5948

1. INSURANCE ASSOCIATION, RECIPROCAL—ITS ATTORNEY PROHIBITED BY SECTION 9556-12, GENERAL CODE, FROM MAKING ANY CONTRACT OF REINSURANCE OF RISKS IN OHIO WITH INSURER NOT AUTHORIZED TO TRANSACT BUSINESS IN OHIO.

2. ATTORNEY OF RECIPROCAL INSURANCE ASSOCIATION —ADMITTED TO DO BUSINESS IN OHIO, WHOSE OFFICE IS IN ANOTHER STATE—MAY NOT ISSUE AGREEMENTS IN OHIO THAT HE SHALL INDEMNIFY SUBSCRIBERS IN OHIO ON ACCOUNT OF ANY ASSESSMENT LIABILITY RESULTANT FROM SUBSCRIPTIONS—SUCH ATTORNEY PROHIBITED FROM EFFECTING CERTAIN CONTRACTS OF INDEMNITY WHERE INSURER NOT AUTHORIZED TO DO BUSINESS IN OHIO.

SYLLABUS:

1. Section 9556-12, General Code, prohibits an attorney for a reciprocal insurance association from making any contract of reinsurance of risks located in Ohio with an insurer which is not authorized by law to transact business in Ohio.

2. An attorney of a reciprocal insurance association admitted to do business in this state and having his office in another state may not issue agreements in Ohio providing that such attorney shall indemnify subscribers in this state on account of any assessment liability arising because of their subscriptions.

3. An attorney of a reciprocal insurance association admitted to do business in this state and having his office in another state is prohibited from effecting with an insurer not authorized to do business in this state, contracts of indemnity whereby the assessment liability of subscribers in Ohio is insured in such insurer not authorized to do business in this state.

Columbus, Ohio, April 2, 1943.

Hon. J. Roth Crabbe, Superintendent of Insurance,
Columbus, Ohio.

Dear Sir:

Your predecessor in office has requested my opinion as follows:

"We would appreciate receiving your opinion on the three following questions:

1. In view of the provisions of Section 9556-12, Ohio General Code, may an attorney-in-fact for a reciprocal of another state, admitted to do business in Ohio, make any contracts of reinsurance on risks located in Ohio with any insurer not authorized by law to transact business in Ohio?

2. May an attorney-in-fact for a reciprocal of another state, admitted to do business in Ohio, issue agreements in Ohio agreeing to indemnify the subscribers in this state for any assessment liability on such subscribers, such agreements being the obligation of the attorney-in-fact rather than the obligations of the subscribers to the reciprocal?

3. May an attorney-in-fact for a reciprocal of another state, admitted to do business in Ohio, effect with an insurer, not authorized to do business in Ohio, contracts of indemnity whereby the assessment liability of the subscribers in Ohio is insured in such unauthorized insurer?"

Before discussing the specific questions which you have propounded, it may be profitable to give consideration to the nature and features of reciprocal insurance. Exhaustive annotations covering the whole subject are found in 94 A. L. R., 836, and 141 A. L. R., 765. A definition which has been quoted with approval in the opinions of several courts is found in 58 Cent. L. J., 323, where it is said:

"A and B form an interinsurance organization, each taking a policy. A and B separately and severally undertake to indemnify C; B and C separately and severally undertake to indemnify A; and A and C separately and severally undertake to indemnify B. They proceed by appointing D their attorney-in-fact for that particular purpose and business, and he takes the place of an insurance company in every particular. The power of attorney is the charter, so to speak, and limits D's rights and powers, and prescribes his duties and provides for his compensation, * * *."

In W. R. Roach & Co. v. Harding, 348 Ill., 454, 181 N. E., 331, the court said concerning reciprocal insurance:

"By this contract the subscriber agrees to exchange insurance of the character therein mentioned with other subscribers. As, for example, subscriber A agrees to insure each of the other subscribers in the amount desired by such subscriber, but in the proportion, only, which A's insurance bears to the whole amount of insurance on all such contracts, A's liability to be several and for such proportion, only, of all losses, including his own, as the amount of his insurance bears to the total insurance of all. A stipulates that he and other subscribers shall not be a corporation, mutual company, or an association, but shall make, and do make, separate contracts, each subscriber exchanging indemnity

> with each of the other subscribers. Each contract defines the separate individual liability of its maker on each other policy put out, and stipulates that if a loss occurs, its maker, as a subscriber, shall pay his part and shall not be responsible for the liability of any other subscriber. Each contract stipulates that for convenience, and by reason of necessity arising out of the fact that the subscribers are scattered over the United States and elsewhere, the subscriber agrees to give, and does give, to a common agent or attorney in fact a separate power of attorney to sign and issue policies and to perform other acts and exercise other powers designated in the contract. Each agrees that he, with all others signing like contracts, is to become a subscriber to the policies issued at the office of such agent or attorney. Each promise to indemnify has for its consideration a like promise of other subscribers."

In Ohio, reciprocal insurance has been the subject of legislation and the regulatory provisions of our law applicable to this subject are found in Sections 9556-1 to 9556-13, both inclusive, General Code, and in general it may be said that the definition contained in 58 Cent. L. J. and the discussion of the Supreme Court of Illinois heretofore quoted are applicable to reciprocal insurance as contemplated by our statutes.

