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MUTUAL PROTECTIVE ASSESSMENT ASSOCIATIONS —
MAY NOT MAKE ADVANCES OF SUMS OF MONEY OUT OF
SURPLUS FUNDS TO FORM A COMPANY UNDER SECTION
9607-1 ET SEQ., G. C. — FIRE INSURANCE — SECTION 9593
ET SEQ., G. C.

SYLLABUS:

Mutual Protective Assessment Associations organized under Section 9593, et seq. of the General Code, may not make advances of sums of money out of their surplus funds for the purpose of forming a company under Section 9607-1, et seq. of the General Code.

Columbus, Ohio, March 16, 1945

Hon. Walter Dressel, Superintendent of Insurance
Columbus, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“In Ohio there are slightly over one hundred mutual protective assessment fire associations organized under Sections 9593 et seq. of the General Code, and licensed by this office to do their appropriate insurance business on the assessment plan. Section 9593-1 authorizes such organizations to make contracts of reinsurance. It has been suggested that many of these associations would like to make advances of money to form a domes-

tic mutual fire insurance company, operating on an advance premium basis under Section 9607-1 et seq. of the General Code. Such advances would be made in accordance with the terms of Section 9607-12. The purpose of such new company would be to write reinsurance for mutual protective assessment fire associations.

Two questions have arisen in connection with the above sections on which I would appreciate receiving your opinion :

1. May mutual protective assessment associations organized under Section 9593 et seq. of the General Code, make advances of sums of money out of their surplus funds for the purpose of forming a company under Sections 9607-1 et seq. of the General Code?

2. If your answer to the above question is in the affirmative, would such an advance require the approval of the membership of the assessment association, or would the action of the Board of Directors be sufficient?"

Section 9593, General Code, provides as follows :

"Any number of persons of lawful age, not less than ten in number, and owning insurable property in this state, may associate themselves together for the purpose of insuring each other against loss on property in this state caused by fire and lightning, smoke, smudge, cyclones, tornadoes or wind storms, hail storms, explosion except explosion by steam boilers or fly-wheels, riot, riot attending a strike, civil commotion, falling or moving bodies except loss or damage to motor vehicles caused by collision, and also to assess upon and collect from each other sums of money, from time to time, as are necessary to pay expenses and losses which occur from the above causes. The assessment and collection of such sums of money shall be regulated by the constitution and by-laws of the association, which shall require such assessments to be made directly and specifically upon the members and to be paid directly and specifically by them and not out of any fund deposited with the association or other trustee in anticipation of assessments or in any other manner except that any such association may borrow money for the payment of losses and expenses, such loans not to be made for a longer period than the collection of their next assessment; and such association may also accumulate a surplus from its assessments not exceeding five dollars on each one thousand dollars of insurance in force, such surplus to be used in paying losses and expenses that may occur and if invested to be under the provisions of Sections 9518 and 9519 of the General Code. Such

associations may only insure farm buildings, detached dwellings and outbuildings, school houses, churches, township buildings, grange buildings, farm implements, farm products, live stock, household goods, furniture, pleasure and utility vehicles, motor vehicles, steam, gas, gasoline and oil engines, motor trucks, tractors, electric motors, electric appliances, lighting systems and other similar property except property used exclusively for commercial or industrial purposes.

Such property may be classified only for the purpose of determining and levying assessments and such property may be located within or without the limits of any municipality. Provided, however, that an association whose membership is restricted to persons engaged in any particular trade or occupation and its insurance confined in any particular kind or description of property may insure property used exclusively for commercial or industrial purposes located in any county or counties in this state; and an association whose membership is so restricted and whose insurance is so confined and which insures such property may also accumulate from its assessments a surplus not exceeding the average yearly losses and expenses of the association as shown by the reports of the association to the department of insurance of the state of Ohio for the preceding three years, such surplus to be used in paying losses and expenses that may occur and if invested to be under the provisions of sections 9518 and 9519 of the General Code.

Any association organized under the provisions of this section may collect an initial charge, on each contract of insurance, in accordance with its constitution and by-laws and in addition thereto an amount not in excess of one-tenth ($1/10$) of one per cent of the amount of each individual contract of insurance; provided, however, that the total amount of such charges shall not exceed the sum of fifteen (\$15.00) dollars."

Section 9594, General Code, provides in part as follows:

"Such persons shall make and subscribe a certificate setting forth therein: * * *

3. The object of the association, which shall only be one or more of the objects set forth in the preceding section, and to enforce any contract by them entered into whereby the parties thereto agree to be assessed specifically for incidental purposes and for the payment of losses which occur to its members. * * *

It is to be noted that Section 9593, General Code, above quoted, provides for assessments from time to time "as are necessary to pay

expenses and losses" and that "such association may borrow money for the payment of losses and expenses" and that "such association may also accumulate a surplus from its assessments * * *, such surplus to be used in paying losses and expenses".

It is also to be noted that Section 9594, General Code, provides that the certificate of incorporation shall set forth as one of the powers of the company "to enforce any contract by them entered into whereby the parties thereto agree to be assessed specifically for incidental purposes and for the payment of losses which occur to its members". It would seem, therefore, to permit the company to advance a sum of money out of surplus for the purpose of forming a company under Section 9607-1, et seq., of the General Code, it would be necessary to conclude that such advancement could be included under the terms "expenses" or "incidental purposes" as used in the above quoted statutes.

There is no statutory definition of the terms "expenses" and "incidental purposes" but it is apparent from the reading of the above quoted statutes that the terms have been used interchangeably and are meant to have the same meaning. It is said in 35 Corpus Juris Secundum at page 207 that the word "expense" is one of somewhat varying significance depending upon the connection in which it is used. "Expense" is a word of broad import and has no fixed definition. It is of varying significance and is dependent for its precise meaning on its connection and purpose to be accomplished by its use. It is comprehensive enough to include a wide range of disbursements. Standing alone it is ambiguous. *Pittsfield & N. A. R. Corp., v. Boston & A. R. Co.*, 157 N. E. 611.

"Incidental" has been defined in 31 Corpus Juris 392 as follows:

"An adjective which has reference to something which is subordinate to, and dependent upon, and follows the existence of another and principal thing and means accessory, causal; collateral; occasional; of minor importance; something additional; something subordinate or casual."

It would seem that the words "expenses" and "incidental purposes" considered together as used in the above quoted statutes, mean the general overhead expenses or costs which are incidental to and arise out of the business of insurance.

Section 9593-1 of the General Code, referred to in your letter, provides as follows:

“Any association organized under the provisions of section 9593 is empowered and authorized to make contracts of reinsurance or accept reinsurance on any portion thereof, for the kinds of insurance authorized by this chapter.”

While this section of the Code authorizes those companies organized under Section 9593, et seq. of the General Code, to write reinsurance as a part of their insurance business, it does not in any sense authorize such companies to advance out of their surplus funds money to be used for the purpose of organizing another corporation to write reinsurance contracts.

To say that the term “expenses” may include money advanced to a corporation to be formed to write reinsurance, would give it a meaning of an investment and no matter how desirable such an investment would be to the company, still such type of investment by those corporations organized under Section 9593, et seq., General Code, would be improper and not in conformity with the provisions regulating investments by insurance companies as set forth in Sections 9518 and 9519 of the General Code.

I am therefore of the opinion that Mutual Protective Assessment Associations organized under Section 9593, et seq. of the General Code, may not make advances of sums of money out of their surplus funds for the purpose of forming a company under Section 9607-1, et seq. of the General Code.

Respectfully,

HUGH S. JENKINS

Attorney General