Your third question is answered in my discussion of the first question. The broker's bond provided by Section 6373-35 of the General Code being obviously to cover the broker's license and a broker being defined in Section 6373-25, as including any person, firm or corporation, the bond given by the partnership will meet the requirements of law and individual bonds of the partners are unnecessary.

Your fourth question is as to the right of an applicant who fails to pass the examination for a broker's license to a return of the fee accompanying his application. Section 6373-39 of the General Code reads as follows:

> "The fees for licenses shall be as follows:
>
> 1. For a real estate broker's license, $10.00 for the first year and $5.00 for each renewal thereof. If the licensee be a corporation, an additional fee of $2.00 for each officer other than the president thereof, and if it be a firm, an additional fee of $2.00 for the second and each additional member thereof. A charge of $1.00 shall be made for duplicate real estate broker's licenses.
>
> 2. For a real estate salesman's license, $2.00 for the first year and $1.00 for each renewal thereof.
>
> In all cases the fee shall accompany the application for license or renewal. If an applicant or other person admitted to an examination for a real estate broker's license fails to pass the examination to which he is admitted, he shall be entitled to be admitted to further examinations."

It is quite obvious that the fees prescribed are for licenses issued. This is the clear import of the language used in the above quoted section. While there is no specific reference to a return of the fee accompanying the application, there is no authority for its retention in the event that a license is not issued. In my view the requirement that the fee accompany the application is merely a provision for safeguarding the payment in the event of the success of the applicant in passing the examination and the consequent issuance of a license. Such fee does not become payable into the state treasury until the license is issued and in the event of the failure of the applicant, it is my opinion that it is your duty to return the amount of the deposit to the unsuccessful applicant.

Respectfully,
EDWARD C. TURNER,
Attorney General.

832.

INSURANCE—INSURANCE ASSOCIATION EXEMPT FROM PAYMENT OF FRANCHISE TAX PROVIDED FOR IN SENATE BILL NO. 22, 87TH GENERAL ASSEMBLY.

SYLLABUS:

Under the provisions of Section 10 *of Amended Substitute Senate Bill, No.* 22, *the Attorney in Fact of a reciprocal or inter-insurance association, being required by law to file an annual report with the superintendent of insurance and pay the tax required under Section* 9556-7, *is not subject to the provisions of said Amended*

Substitute Senate Bill, No. 22, and is therefore exempt from the payment of the franchise tax provided for in said Act.

COLUMBUS, OHIO, August 5, 1927.

The Tax Commission of Ohio, Wyandotte Building, Columbus, Ohio.

GENTLEMEN: This will acknowledge receipt of your recent communication requesting my opinion as follows:

> "The Commission has directed me to submit to you the enclosed communication from Mr. E. L. Savage as representative of the State Automobile Insurance Association.
>
> You will note that the claim is advanced that the 'Automobile Underwriters, Incorporated', an Indiana corporation which does business in Ohio, is an insurance company entitled to exemption from franchise tax in this state. The commission is somewhat in doubt as to whether or not this claim should be allowed and desires to have your advice.
>
> Should you not have sufficient information in the inclosed letter to enable you to reach a definite conclusion we suggest that Mr. Savage will be glad to answer any inquiries you may wish."

Section 10 of Amended Substitute Senate Bill, No. 22, passed April 20, 1927, is as follows:

> "An incorporated company, whether foreign or domestic, owning and operating a public utility in this state, and as such required by law to file reports to the tax commission and to pay an excise tax upon its gross receipts or gross earnings and insurance, fraternal, beneficial, building and loan, bond investment and other corporations, required by law to file annual reports with the superintendent of insurance, shall not be subject to the provisions of this act."

The "Automobile Underwriters, Incorporated" of Indianapolis, Indiana, is a corporation and this corporation is the Attorney in Fact for a reciprocal insurance company located in Indiana and transacting business in Ohio under the name of The State Automobile Insurance Association.

The laws of Ohio, Sections 9556-1 to 9556-13, inclusive, of the General Code, recognize this form of insurance. This plan of insurance resembles in some respects the mutual insurance plan. There are some decided differences, however. A mutual insurance company operates by and through its board of directors. The reciprocal insurance association operates by and through its Attorney in Fact.

No insurance company can carry on its business in Ohio unless it is organized and conducted in accordance with the laws of Ohio and is duly licensed by the Superintendent of Insurance. A detailed discussion of the plan and mode of operation of a reciprocal insurance company is not necessary for the purposes of this opinion.

Suffice it to say that if it is found that the above mentioned corporation is an insurance corporation under the provisions of Section 10 of the above mentioned Senate Bill, it is exempt from the operation of the Act. And this is so for the reason that its taxes are provided for in the insurance act.

