

of Section 2288-2, General Code. This lease is accordingly approved by me and the same is herewith returned to you.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

1702.

LIABILITY ON THE BOND FOR POLICIES OF INSURANCE
—PRELIMINARY APPLICANTS WHO HAVE PAID PRE-
MIUMS.

SYLLABUS:

The liability on the bond required under Section 9607-4, General Code, ceases when policies of insurance are issued to all preliminary applicants who have paid premiums therefor and does not continue indefinitely.

COLUMBUS, OHIO, December 30, 1937.

HON. ROBERT L. BOWEN, *Superintendent of Insurance, Columbus, Ohio.*

DEAR SIR: This will acknowledge receipt of your letter of recent date wherein you request my opinion with respect to the extent of liability upon the bond required to be given pursuant to Section 9607-4, General Code. Your letter in part reads as follows:

“Does the liability on this bond cease when policies of insurance are issued to all those preliminary applicants who have paid premiums therefor, or, does liability continue indefinitely guaranteeing the faithful accounting for all funds and property that may come into the possession of the company at any time or times?”

Section 9607-4, General Code, referred to in your letter, reads as follows:

“No such domestic company shall solicit applications for insurance, or accept premiums, until it has filed with the superintendent of insurance its bond (with sureties) in the sum of ten thousand dollars, conditioned upon the faithful accounting for all funds and property which it may re-

ceive or possess, nor until it has procured the certificate of the superintendent of insurance approving such bond and the sureties thereon. The premiums received on subscriptions for insurance shall be held by the company in trust for the respective subscribers until policies of insurance are issued to them.”

This section, standing alone, may indicate that the liability on the bond continues indefinitely for the purpose of guaranteeing the faithful accounting of all funds received by an insurance company. Such a conclusion may be justified by the use of the words “conditioned upon the faithful accounting for all funds and property which it may receive or possess * *.” The ultimate purpose in the interpretation of statutes is to ascertain the legislative intent. To determine the legislative intent in this instance it is necessary to consider not only certain sections of the insurance laws relating to the same subject matter which must be regarded as *in pari materia* with Section 9607-4, *supra*, but also other pertinent sections of the insurance laws.

Under the provisions of Section 9607-4, *supra*, a domestic mutual insurance company is prohibited from soliciting applications for insurance or accepting premiums until it has filed a bond with the Superintendent of Insurance and until such bond and sureties thereon have been approved by the Superintendent.

An insurance company organized under the provisions of Section 9607-2, General Code, is not authorized to issue any policies or effect any insurance until it has received a license from the Superintendent of Insurance. The conditions upon which such license may be issued are set forth in Section 9607-5, General Code, which 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."

It is to be noted that under the provisions of the foregoing section, which must be regarded as in *pari materia* with Section 9607-4, *supra*, a domestic mutual insurance company is required among other things to hold a certain number of bona fide applications for insurance and to have collected a premium upon each application so held before a license may be issued to such company by the Superintendent of Insurance. It is well to keep in mind that many companies organized pursuant to Section 9607-2, General Code, may not meet the conditions set forth in Section 9607-5, *supra*, and by reason thereof would not be licensed to issue policies or effect any insurance; yet such companies are specifically authorized to solicit applications and collect premiums. Such a procedure sanctions the collection of funds for insurance without authority to effect insurance. To prevent the dissipation of such funds and to protect these persons subscribing for insurance under the above circumstances, the legislature provided that "premiums received on subscriptions for insurance shall be held by the company in trust for their respective subscribers until policies of insurance are issued to them." Thus a trust is created for the benefit of subscribers for insurance and a bond is required, conditioned upon the faithful accounting for all funds and property which the company may receive. The trust so created is terminated when the policy is issued and it would necessarily follow that the liability under the bond provided for in the same section of the General Code ceases at the same time.

Rather significant is the term "subscribers" used by the legislature in Section 9607-4, *supra*, in light of Section 9607-6, General Code,

which provides that a person while his policy is in force with a domestic mutual insurance company shall be considered a member. This, in my opinion, indicates a legislative intent to distinguish between those who apply for insurance and pay premiums prior to the time a domestic mutual insurance company is licensed and who are referred to as "subscribers," and those who have policies in force after the licensing of such a company and who are referred to as "members." This would indicate that the provisions of Section 9607-4, supra, apply only to those preliminary applicants who apply for insurance and pay premiums before the company is licensed to effect any insurance.

Applicants for insurance in domestic mutual insurance companies duly licensed do not require the protection afforded under Section 9607-4, supra, for such companies are authorized to effect insurance upon the unconditional acceptance of the application or upon the payment of premiums. See *Insurance Co. vs. Whitman*, 75. O. S. 312.

A consideration of Sections 9510, et seq., General Code, supports a conclusion that the liability on the bond provided for in Section 9607-4 does not continue indefinitely but ceases when the conditions of Section 9607-5, supra, are complied with and policies are issued to preliminary applicants. Insurance companies organized under Sections 9510, et seq., are authorized to transact the same type of insurance business as those organized under Sections 9507-2, et seq., General Code. The former, however, are authorized to issue stock, while the latter do business on a mutual basis. A stock insurance company is required to comply with certain conditions before a license may be issued to it. However, such companies are not authorized to solicit applications or collect premiums prior to the issuance of a license. No bond is required of such companies. If the legislature intended to protect applicants for insurance of a domestic mutual insurance company after such a company is licensed, it would be reasonable to assume that such protection would be afforded not only to applicants for insurance of mutual insurance companies but to applicants for insurance of stock insurance companies as well.

In view of the above, it would seem that in enacting Section 9607-4, supra, the legislature intended to provide a bond only as a preliminary step to the organization of domestic mutual insurance companies and that the liability under such bond would terminate when such companies have complied with the conditions outlined in Section 9607-5, General Code, and have been issued a license.

It is my opinion, therefore, that the liability on the bond required under Section 9607-4, General Code, ceases when policies of insurance

are issued to all preliminary applicants who have paid premiums therefor and does not continue indefinitely.

Respectfully,

HERBERT S. DUFFY,

Attorney General.