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1. BOND INVESTMENT COMPANIES—COMPANIES PRIOR TO SEPTEMBER 20, 1955, EFFECTIVE DATE OF AM SB 255, 101 GA, WERE CLASSIFIED “BOND INVESTMENT COMPANIES”—UNDER SUPERVISION OF SUPERINTENDENT OF INSURANCE AS “SUPERVISOR OF BOND INVESTMENT COMPANIES”—NOW CLASSIFIED “BOND INVESTMENT COMPANIES” OR “FACE-AMOUNT CERTIFICATE” COMPANIES—TYPE OF CONTRACTS ISSUED—CHIEF OF DIVISION OF SECURITIES IS SUPERVISOR OF SUCH COMPANIES—SECTIONS 3949.01, 3949.02 RC.
2. STATUTORY DEPOSIT MADE PRIOR TO SEPTEMBER 20, 1955 PURSUANT TO SECTION 3949.05 RC WITH SUPERINTENDENT OF INSURANCE—COMPANY CLASSIFIED AS FOREIGN BOND INVESTMENT COMPANY—NOW UNDER ADMINISTRATIVE JURISDICTION, CHIEF DIVISION OF SECURITIES—HIS JURISDICTION AS SUPERVISOR IS IN NO WAY AFFECTED BY FACT DEPOSITING COMPANY NOW CLASSIFIED AS “FACE-AMOUNT CERTIFICATE” COMPANY.

SYLLABUS:

1. Companies, which prior to September 20, 1955, the effective date of Amended Senate Bill No. 255, passed by the 101st General Assembly, were classified as “bond investment companies” pursuant to former Section 3949.01, Revised Code, and which were under the supervision of the superintendent of insurance acting as the “supervisor of bond investment companies,” are now classified in Section 3949.01, Revised Code, as “bond investment companies” or “face-amount certificate” companies, depending upon the type of contracts issued; and the chief of the division of securities is the supervisor of such companies under the provisions of Section 3949.02, Revised Code.

2. A statutory deposit made prior to September 20, 1955, pursuant to former Section 3949.05, Revised Code, with the superintendent of insurance as "supervisor of bond investment companies" by a company then classified as a foreign bond investment company, is now under the administrative jurisdiction of the chief of the division of securities who is "supervisor of bond investment companies and face-amount certificate companies," and the supervisor's jurisdiction over such deposit is in no way affected by the fact that the depositing company now is classified as a "face-amount certificate" company.

Columbus, Ohio, December 20, 1955

Hon. W. Harper Annat, Director, Department of Commerce
Columbus, Ohio

Dear Sir:

I have before me your request for my opinion which reads as follows:

"Your informal opinion is requested regarding a matter of administrative jurisdiction involving the Divisions of Insurance and Securities, respectively, of the Department of Commerce. Specifically, before doing business in Ohio, every bond investment company must deposit with the Treasurer of State \$100,000.00 in cash or bonds for the protection of investors in the securities of such company. Section 3949.03. Further, specific provision is also made as to deposits which foreign bond investment companies are required to make with the Supervisor of Bond Investment Companies and which he, in turn, is required to deposit with the Treasurer of State or any federal reserve bank or trust company. Section 3949.05. It is the administrative jurisdiction of this latter deposit which gives rise to this request by virtue of the implication of certain provisions of Amended Senate Bill No. 255, the effective date of which is September 20, 1955.

"The following facts seek to establish the basis for the request. All statutory references herein are to the Revised Code of Ohio.

"1. Prior to enactment of said Bill, Section 3949.02 designated the superintendent of insurance as the supervisor of bond investment companies. Section 3949.02, as amended, designates the chief of the division of securities as the supervisor of bond investment companies.

"2. Prior to said amendment, Section 3949.05 designated that the deposits therein provided shall be deposited with the supervisor of bond investment companies, (said superintendent of insurance). Section 3949.05, after amendment, remains un-

changed except that the reference to the supervisor of bond investment companies now means the chief of the division of securities.

"3. Section 3949.01, as amended, excludes from the operation of the bond investment act 'face amount certificate companies' in addition to building and loan associations.

