6169.

APPROVAL—ARTICLES OF INCORPORATION OF THE FARM UNION MUTUAL AUTOMOBILE INSURANCE COMPANY OF OHIO.

COLUMBUS, OHIO, October 9, 1936.

HON. GEORGE S. MYERS, *Secretary of State, Columbus, Ohio.*

DEAR SIR: I have examined the articles of incorporation of The Farm Union Mutual Automobile Insurance Company of Ohio which you have submitted for my approval. Finding the same not to be inconsistent with the Constitution or laws of the United States or of the State of Ohio, I have endorsed my approval thereon and return the same herewith to you.

Respectfully,
JOHN W. BRICKER,
Attorney General.

6170.

INSURANCE—PLAN FOR INSURING PROPERTY INVOLVED IN LIQUIDATION OF BANKS AND BUILDING AND LOAN ASSOCIATIONS DISCUSSED.

SYLLABUS:

Legality of proposed plan for insuring property involved in the liquidation of banks and building and loan associations discussed and upheld.

COLUMBUS, OHIO, October 13, 1936.

HON. ALFRED A. BENESCH, *Director of Commerce, Columbus, Ohio.*

DEAR SIR: I acknowledge receipt of your communication of September 1 which reads as follows:

> "The Division of Insurance has under consideration, as a means of conserving for stockholders and depositors of banks and building and loan associations in liquidation as large an equity as possible, a proposal for the placing of insurance on property involved in such liquidations with a single insurance company, licensed either as a domestic corporation or as a foreign corporation. Among the advantages accruing from the adoption of such a procedure would be a more effective inspection and

survey of the insurance needs in each individual case, more effective supervision and better servicing of the risk.

A similar plan adopted by the Commissioner of Banking and Insurance in the State of New Jersey provides that a New Jersey company be selected to write the contracts of insurance with the understanding that this company is to retain only 10% of the business and re-insure 90% with all the fire insurance companies admitted to the state and writing one-fourth of 1% of the fire premiums in New Jersey for the year 1934. Each county has an Advisory Board of three or five members elected by the participating agents of that county. The Advisory Board in turn elects a Secretary-Treasurer who is the contact man for the county. He receives all orders for insurance and distributes them to the agent nearest the risk or to the agent best qualified to service it. All the agents hold a limited commission of authority from the company to issue policies for this business only. The Secretary-Treasurer of the county units keeps a record of the policies written and twice a year receives a check for the *full agency commission* on all these policies. After deduction of the expenses of the Secretary-Treasurer's office, the commissions are distributed equally among all the agents of the county.

Several difficulties in the way of the adoption of a similar plan or procedure for Ohio have occurred to me, and I am, therefore, writing to secure your opinion on the following issues:

1. Does the placing of a minimum gross premium qualification for the re-insuring companies result in discrimination against the companies not possessing such qualification, but still enjoying the privilege of a license issued by the Superintendent of Insurance?

2. Is the objection that our present statutes make no provision for issuing limited licenses of the type in contemplation insuperable?

3. Section 9563 of the General Code provides that 'if such company, etc., requires its agents to enter into any compact or combination with other insurance agents or companies for the purpose of controlling the rates charged for fire insurance on property in this state, or of controlling the rates percent amount of commission or compensation to be allowed agents, etc., the Superintendent of Insurance forthwith shall revoke, etc., and such company shall be prohibited from transacting any business in this state until again duly licensed and authorized.'

Would the procedure involved in the suggested plan run afoul of this statutory provision?

4. Section 9592-10 of the General Code provides that 'except as contained in the policy and the usual agreement for other insurance, no such insurance company or insurer or rating bureau shall make any contract or agreement with any person insured or to be insured that the whole or any part of any insurance shall be written by or placed with any particular company, insurer, agent, or any group of companies, insurers or agents.'

Though the purpose of this enactment is not quite clear to me, its language is broad enough in my judgment to prohibit the insurer, who in the suggested case would be the single insurance company, from entering into any agreement with the insured, who in the suggested case would be the Superintendent of Banks or the Superintendent of Building and Loan Associations, by the terms of which agreement the whole or any part of the insurance is to be written or placed with that particular company.

My attention has been called, however, to the fact that the plan contemplates a policy of insurance and not a collateral agreement, contract or combine binding the insured to insure with any company beyond the time of his election to continue the placement of such insurance. The plan in question contemplates the issuance of one policy, insuring all of the property for which the Superintendent of Banks or the Superintendent of Building and Loan Associations shall be responsible under certain named conditions, subject to the same privileges of cancellation by either party as are contained in fire insurance policies generally, and the single policy referred to will contain the provision that separate policies shall be issued for each separate property, although the guaranty to the insured is contained in one policy designated as a master policy, and losses will be collectible under that policy and premiums payable thereunder, and the individual policies will be issued as a matter of mechanics in the distribution of the business and to facilitate the servicing of individual risks and the rating thereof."

Your questions will be answered in the order in which they are asked.

1. With reference to the power of the Superintendent of Banks, Section 710-95, General Code, reads in part as follows:

"The superintendent of banks, upon taking possession of the business and property of any bank, shall have, exercise and

discharge the following powers, authority and duties, without notice or approval of court, but subject to the provisions of this chapter, to-wit:

* * * * * * * * *

2. To perform all such acts as are desirable or expedient in his discrettion to preserve and conserve the assets and property thereof.

* * * * * * * * *

6. To pay out and expend such sums as he shall deem necessary for the preservation, maintenance, conservation and protection of any such property or any asset or property on which such bank has a lien by mortgage, pledge or otherwise.