With this brief introduction, I come now to a consideration of the specific questions which you have asked.

1. Section 9556-12, General Code, to which reference is made in the request, provides:

> "For the purposes of organization and upon issuance of permit by the superintendent of insurance, powers of attorney and applications for such contracts may be solicited without license, but no such attorney or other person shall make any such contracts of indemnity until he shall comply with the provisions of this act. No such attorney shall make any contracts of re-insurance *or* risks located in this state with any company, association or person not authorized by law to transact business in this state, and no such attorney shall re-insure all risks undertaken by him without the consent of the superintendent of insurance."

It seems to me that the word "or" which I have emphasized in the second sentence of such section should be read as "on" or "of." The mistake is obviously due to some clerical error and there is ample authority for substituting the proper word to make full sense in the statute. 37 O. Jur., 501, 502, and cases cited.

If the language contained in said second sentence of the section is read by itself and without any reference to the first sentence, there is no

room for interpretation because the language is so plain, clear and unambiguous as to make it unnecessary to construe it.

However, it has been suggested that the second sentence must be read in the light of the first sentence of the section and that the prohibition against reinsurance with companies, associations or persons not authorized by law to do business in this state was intended by the legislature to apply only where an association for reciprocal insurance was being originally organized, and that such language has no application to reciprocals which are in existence and transacting business.

With this suggestion I am unable to agree. I find nothing in the section which limits the application of the second sentence thereof to reciprocals which are in the process of organization. Moreover, for many years it has been the policy of the legislature of this state to prohibit insurance companies or associations authorized to do business in Ohio from reinsuring any risk or liability covering property wholly or partially located in this state with a company, association or person not authorized by law to do business in this state. See Section 5439, General Code. I believe that the language contained in the second sentence of Section 9556-12, General Code, was designed to extend this long continued policy to the business of reciprocal insurance. I am therefore of the opinion that the provisions of Section 9556-12, General Code, supra, prohibit an attorney for a reciprocal insurance association from making any contract of reinsurance on risks located in Ohio with an insurer which is not authorized by law to transact business in Ohio.

2. In connection with the second question, your attention is invited to the first paragraph of Section 665, General Code, which provides:

> "No company, corporation, or association, whether organized in this state or elsewhere, shall engage either directly or indirectly in this state in the business of insurance, or enter into any contracts substantially amounting to insurance, or in any manner aid therein, or engage in the business of guaranteeing against liability, loss or damage, unless it is expressly authorized by the laws of this state, and the laws regulating it and applicable thereto, have been complied with."

There is nothing in the law regulating reciprocal insurance which authorizes an attorney in fact to issue an agreement of the sort mentioned in the second question and I find nothing in any of the other laws of Ohio which would permit such attorney to issue such an agreement. Consequently, it falls within the prohibition contained in the language just quoted and must be deemed an illegal practice by such attorney.

3. The third question also involves a consideration of the provisions of the second sentence of Section 9556-12, General Code, supra. It is necessary to determine whether tne contracts of indemnity effected by the attorney in fact with insurers not authorized to do business in this state on behalf of the Ohio subscribers whereby such subscribers are indemnified against assessment liability, amounts to reinsurance within the meaning of such term as used in the section.

In Commercial Mutual Insurance Company v. Detroit Fire and Marine Insurance Company, 38 O. S., 11, at page 15, in the opinion of the court the following definition of reinsurance from May on Insurance is quoted with approval:

> "It is a contract of indemnity to the re-insured, whatever be the subject-matter, and binds the re-insurer to pay to the re-insured the loss sustained in respect to the subject insured, to the extent for which he is re-insurer, and not necessarily differing in form from an original insurance."

A similar definition is found in 8 Couch on Insurance, 7389, where it is said:

> "Reinsurance * * * is a contract whereby one for a consideration agrees to indemnify another, either in whole or in part, against loss or liability the risk of which the latter has assumed under a separate and distinct contract as insurer of a third party."

Inasmuch as each subscriber to a reciprocal insurance contract is an insurer of every other subscriber to such contract and is liable for a portion of the loss sustained by such other subscribers, it follows that a contract agreeing to indemnify such subscriber against assessment liability is a contract of reinsurance. The contracts of indemnity against assessment liability which the attorney in fact effects are therefore prohibited by Section 9556-12, General Code.

I am therefore of the opinion that:

1. Section 9556-12, General Code, prohibits an attorney for a reciprocal insurance association from making any contract of reinsurance of risks located in Ohio with an insurer which is not authorized by law to transact business in Ohio.

2. An attorney of a reciprocal insurance association admitted to do business in this state and having his office in another state may not issue agreements in Ohio providing that such attorney shall indemnify sub-

scribers in this state on account of any assessment liability arising because of their subscriptions.

3. An attorney of a reciprocal insurance association admitted to do business in this state and having his office in another state is prohibited from effecting with an insurer not authorized to do business in this state, contracts of indemnity whereby the assessment liability of subscribers in Ohio is insured in such insurer not authorized to do business in this state.

Respectfully,

THOMAS J. HERBERT,
Attorney General.