"In consequence whereof, there was but one company engaging in business in Ohio as a foreign bond investment company prior to said amendment and which said company is now expressly excluded from said act under said amendment since it is by definition a 'face amount certificate company'; said company, on and after September 20, 1955, ceased doing business in Ohio as a foreign bond investment company and is engaging in business in Ohio solely as a 'face amount certificate company' pursuant to the provisions of the Ohio Securities Law, Sections 1707.01 to 1707.45, inclusive.

"Accordingly, the now supervisor of bond investment companies, the chief of division of securities, has in fact no companies so engaged under the bond investment act, has no present functions to perform with respect to regulating such business, issuing certificates of authority, requiring and receiving deposits as described supra or presently carrying out any further duties imposed under Sections 3949.01 to 3949.16, inclusive.

"4. The deposits made prior to such amendment to the supervisor of bond investment companies, then the superintendent of insurance, are not those of a company now and since the effective date of the amendment engaged in business in Ohio as a bond investment company.

"5. Amended Senate Bill No. 255 did not amend Sections 3903.01 to 3903.33 with regard to liquidation of companies within the category expressed in Division (A) of Section 3903.01 and therefore apparently continued thereby original jurisdiction over liquidation of such companies in the superintendent of insurance, who must be represented by the attorney general in such actions pursuant to Section 3903.03.

"The specific questions upon which your informal opinion is requested are:

"(a) Shall the division of insurance continue to administer and retain custody of the deposit received by it under Sections 3949.01 to 3949.16, inclusive, or shall such deposit be surrendered to the division of securities?

"(b) Since the company formerly engaged in the business of a bond investment company is no longer so engaged, and if the division of securities is deemed the successor of the division of insurance, under what statutory authority may it be compen-

sated for services performed since Section 3949.10 deals with fees payable only by bond investment companies?

“In conclusion we should like to point out that the deposits herein mentioned totalled as of August 31, 1955, the sum of \$11,945,230.54 and that there are substitutions, replacements and withdrawals of items so deposited requiring daily attention and action. In view of the public interest involved in the surveillance of said deposit, the size in dollar amount thereof and the question of liability which may accrue under the personal bonds of the chief of division of securities and the superintendent of insurance, your prompt attention to this request is earnestly solicited.”

Prior to the enactment of Senate Bill No. 255 by the 101st General Assembly, all companies (other than building and loan associations) which placed or sold certificates, bonds, debentures, or other investment securities of any kind, on the partial payment or installment plan were called “bond investment companies” and were governed by Chapter 3949, Revised Code. Section 3949.02, Revised Code, placed these companies under the supervision of the superintendent of insurance, who was referred to in the code as “the supervisor of bond investment companies.”

Before doing business in this state, every bond investment company was required by Section 3949.03, Revised Code, to deposit with the treasurer of state \$100,000.00 in cash or bonds of the United States, of this state, or of any county or municipal corporation of this state, for the protection of investors in the securities of such company. Foreign bond investment companies were required by Section 3949.05, Revised Code, to make deposits with the supervisor which were, in turn, required to be deposited with the treasurer of state or any federal reserve bank or trust company.

I understand from your letter that there was only *one* foreign bond investment company doing business in this state prior to the enactment of Senate Bill No. 255. That company posted a deposit under Section 3949.05, Revised Code, which in pertinent part, read as follows:

“In addition to the deposits under sections 3949.03 and 3949.04 of the Revised Code, *each bond investment company*, except those domiciled and holding certificates of authority in this state on April 13, 1939, *shall deposit with the supervisor of bond investment companies, securities or assets* of the kind and character permitted to be invested in * * * under sections 3907.14 and 3907.15 of the Revised Code, in an amount equal to the cash surrender value as defined in such contracts on all contracts

entered into on and after April 13, 1939 by such companies with persons resident in this state, *and such bond investment companies* are hereby required to maintain such deposits in amounts equal to such contract liabilities. * * *

“All deposits required under this section shall be held by the supervisor for the protection and benefit of their contract holders who are residents of this state.

“If such company ceases to do business in this state, the supervisor may release such securities or assets, in his discretion, retaining sufficient securities or assets to satisfy all outstanding contractual liabilities to persons resident of this state. * * *”

(Emphasis added.)

