of Section 710-171, your office has adequate authority to make an examination in this instance.

I would suggest that you verify the list of outstanding policies and check the canceled policies against the list so verified, ascertaining in each instance the authority for the cancellation of the policy, which should include the consent of the policy holder in case a new policy is issued by the purchasing company in lieu of the one canceled.

I am of the opinion that, upon being satisfied that there are no outstanding liabilities, it is your duty to authorize the withdrawal of the deposit in question.

Respectfully,
EDWARD C. TURNER.
Attorney General.

411.

MUNICIPAL COURT OF PIQUA—UNAUTHORIZED TO APPOINT WASHINGTON TOWNSHIP TRUSTEE, MIAMI COUNTY.

SYLLABUS:

The judge of the municipal court of Piqua, Ohio, does not have power or authority to make an appointment to fill a vacancy on the board of trustees of Washington township, Miami county, Ohio.

COLUMBUS, OHIO, April 29, 1927.

HON. L. E. HARVEY, *Prosecuting Attorney, Troy, Ohio.*

DEAR SIR:—This will acknowledge your letter of recent date which reads as follows:

"Will you please favor me with your opinion on the following question:

Can the Judge of the Municipal Court of Piqua appoint some suitable person to fill a vacancy on the board of trustees of Washington township?

Section 3262 of the General Code, provides that the justice holding the oldest commission shall make the appointment to fill a vacancy in the board of trustees of a township.

Section 1579-598 provides, in part, that no justice of the peace shall be elected in Washington township.

It was evidently the intention of the legislature that the duties of the justice of the peace should be performed by the Municipal Court. The act creating the Municipal Court for the City of Piqua confers on