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INSURANCE COMPANY—ORGANIZED UNDER LAWS OF OHIO—TO DISPOSE OF SECURITIES ISSUED BY IT MAY REGISTER WITH SUPERINTENDENT OF INSURANCE, TRANSACTIONS RELATING TO SUCH SALES AND UPON PAYING THE FEES FOR REGISTRATION MAY PROCEED TO SELL SUCH SECURITIES WITHOUT BEING LICENSED AS A DEALER IN SECURITIES—SECTIONS 8624-9, 8624-6, PARAGRAPH 1, G. C.

SYLLABUS:

An insurance company organized under the laws of this state, desiring to dispose of securities issued by it, may register with the Superintendent of Insurance the transactions relating to such sales and upon paying the fees prescribed by section 8624-9, General Code, for such registration, may proceed to sell such securities in accordance with the provisions of paragraph 1 of section 8624-6, General Code, without being licensed so to do, as a dealer in securities.

Columbus, Ohio, July 3, 1945

Hon. Walter Dressel, Superintendent of Insurance  
Columbus, Ohio

Dear Sir:

This will acknowledge receipt of your letter of recent date, which reads as follows:

“Articles of incorporation for a stock miscellaneous insurance company have been deposited with this office by the Secretary of State of Ohio. On behalf of the corporation, application

has been made to this office for the registration of future sales of its securities under section 8624-6, paragraph 1, of the General Code. 1943 Attorney General Opinion No. 6244, with regard to the sale of securities of a stock life insurance company organized under the laws of Ohio, indicates that the stock is exempt from the registration provisions of the Ohio Securities Act, but holds that the company cannot be licensed as a dealer in securities to sell its own stock until it has subscriptions at least equal to the amount with which the articles of the incorporation state it shall commence business.

It is contended by the applicant in the instant case that at its option it may apply for registration of its securities under the provisions of section 8624-6 of the General Code of Ohio.

We would appreciate receiving your opinion on the following questions:

1. May we register the securities in accordance with section 8624-6 of the General Code of Ohio, regardless of 1943 Attorney General Opinion No. 6244?
2. If your answer to the above question is in the affirmative, may the corporation dispose of its own securities without being licensed as a dealer in securities under the Ohio Securities Act?"

It is noted that your letter states that application has been made by the company in question for the registration of future sales of its securities under paragraph 1 of section 8624-6, General Code, while your inquiry concerns your authority to register such company's securities in accordance with that section.

Since section 8624-6 deals with the registration of transactions involving the sale of securities and not with the registration of securities themselves, and inasmuch as the company is apparently concerned only with the registration of transactions relating to the sale of its securities, I assume that your questions deal therewith and shall therefore proceed accordingly.

In the opinion of the Attorney General, referred to in your communication (Opinions of the Attorney General, 1943, No. 6244), it was held as disclosed by the syllabus:

"1. A life insurance company organized under authority of Subdivision I, Division III, Title IX, General Code, disposing or attempting to dispose of its stock, becomes subject thereby to

the supervision of the Superintendent of Insurance by reason of the provisions of Section 8624-37, General Code, and since said section also regulates the issuance of such stock by such a life insurance company, such stock, by reason of the provisions of paragraph 7 of Section 8624-3, General Code, is exempt from the registration provisions of the Ohio Securities Act.

2. The Superintendent of Insurance has authority to license dealers and salesmen to dispose of stock where the issuer thereof is a life insurance company organized under Subdivision I, Division III, Title IX, General Code.

3. A life insurance company cannot be licensed as a dealer in securities under the Ohio Securities Act to sell its own stock prior to the time subscriptions for its capital stock have been received in an amount at least equal to that with which the articles state it shall commence business."

It will be observed from the above that said opinion dealt only with the registration of securities issued by a stock life insurance company and the authority of the Superintendent of Insurance to license such a company as a dealer in securities.

Inasmuch as the questions raised in the instant case relate only to the registration of its transactions in securities by an insurance company and the authority of such company to sell and dispose of its securities, without being licensed as a dealer in securities, it would appear that such opinion is not relevant and consequently may be disregarded and dismissed from further consideration.

Paragraph 1 of section 8624-6, General Code, reads as follows:

"The following transactions in securities may be carried on and completed upon compliance with section 8624-7:

(1) The sale of its securities by a corporation organized under the laws of this state when no part of the securities to be sold is issued directly or indirectly in payment or exchange for intangible property or for property not located in this state, and when the total commission, remuneration, expense or discount in connection with the sale of such securities does not exceed three per centum (3%) of the total sale price thereof."

It will be noted that a compliance with the provisions of section 8624-7, General Code, is necessary before a corporation becomes qualified to proceed with the sale of its securities in accordance with the provisions of the above section.

Section 8624-7, in so far as the same relates to the subject matter of section 8624-6, reads:

“ \* \* \* the transactions specified in section 6 may be carried on and completed if the requirements of section 8 have been complied with.”

Sections 6 and 8 referred to above are sections 8624-6 and 8624-8, respectively, of the General Code.

Reference to section 8624-8, General Code, discloses that said section contains the following requirements:

“The securities specified in section 8624-5 may be sold and the transactions enumerated in section 8624-6 may be consummated on compliance with the provisions of this section. \* \* \*

When transactions in any securities enumerated in section 8624-6 have been registered and the fees prescribed by section 8624-9 have been paid, such transactions may be consummated so long as such registration remains in full force and effect.”

From the above, it is apparent that the transaction in question may be carried on and completed in accordance with the provisions of paragraph 1 of section 8624-6, when such transaction has been registered in compliance with the terms of section 8624-8, and the fees prescribed by section 8624-9 have been paid.

The provisions of section 8624-8, dealing with the registration of transactions in securities enumerated in section 8624-6, of course contemplate such registration with the Division of Securities. In this connection, however, your attention is directed to section 8624-37, General Code, which provides in part:

“If the issuer of such securities be incorporated, organized or formed to make any insurance named in Subdivisions I and II, Division III, Title IX of the General Code, the superintendent of insurance of Ohio shall, for all the purposes of this act, be substituted for the division of securities.”

The above provisions manifestly place section 8624-37 in pari materia with all other sections of the Securities Act which relate to or prescribe the functions of the Division of Securities in connection with the sale of securities. This being true, all sections of the Securities Act, when applied to securities issued or transactions with respect to the sale of its securities

engaged in by an insurance company, are to be construed together with the above provisions, in order to arrive at a correct interpretation of any particular one. Therefore, in order to comply with the provisions of section 8624-8, regarding the registration of its transactions in the securities issued by it, the issuer, if an insurance company, must register such transactions with the Superintendent of Insurance.

This brings me to your second question.

In regard thereto, your attention is called to the concluding sentence of section 8624-6, General Code, which reads:

“An issuer engaging in any transaction specified in this section shall not be deemed to be a dealer.”

Here, in specific language, the General Assembly has stated that an issuer who has complied with the provisions of sections 8624-7 and 8624-8, relating to the registration of transactions in its securities, may carry on and complete the sale of its securities in accordance with the conditions and limitations prescribed in said section and in so doing shall not be deemed to be a dealer.

In connection herewith, the provisions of section 8624-17, General Code, should also be noted. Said section reads in part:

“No person shall sell any securities within this state or engage in the business of buying, selling or dealing in securities otherwise than in transactions through or with a licensed dealer, unless such person is licensed as a dealer by the division, except:  
\* \* \*

(2) When the person is an issuer (selling securities issued by it or issued by its subsidiary) when (a) such securities are specified under subsections 6 or 8 of section 8624-3, or section 8624-4a; or (b) such issuer is not a dealer by the express provisions of section 8624-6.” (Emphasis added.)

Summarizing the above, you are advised that in my opinion an insurance company organized under the laws of this state, desiring to dispose of securities issued by it, may register with the Superintendent of Insurance the transactions relating to such sales and upon paying the fees prescribed by section 8624-9, General Code, for such registration, may

proceed to sell such securities in accordance with the provisions of paragraph 1 of section 8624-6, General Code, without being licensed so to do, as a dealer in securities.

Respectfully,

HUGH S. JENKINS

Attorney General