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INSURANCE—PHRASE “AUTHORIZED FIRE INSURANCE COMPANY OR COMPANIES”—SECTION 9357 H (a) G. C.—INVESTMENTS PERMITTED DOMESTIC LIFE INSURANCE COMPANIES—NOTES SECURED BY MORTGAGES ON REAL ESTATE ALSO REQUIRING FIRE INSURANCE ON STRUCTURES FOUND ON REAL ESTATE— INTERPRETED TO MEAN A FIRE INSURANCE COMPANY OR COMPANIES AUTHORIZED TO DO BUSINESS IN OHIO, DISTRICT OF COLUMBIA OR PROVINCE OF DOMINION OF CANADA—WHERE MORTGAGED REAL ESTATE IS SITUATED—COMPANY NOT NECESSARILY AUTHORIZED TO DO BUSINESS IN OHIO.

## SYLLABUS:

The phrase "authorized fire insurance company or companies" found in Section 9357 H (a), General Code with reference to investments permitted domestic life insurance companies in notes secured by mortgages on real estate and also requiring fire insurance on the structures found on such real estate, means a fire insurance company or companies authorized to do business in the state, District of Columbia, or the province of the Dominion of Canada where the mortgaged real estate is situated, and not necessarily authorized to do business in Ohio.

Columbus, Ohio, March 2, 1951

Hon. Walter A. Robinson, Superintendent of Insurance  
Columbus, Ohio

Dear Sir:

Your request for my opinion reads as follows:

"Will you kindly give us an opinion on the question of authorized investments for domestic life insurance companies.

"We refer to Section 9357-H (a) of the Ohio Statutes. It outlines investments of domestic life insurance companies and authorizes investments 'in notes secured by mortgages or deed of trust, etc.' and further provides that 'if the amount loaned exceeds two-thirds of the value of the land mortgages, etc., such a structure or structures must be insured in an authorized insurance company or companies, etc.'

"Section 9519 in regulating investments of funds accumulated in the course of business or surplus money over and above the capital stock of any company formed for the purpose of insuring other than life, permits investments in mortgages on buildings only if such buildings are insured in a company authorized to do business in this State, etc.

"The question, therefore, arises—does an authorized company, as mentioned in Section 9357-H (a) mean a company licensed by this State?"

Section 9357, General Code, mentioned in your request, provides in part as follows:

"Except as otherwise provided by law, the capital, surplus and all accumulations of every domestic life insurance company, shall be invested as follows: \* \* \*

"H. Bonds or mortgages on real estate. (a) In bonds or notes secured by mortgages or deeds of trust which are a first lien upon unencumbered fee simple *real estate in any state of the*

*United States, in the District of Columbia or the Dominion of Canada, the actual market value of which is at least fifty per cent more than the amount loaned thereon at the time of the investment, as shown by a valuation and appraisal in writing made under oath by two (2) real estate owners, residents of the county or local district where the real estate is located, or by a qualified land appraiser. If the amount loaned exceeds two-thirds of the value of the land mortgaged, exclusive of structures thereon, such structure or structures must be insured in an authorized fire insurance company or companies, in an amount not less than the difference between two-thirds of the value of such land, exclusive of structures, and the amount loaned, and the policy or policies shall be payable to and held by the mortgagee or by a trustee in its behalf.”* (Emphasis added.)

In determining the meaning of the phrase “in an authorized fire insurance company”, found in the above quoted statute, help may be found in the chapter relating to domestic life insurance companies found in the General Code of Ohio in Sections 9339 to 9409.

Section 9343, General Code, provides as follows:

“No joint stock company shall be organized under this chapter with less than one hundred thousand dollars capital. Before proceeding to business, the whole capital shall be paid in and invested in treasury notes, in stocks or bonds of the United States, or of the State of Ohio, or of any municipality or county thereof, or in mortgages on unincumbered real estate within this state worth double the amount loaned thereon, or in farm loans issued under the provisions of the act of congress known as the federal farm loan act approved July 17, 1916, and amendments thereto.”