The General Assembly, in passing Senate Bill No. 255, left the section as quoted intact, except for amending the last quoted paragraph, *supra*, to read :

“If such company ceases to do business in this state as a bond investment company, the supervisor may release such securities or assets, in his discretion, retaining sufficient securities or assets to satisfy all outstanding contractual liabilities to persons resident of this state *incurred by the depositor as a bond investment company.*”

At the same time the legislature amended Sections 3949.01 and 3949.02, Revised Code, so as: a) to define “bond investment” companies; b) to define “face amount certificate” companies; and c) to substitute the chief of the division of securities for the superintendent of insurance as the supervisor of bond investment companies.

Section 3949.02, Revised Code, now reads as follows :

“*The chief of the division of securities is the supervisor of bond investment companies and face amount certificate companies. Face-amount certificate companies doing business in this state shall comply with the provisions of Chapter 1707 of the Revised Code. The supervisor shall see that the laws of this state relating to such companies are strictly enforced.*” (Emphasis added.)

Hence, whether the company in question is a “bond investment” company or a “face-amount certificate” company, its supervisor is now the chief of the division of securities. The authority of the superintendent of insurance relative to supervising bond investment companies, which had formerly stemmed from Section 3949.02, was withdrawn.

It is true that under the present law those companies which fall within the definition of a "face-amount certificate" company need not make a statutory deposit with the supervisor. If the company in question were a newly formed "face-amount certificate" company, with no prior contractual obligations outstanding, clearly it would not be required to make a deposit with the chief of the division of securities. But the facts reveal that a certain company, which since the effective date of Senate Bill No. 255, (September 20, 1955,) qualifies as a "face-amount certificate" company because of the kind of contracts it issues and has issued, nonetheless was operating for years prior to that as a "bond investment" company. Even though the company issued face-amount certificate contracts in past years, it had to make the deposit required of bond investment companies, since the only way it could qualify in this state was as a bond investment company. There was no company classification designated by statute as a "face-amount certificate" company.

It is obvious that this company still has many contracts outstanding, which were issued by it as a bond investment company. Clearly, outstanding liabilities of this nature, incurred by the depositor company in favor of certificate holders residing within this state, are still intended to remain secured so long as those obligations remain outstanding. The question is: *Who* shall now administer and retain custody of the deposit which the company has posted with the superintendent of insurance in his capacity as supervisor of the depositor?

I believe the duty falls upon the chief of the division of securities. It is helpful to picture the deposit as made with "the supervisor" of bond investment companies and not as having been made with the superintendent of insurance. The former law merely named the superintendent as the supervisor of these companies. The same individual was *superintendent* of insurance companies and *supervisor* of bond investment companies. He was a state administrative officer serving in *two* distinct and separate capacities.

The title of the recent enactment is as follows:

"An act to amend sections 3949.01, 3949.02, 3949.04, 3949.05, and 3949.15 of the Revised Code relative to bond investment companies and face-amount certificate companies *and to provide that such companies shall be supervised by the division of securities.*"

The title clearly reveals the *central* purpose of the enactment, which apparently was to change the supervision of these companies, and such an indication is of course borne out by Section 3949.02, Revised Code.

The transfer of supervision of these companies from the superintendent of insurance to the chief of the division of securities was undoubtedly dictated in part at least by the consideration that in practically every other state in the Union, such companies are supervised by a securities department which seemingly is the more appropriate supervisory body as compared with an insurance department or some other state departmental agency. These companies are also regulated by the Securities and Exchange Commission of the Federal Government. It will be noted that Section 3949.02, Revised Code, provides that face-amount certificate companies shall comply with Chapter 1707, Revised Code, which is the so-called "Blue Sky" law, relative to the registration and sale of securities.

Since both bond investment companies and face amount certificate companies are expressly placed under the *supervision* of the chief of the division of securities, and since the law requires that officer to "see that the laws of this state relating to such companies are strictly enforced," the conclusion seems inescapable that, as between the new supervisor and the person formerly designated as supervisor, the *new* supervisor should hold and administer any deposit which was posted before the new supervisor's authority commence. In this connection, it must be remembered that the legislature repealed the only section under which the *former* supervisor derived his authority, and in re-enacting Section 3949.02, Revised Code, a new supervisor was designated.

