

OPINION NO. 68-102**Syllabus:**

Pursuant to Section 3905.01, Revised Code, the Superintendent of Insurance may deny an application for, or revoke an agent's license, other than life, if the applicant or licensee is a domestic corporation whose stock is owned by nonresidents who are engaged in the business of insurance as agents or brokers.

To: Eugene P. Brown, Director, Dept. of Insurance, Columbus, Ohio
By: William B. Saxbe, Attorney General, June 18, 1968

Before me is your request for my opinion which reads in pertinent part as follows:

"May the Superintendent of Insurance deny an application for, or revoke an agent's license, other than life, if the applicant or licensee is a domestic corporation whose stock is owned by non-residents who are engaged in the business of insurance as agents or brokers?"

Before answering your question it appears necessary to clarify Opinion No. 66-025, Opinions of the Attorney General for 1966, to which you refer in your letter. In that opinion the first question was "May the holder of a foreign broker's license own stock in an Ohio corporate insurance agency?" This question was answered essentially by stating that such acquisition was permissible but might result in the revocation of the foreign broker's license. This conclusion was based on the foreign insurance broker's licensing statute, Section 3905.03, Revised Code, which prohibits a license from being issued to a person who has an interest in an Ohio licensed agent or agency. In addition, the opinion stated that "There is no prohibition of a holder of a foreign broker's license acquiring stock in an Ohio corporate insurance agency, nor do I find any provision of the Code which would disqualify such licensee from such acquisition." The opinion did not pass on the question now presented and was primarily limited to an interpretation of Section 3905.03, Revised Code.

The present question is addressed to the power of the superintendent of Insurance to refuse to issue or revoke an Ohio resident agent's license (Section 3905.01, Revised Code), of a domestic corporation whose stock is owned by nonresident insurance agents or brokers.

As noted in your request letter, Section 3905.01, Revised Code, does not specifically authorize the issuance of resident agents' licenses to corporations. However, as you know, it has been the long-standing administrative practice to issue such licenses to domestic corporations under certain circumstances, and previous opinions of this office have approved this practice. (See Opinion No. 3711, Opinions of the Attorney General for 1922, page 909, Opinion No. 44, Opinions of the Attorney General for 1927, page 55, and Opinion No. 5078, Opinions of the Attorney General for 1936, page 19.)

The opinions cited are all pertinent to the question posed in that they all deal with the use and abuse of resident agents' and foreign brokers' licenses. They should be considered in connection with this opinion because in varying degree they all support the conclusion reached herein.

Under Ohio law it is clear that your question must be answered in the affirmative. The leading case is The State ex rel. Johnson & Higgins Co. v. Safford, Supt., 117 Ohio St., 576 (1927). This case was an original action in mandamus in the Supreme Court of Ohio seeking writs to compel the Superintendent of Insurance to issue licenses to two Ohio agency corporations. The Superintendent had refused to issue licenses on the ground that a majority of the stock of the agency corporations was owned by foreign corporations engaged in the insurance brokerage business in other states.

The licenses sought were resident agents' licenses pursuant to Section 644, General Code, which was re-enacted as Section 3905.01, Revised Code, with amendments not pertinent here.

The court sustained a demurrer to the petition stating in the syllabus as follows:

"1. In the furtherance of justice, the fiction of a corporate entity may be disregarded where the corporation is so controlled and its affairs so conducted as to make it merely an instrumentality for the purpose of evading and circumventing a state law.

"2. Where a statute forbids the issuing of an insurance agent's license unless the applicant be a resident of the state, and the superintendent of insurance, pursuant to administrative precedent and in the exercise of a sound discretion, has denied a license to a domestic insurance corporation, the majority of whose capital stock is owned by the holder of a foreign insurance broker's license, upon the ground that the fiction of the domestic corporate entity is sought to be used as a means of circumventing the statute by such holder of a foreign insurance broker's license, a writ of mandamus seeking to compel the superintendent of insurance to issue such license will be denied."

In the Safford opinion at page 580 the legal proposition was stated as follows:

"To state the proposition somewhat differently, may a domestic corporation, organized for the purpose of soliciting insurance other than life, incorporated under the laws of this state, be denied a license to do business in this state merely because the bulk of its stock is owned by a foreign corporation engaged in the insurance brokerage business, which latter corporation is not enabled to secure a license to act in this state by reason of Section 644, General Code?"

In determining that a license could be denied on such ground, the opinion, after discussing the principle of disregarding the corporate entity, states at page 582:

"The principle of denying the right to do by indirection what cannot be done by direct method is thus clearly recognized. If a non-resident insurance company cannot write insurance in Ohio without a resident license, how can this desired result be acquired by coming into the state in the guise of an owner of a controlling interest in a domestic corporation, thus seeking to circumvent the statute relative to resident licenses?"

Further, the Court acknowledged that administrative interpretations of given laws, if long continued, will be recognized and followed by the Courts. The Court noted that Sections 644,

644-1, and 644-2, General Code (presently Sections 3905.01, 3905.02 and 3905.03, Revised Code, with minor amendments) had been interpreted by the Department of Insurance and such interpretation was adopted by the Court as follows at page 582:

"Sections 644, 644-1, and 644-2, General Code, prior to the amendment of March 14, 1927 (112 Ohio Laws, p. 92), have received interpretation of the insurance department of this state; and, under facts so similar as to make the situation almost parallel to the instant case, a license was refused to a holder of a foreign broker's license where such license was sought by a corporation of Ohio dominated by the holder of such foreign broker's license. We think the interpretation then placed upon the statutes was correct and that the same interpretation should now prevail, in spite of the amendment of Section 644-2."

The Court concludes on page 583 as follows:

"It is our conclusion that the relator company is but the alter ego of a nonresident insurance broker corporation desiring to write insurance in Ohio, but unable to obtain a resident license, and that the course pursued by it is but an attempt to do by indirection that which cannot be accomplished by direct and legal methods. Entertaining this view, the demurrer of the respondent to the petition of the relator is sustained."

The principle of Safford, supra, was found applicable in State ex rel Federal Union Ins. Co. v. Warner, Supt. of Ins., 128 Ohio St., 261 (1934), in which a resident agent's license was refused to a natural resident of this state who had entered into a partnership with nonresident agents and brokers.

I have examined the legislative history of General Code Sections 644, 644-1 and 644-2 (Sections 3905.01, 3905.02 and 3905.03, Revised Code, respectively) and the cases which have considered these sections. There are no amendments or cases which would suggest a result or interpretation different from the Safford and Warner decisions. On the contrary, it appears that the administrative interpretation has been followed for an additional forty-one years since Safford.

The cases are clear that the Superintendent has discretion to grant or deny a license. In the exercise thereof pursuant to Section 3905.01, Revised Code, the Superintendent of Insurance may deny an application for, or revoke an agent's license, other than life, if the applicant or licensee is a domestic corporation whose stock is owned by nonresidents who are engaged in the business of insurance as agents or brokers.