Section 9344, General Code, provides as follows:

“If the amount loaned exceeds one-half the value of the land mortgaged, exclusive of structures thereon, such structures shall be insured in an authorized fire insurance company in any amount not less than the difference between one-half the value of such land exclusive of structures, and the amount loaned, and the policy assigned to the mortgagee.”

It is to be noted that the above two mentioned statutes provide for the investment of the capital of domestic life insurance companies, while Section 9357, General Code, provides for the investment of the surplus and accumulations of domestic life insurance companies. In tracing the history of the above three mentioned statutes, I find that in 69 O. L. 150, et seq., in the chapter on Life Insurance, enacted in 1872, Section 7 thereof

(which is comparable to the present section 9343, General Code), provided in part as follows :

“\* \* \* The whole capital of such company shall, before proceeding to business, be paid in and invested in \* \* \* or in mortgages on unincumbered real estate within the state of Ohio, worth double the amount loaned thereon, exclusive of buildings thereon: \* \* \*”

And Section 8, which is comparable to Section 9344, General Code, provided in part as follows :

“Any life insurance company organized under this chapter, or any other law of this state, may invest its capital in stocks, bonds and mortgages, or securities mentioned in the preceding section, and change and invest the same or any part thereof in like manner, at pleasure; \* \* \*”

While Section 11 which is comparable to Section 9357, General Code, provided in part as follows :

“It shall be lawful for any life insurance company organized under the laws of this state, to invest its accumulations of bonds and mortgages on unincumbered real estate, worth fifty per cent, more than the amount loaned thereon, exclusive of buildings, unless such buildings shall be insured in some *insurance company authorized to do business in this state*, and the policy or policies of insurance be assigned as collateral security for the loan so made, when, in addition to the amount authorized to be loaned on real estate exclusive of buildings, there may be added thereto not exceeding fifty per cent. on the amount of the policy or policies so assigned; \* \* \*”  
(Emphasis added.)

It is to be noted that at that early date a difference was made as to the investment of the capital and the investment of the surplus. Sections 7 and 8, above noted, among other kinds of permitted investments for the capital of domestic life insurance companies, provided for the investment in mortgages on unincumbered real estate within the state of Ohio worth double the amount loaned thereon, exclusive of buildings. Since buildings were not to be included in determining value there was no necessity for insurance, and insurance is not mentioned in either one of those sections. However, Section 11 thereof provided for the investment of the accumulations of domestic life insurance companies in mortgages on unincumbered real estate without designation of the location of the real estate; that is, it did not provide that the real estate must be situated in

Ohio. Such mortgages were to be worth fifty per cent more than the amount loaned, exclusive of buildings, unless such buildings were insured by "some insurance company authorized to do business in this state." In other words, to qualify as a capital investment, the real estate mortgaged must be worth, exclusive of buildings, twice the amount loaned, and also must be located in Ohio, while an investment of the company's accumulations could be in mortgages on unincumbered real estate situated any where worth fifty per cent more than the amount loaned, but if the buildings were also to be valued, then such buildings were to be insured in an insurance company authorized to do business in Ohio.

Then in 95 O. L., 38, et seq., enacted in 1902, appears Revised Statute 3591, comparable to present Sections 9343 and 9344, General Code, which provided that the capital of life insurance companies could be invested in mortgages on real estate in the state of Ohio, and :

"If the amount loaned shall exceed one-half the value of the land mortgaged, exclusive of structures thereon, such structures shall be insured in an authorized fire insurance company in any amount not less than the difference between one-half of such land exclusive of structures, and the amount loaned, and the policy assigned to the mortgagee."

Here the term used is "authorized fire insurance company," but since the real estate must be situated in Ohio, an authorized fire insurance company could only be a company authorized to do business in this state.

Also in 95 O. L. , page 38, appears Revised Statute Section 3598, comparable to present Section 9357, General Code, which was amended to provide for the investment of the accumulations of domestic life insurance companies in mortgages on real estate located any where, and for insurance on the buildings in an authorized fire insurance company as follows :

"In bonds and mortgages upon unincumbered real estate, the market value of which real estate is at least double the amount loaned thereon, at the date of investment. If the amount loaned shall exceed one-half the value of the land mortgaged, exclusive of structures thereon, such structures shall be insured in an authorized fire insurance company in an amount not less than the difference between one-half the value of such land, exclusive of structures, and the amount loaned, and the policy assigned to the mortgagee; and the value of such real estate shall be determined by a valuation, made under oath, by two real estate owners, residents of the county where the real estate is located."

Now, there has taken place a substantial change in the statute. Formerly the mortgages could be on real estate located anywhere, while the insurance company had to be authorized to do business in Ohio. This may have proved to be unworkable since it would have meant that if the real estate was situated in another state, then an insurance company authorized to do business in Ohio and in that state where the real estate was situated must have been found. Whatever may have been the reason the legislature has seen fit to drop the "in Ohio" and provide only for an authorized fire insurance company, which would mean authorized in the state where the mortgaged real estate was situated and not necessarily authorized to do business in Ohio. In so far as our purposes are concerned, this statute has continued to so read from the time of the above noted amendment, namely, in 1902 until the present time, with the exception that now the section reads "real estate in any state of the United States, in the District of Columbia, or the Dominion of Canada", a further reason why the legislature could have considered it unworkable to require the fire insurance company to be authorized to do business in Ohio.

Since your request has also called to our attention Section 9519, General Code, in regard to the investment of the surplus and accumulations of insurance companies other than life, this section and other related sections will now be examined.

Section 9518, General Code, provides in part as follows:

"No company organized under this chapter or incorporated under any law of this state, for the purpose provided in section 9512, shall invest its capital or any part thereof, otherwise than in:

\* \* \* 4. (a) Bonds and mortgages on unincumbered real estate within this or any other state of the United States, worth double the amount loaned thereon. If the amount loaned exceeds one-half the value of the land mortgaged, exclusive of structures thereon, such structures must be insured *in an authorized fire insurance company* other than the company making the loan, in an amount not less than the difference between half the value of such land exclusive of structures, and the amount loaned, and the policy assigned to the mortgagee; \*\* (Emphasis added.)

Section 9519, General Code, provides in part as follows:

"Funds accumulated in the course of business, or surplus money over and above the capital stock of any company organized under this chapter or incorporated under any law of this state,

for the purposes provided in section 9512, shall only be loaned on or invested in the above named securities, or :

I. (a) Bonds and mortgages on unincumbered real estate within this or any other state of the United States worth fifty per cent more than the sum loaned thereon, exclusive of buildings, unless such buildings are *insured in some company authorized to do business in this state*, and the policy is transferred to a company making the investment ;” (Emphasis added.)

In tracing the history of the two above mentioned sections, I find in 70 O. L., 147 (enacted in 1872 with reference to the regulation of domestic insurance companies other than life) that Section 6 thereof provided for the investment of the capital of such companies, among other ways, in :

“4. Bonds and mortgages on unincumbered real estate within the state of Ohio, worth fifty per cent, more than the sum loaned thereon, exclusive of buildings ;”

Nothing was said concerning insurance because in making such loans the value of buildings was not to be included. This same section also provided for the investment of accumulations of such companies, in :

“1. Bonds and mortgages on unincumbered real estate within the state of Ohio worth fifty per cent, more than the sum loaned thereon, exclusive of buildings, unless such buildings are insured in some insurance company authorized to do business in this state, and the policy transferred to said company making the investment ;”

Now, it is to be noted that the real estate must be located in Ohio, and necessarily the insurance company must be authorized to do business in this state.

Then in 95 O. L., 59, enacted in 1902, Section 3637, Revised Statutes (comparable with present section 9518, General Code), permitted capital investments were enlarged and provided, among other investments :

“4. Bonds and mortgages on unincumbered *real estate within this state*, worth double the amount loaned thereon ; if the amount loaned shall exceed one-half the value of the land mortgaged exclusive of structures thereon, such structures *shall be insured in an authorized fire insurance company* other than the company making such loan in an amount not less than the difference between one-half the value of such land exclusive of structures, and the amount loaned, and the policy assigned to the mortgagee ;” (Emphasis added.)

This resulted in permitting a capital investment in mortgages on real estate situated in Ohio, and also provided that structures if so included be insured in "an authorized fire insurance company;" and, since the real estate had to be situated in Ohio, a fire insurance company in order to insure it must also be authorized to do business in Ohio. In that Act there was no change made in investment of accumulations of companies other than life.

In 106 O. L. 115, enacted in 1915, Section 9518, General Code, read in part as follows:

"No company organized under this chapter or incorporated under any law of this state, for the purpose provided in section ninety-five hundred and twelve, shall invest its capital or any part thereof, otherwise than in:

"\* \* \* 4. Bonds and mortgages on unincumbered real estate within this or any other state of the United States, worth double the amount loaned thereon. If the amount loaned exceeds one-half the value of the land mortgaged, exclusive of structures thereon, such structures must be insured in an authorized fire insurance company other than the company making the loan, in an amount not less than the difference between half the value of such land exclusive of structures, and the amount loaned, and the policy assigned to the mortgagee;"

This amendment resulted in permitting capital investments to include mortgages on real estate situated "in this or any other state" and provided that structures must be insured in an authorized fire insurance company" without reference to being authorized to do business in Ohio, and in the latter respect read as did its predecessor statute. There seems to have been a reason for this, since the real estate mortgaged could be situated not only in Ohio but in any state.

In the same Act Section 9519, General Code, was enacted to read in part as follows:

"Funds accumulated in the course of business, or surplus money over and above the capital stock of a company, may be loaned on or invested in the above named securities, or:

"1. Bonds and mortgages on unincumbered real estate within this or any other state of the United States worth fifty per cent more than the sum loaned thereon, exclusive of buildings, unless such buildings are insured in some company authorized to do business in this state, and the policy is transferred to a company making the investment;"



Now, heretofore this section had provided that the real estate mortgaged must be situated in Ohio, and also that the insurance company must have been authorized to do business in Ohio, which presented no difficulty, since, as I have pointed out, if the real estate be situated in Ohio the fire insurance company insuring such real estate must of necessity be authorized to do business in Ohio. However, by this last amendment the investment statute as to the surplus and accumulations provided for the mortgaged real estate to be located in this or any other state, but at the same time the amendment retained the phrase "authorizd to do business in Ohio." Whether this was done in error, or whether the legislature in its wisdom had a reason for doing it, I do not know. But the expression is there, is unambiguous, and I must give effect to it. It is true that the result would be to place a greater limitation as to the choice of fire insurance companies by companies other than life investing their surplus and accumulations than in investing their capital, and also would place a greater limitation as to the choice of fire insurance companies by companies other than life in investing its surplus and accumulations than in domestic life insurance companies, but that is exactly what the legislature has said.

I suppose it would be needless to point out that the legislature in Section 9357, General Code, has laid down only one requirement as to a fire insurance company, namely, that it be authorized to do business, and that a domestic life insurance company, before accepting a mortgage security could impose additional requirements such as requiring that the fire insurance company be authorized to do business in Ohio, or have a certain amount of capital and surplus.

In specific answer to your question I am therefore of the opinion that the phrase "authorized fire insurance company or companies" found in Section 9357 H (a), General Code, with reference to investments permitted domestic life insurance companies in notes secured by mortgages on real estate and also requiring fire insurance on the structures found on such real estate, means a fire insurance company or companies authorized to do business in the state, District of Columbia, or the province of the Dominion of Canada where the mortgaged real estate is situated, and not necessarily authorized to do business in Ohio.

Respectfully,

C. WILLIAM O'NEILL

Attorney General