Although Senate Bill No. 255 may not serve as a model of "transition" legislation, inasmuch as the legislature did not spell out what happens to deposits already made, nevertheless, it seems reasonable to accord to the act a construction which avoids effecting a split in the supervision of the company in question. I cannot believe that such a dichotomy of authority was intended.

Moreover, as has been said above, Section 3949.05, Revised Code, *requires* the supervisor to hold sufficient securities, upon the cessation of business "as a bond investment company" to satisfy all outstanding contractual liabilities to persons residing within this state, which liabilities were "incurred by the depositor as a bond investment company." In a sense this company *has ceased* doing a bond investment company business, since it now engages in issuing face-amount certificates only.

I note that your letter refers to Sections 3903.01 to 3903.33, Revised Code, relative to liquidation of bond investment companies, which sections were not amended. It was your conclusion that this fact indicates that the superintendent of insurance still has jurisdiction over the *liquidation* of bond investment companies. Upon an examination of the liquidation act, such a conclusion is not necessarily demanded nor warranted. This is because the definition section of the liquidation act, Section 3903.02, Revised Code, provides in material part as follows:

“* * * (B) ‘Superintendent of insurance’ refers to the superintendent of insurance *or to the supervisor of bond investment companies.*” (Emphasis added.)

The question of jurisdiction over liquidation of a bond investment company is not before me, and yet in that statutory area, it is well to observe who is referred to in the liquidation act. It is entirely arguable that the chief of the division of securities would in fact be the liquidator of such companies, now that he is the newly designated supervisor.

Your question (b) is as follows:

“Since the company formerly engaged in the business of a bond investment company is no longer so engaged, and if the division of securities is deemed the successor of the division of insurance, under what statutory authority may it be compensated for services performed since Section 3949.10 deals with fees payable only by bond investment companies?”

I cannot see that this question has any particular significance. The question assumes that fees *must* be collected even from a company which is not a bond investment company.

Section 3949.10, Revised Code, to which you refer, is a part of the law which was not in any respect amended and it reads in part as follows:

“*A bond investment company shall pay to the supervisor of bond investment companies the following fees:*

“(A) For filing each application for admission to do business in this state, one hundred dollars;

“(B) For filing each certificate of authority and annual renewal of certificate, fifty dollars; * * *” (Emphasis added.)

The statute enumerates several other fees. It is apparent that with respect to the company which is now no longer a bond investment company, no fees would be exacted and the chief of the division of securities

would have no authority to collect fees of the type mentioned. Merely because the company was *formerly* a bond investment company, which had to place a deposit with the former supervisor and which must now be held by the *new* supervisor, does not dictate that the company remains for all time, and for all purposes, a *bond investment* company. Your entire request is predicated upon the essential fact that the company in question, since September 20, 1955, has been engaged solely in issuing "face-amount certificate" contracts and such business is not within the business *now* categorized as bond investment company business. None of the fees mentioned in Section 3949.10, Revised Code, are applicable to the company in question.

Accordingly, it is my opinion that :

1. Companies, which prior to September 20, 1955 (the effective date of Amended Senate Bill No. 255, passed by the 101st General Assembly) were classified as "bond investment companies" pursuant to former Section 3949.01, Revised Code, and which were under the supervision of the superintendent of insurance acting as the "supervisor of bond investment companies," are now classified in Section 3949.01, Revised Code, as "bond investment companies" or "face-amount certificate" companies, depending upon the type of contracts issued; and the chief of the division of securities is the supervisor of such companies under the provisions of Section 3949.02, Revised Code.

2. A statutory deposit made prior to September 20, 1955, pursuant to former Section 3949.05, Revised Code, with the superintendent of insurance as "supervisor of bond investment companies" by a company then classified as a foreign bond investment company, is now under the administrative jurisdiction of the chief of the division of securities who is "supervisor of bond investment companies and face-amount certificate companies", and the supervisor's jurisdiction over such deposit is in no way affected by the fact that the depositing company now is classified as a "face-amount certificate" company.

Respectfully,

C. WILLIAM O'NEILL

Attorney General