* * * * * * * * *."

The same powers are given to the Superintendent of Building and Loan Associations by Section 687-10, paragraphs 2 and 6, General Code. These statutes give the Superintendent of Banks and the Superintendent of Building and Loan Associations ample power to insure the property of the institutions which they have charge of for the purpose of liquidation, as well as the property on which such institutions have liens. There is no legal requirement that this insurance be placed with any particular company or companies. The authority granted to an insurance company to do business in this state does not give it a right to demand business from anyone. It is, therefore, within the discretion of these officers to place such insurance with such company or companies as they deem best for the interests of the creditors, stockholders and members of such institutions. Each of such officers may contract for all such insurance with one company or with as many companies as he desires so long as such company or companies are authorized to do business in this state. Likewise, he may refuse to so contract with any particular company for any reason or for no reason at all. It follows, therefore, that he may, if he so desires, contract for such insurance only with companies which do a specified minimum amount of business in this state and this, in my opinion, would not be an unlawful discrimination. It would also not be unlawful to place all such insurance with one company authorized to do business in Ohio with the understanding that a designated portion of it be reinsured in all authorized companies which do a specified minimum amount of business in this state.

2. There is no provision in the statutes authorizing the Superintendent of Insurance to issue agents' licenses which would limit the agents to the writing of only such insurance as may be procured from the Superintendent of Banks and the Superintendent of Building and Loan Associations. Section 644, General Code, provides that such an agent's license

"shall state in substance that the company is authorized to do business in this state and that the person named therein is a constituted agent of the company in this state for the transaction of such business as it is authorized to transact therein." However, as between the insurance company and the agent, I am of the view that there is no objection to the company limiting the authority of the agent to write only certain business. So far as third parties are concerned who have no knowledge of such limitation of authority, the agent would probably have by virtue of his license apparent authority to act as agent for the transaction of such business as the company is authorized to transact in this state. But as between the agent and the company such limitation of authority would be binding.

3. The provision of Section 9563, General Code, to which you refer, makes it unlawful for any company to require its agents to enter into any contract or combination with other insurance agents or companies for the purpose of controlling rates charged for fire insurance on property in this state or of controlling the commission to be allowed agents for procuring contracts of such insurance. I find nothing in the proposed plan as outlined by you whereby any company would require the agents to enter into any kind of an agreement. As I understand it, the agents of each county are voluntarily to agree on the exchange of this business and the division of the compensation therefor. There is also nothing in the proposed plan as outlined by you to show that any of the purposes of such plan are to control rates charged for insurance on property in this state or to control the agents' commissions. So far as the agents are concerned, it is simply an agreement for the exchange of certain business between the agencies of a county and the division of commissions. It is not probable that such a plan which relates only to property under the control of these officers could result in the controlling of rates charged for insurance on all property in this state. Of course, the rates charged to these officers could not be any other than those provided for by the schedule of rates established and maintained by the rating bureau of which the insuring company is a member, with such deviations from such rates as may have been filed with such rating bureau as provided by law. The charging of rates for insurance on the property under the control of said officer different than those charged for risks of the same hazards would, of course, be a violation of Section 9592-8, General Code.

4. Section 9592-10, General Code, quoted by you, prevents the making of any contract by any insurer with any person providing that the whole or any part of insurance shall be written by or placed with any particular company, insurer, agent or groups thereof, except as contained in the policy and the usual agreement for other insurance. In the proposed plan, there is no agreement binding the officers in question to place all insurance with the insurance company to be selected except such as is con-

tained in the master policy and such other policies as may be issued covering individual risks. It is quite customary to issue blanket policies and their legality has never been questioned. I am of the view, therefore, that such proposed plan as outlined by you would not violate either Section 9563 or Section 9592-10, General Code.

Respectfully,
JOHN W. BRICKER,
Attorney General.

6171.

DISCUSSION OF SUBSTITUTE SENATE BILL No. 236, 91ST GENERAL ASSEMBLY.

COLUMBUS, OHIO, October 13, 1936.

HON. CARL G. WAHL, *Director, Department of Public Works, Columbus, Ohio.*

DEAR SIR: This is to acknowledge the receipt of your recent communication in which you refer to Substitute Senate Bill No. 236, enacted by the 91st General Assembly under date of May 21, 1935, 116 O. L., 244, which confers certain powers upon the Superintendent of Public Works relating to the subaqueous and marginal lands of Lake Erie situated within the territorial confines of the state of Ohio, and in which you request my opinion as to whether under the provisions of this act the Superintendent of Public Works has authority to determine the boundary lines between the subaqueous and shore lands of Lake Erie, the title of which is in the state of Ohio, and the contiguous uplands or other littoral lands owned by persons and corporations, including the municipalities along the lake. In this communication, you likewise request my opinion as to the power and authority of the Superintendent of Public Works to effect leases of subaqueous and other state lands to private persons, corporations and municipalities owning contiguous or adjoining lands.

By the act above referred to, which has been carried into the General Code as Sections 412-24 to 412-33, inclusive, the Superintendent of Public Works is authorized and directed to act as the agent of the state of Ohio for the purpose of cooperating with the Beach Erosion Board of the United States War Department, as provided for under the provisions of Section 2 of the "River and Harbor Act" known as House Resolution No. 11781, adopted by the Congress of the United States and approved July 3, 1930; and by this act the Superintendent of Public Works and engineers under his direction are required to cooperate with the Beach