Section 9556-7, General Code, provides for the annual statement, the computation of the tax, and the payment of the same as follows:

"In such annual statement the attorney shall set forth the gross amount of premiums or deposits received by him during the preceding calendar year on contracts of indemnity covering risks within the state. He shall also set forth therein, in separate items premiums paid for cancellations, premiums or deposits returned and credited ratably to subscribers, and consideration received for re-insurance during such year. The superintendent of insurance shall compute a tax of 2½ per cent, and in case of fire insurance an additional one-half of one per cent fire marshal tax on the balance of such gross amount of premiums or deposits, after deducting premiums and deposits so returned and credited and considerations received for reinsurances, and prior to November first mail to such attorney, at his principal office, designated in his declaration or amendment thereof, a statement of the amount of the tax so charged, which amount the attorney shall pay to the treasurer of state, for the use of the state on or before December first of such year, or within thirty days after receipt of such notice. No further taxes shall be imposed upon such attorney or his subscribers or their representatives for the privilege of transacting business in the state. If an attorney shall cease doing business in the state, he shall thereupon make report to the superintendent of insurance of the premiums or deposits subject to taxation, not theretofore reported, and forthwith pay to the superintendent of insurance a tax thereon computed according to law. If such attorney fail to make any report for taxation, or fail to pay any tax as herein required, his subscribers shall be liable to the state for such unpaid taxes, and a penalty of not more than twenty-five per cent per annum after demand therefor. Service of process in any action to recover such tax or penalty shall be made according to the requirements of the law relating to actions against the attorney and his subscribers."

It is my opinion that the above section is decisive of the question. The Attorney in Fact is the active, moving force of the association; he is responsible for the conduct of the business; under the provisions of Section 9556-3, General Code, he is required to pay certain fees to the superintendent of insurance; under Section 9556-4, General Code, he may be proceeded against in an action at law; under Section 9556-5, General Code, the Attorney in Fact must establish and maintain certain reserve funds equal in amount to those required of other kinds of companies. Under the provisions of Section 9556-6, General Code, such Attorney in Fact is required to file an annual report with the superintendent of insurance. From this report the superintendent of insurance under the provisions of Section 9556-7, General Code, above quoted, is required to compute the tax on the premiums and mail a statement thereof to the Attorney who is required to pay the same to the state treasurer on or before December first of each year or within thirty days after the receipt of such notice.

This section also provides specifically that:

"No further taxes shall be imposed on such attorney or his subscribers or their representatives for the privilege of transacting business in the state * * * ."

Under the provisions of Section 9556-8, General Code, the superintendent of insurance is authorized to make examination of the books and affairs of such Attorney in Fact. Under the provisions of Section 9556-10, General Code, the superintendent of insurance shall issue a license to such Attorney in Fact to do business in this state when he has complied with the provisions of the Act. Section 9556-13, General Code, provides a penalty against the Attorney in Fact for the violation of the provisions of this Act, or a failure to comply with his duties thereunder.

It will be observed in the above form of insurance that there is no incorporation of the subscribers as such to make them a body corporate or a legal entity. The name adopted and used by this group in providing for reciprocal or inter-insurance contracts means very little except a convenient form of designating a name and place where such contracts may be exchanged, and this place is always the office of the Attorney in Fact. In practical operation the office of the Attorney in Fact compares with that of the head office of any other insurance company.

The Attorney in Fact publishes the rates, prepares the contracts of insurance, appoints soliciting agents, adjusts and settles the losses, keeps the accounts, and makes all reports required under the law.

When the subscriber makes application for insurance in this kind of an association, he executes in connection with said application a power of attorney to the Attorney in Fact authorizing him to do all these things for and on behalf of such subscriber as is permissible and required under the law to enable such an association to operate.

It is therefore my opinion that under the provisions of Section 9556-7, General Code, said corporation is required to pay the amount of the tax therein provided for as an insurance company. Said section also provides that no further taxes shall be imposed for the privilege of transacting business in this state.

It is also my opinion that under the provisions of Section 10 of Amended Substitute Senate Bill, No. 22, the Attorney in Fact of a reciprocal or inter-insurance association, being required by law to file an annual report with the superintendent of insurance and pay the tax required under Section 9556-7, is not subject to the provisions of said Act above mentioned, Amended Substitute Senate Bill, No. 22, and is therefore exempt from the payment of the franchise tax provided for in said Act.

Respectfully,
EDWARD C. TURNER,
Attorney General.

833.

FEEDING OF PRISONERS—AUTHORITY OF SHERIFF TO BUY COOKED FOOD FROM RESTAURANTS—SECTION 3162, GENERAL CODE, DISCUSSED.

SYLLABUS:

By the terms of Section 3162, General Code, the Court of Common Pleas has full, complete and exclusive authority to promulgate rules and regulations for the feeding of prisoners and other persons confined in county jails. In the absence of any such rule to the contrary, a sheriff may lawfully purchase food already prepared for consumption from a restaurant or other person, subject however, to such rules and regulations relating to the purchasing of food as may be prescribed by the county commissioners and to the limitations of Section 2850, General Code, that he shall be allowed only the actual cost of feeding such inmates, but at a rate not to exceed seventy-five cents per day of three meals each.

COLUMBUS, OHIO, August 5, 1927.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—This will acknowledge receipt of your inquiry of recent date which reads as follows: