eficial to the fund, but as no such action appears to have been taken in this instance, I am not specifically passing upon this question.

By way of specific answer to your inquiry, therefore, I am of the opinion that the sinking fund trustees of a municipality are without power to sell securities in their hands for the purpose of raising funds to purchase municipal bonds offered for sale by the municipality.

Respectfully,
EDWARD C. TURNER,
Attorney General.

2386.

APPROVAL, BONDS OF THE VILLAGE OF WEST LIBERTY, LOGAN COUNTY, OHIO—$23,460.06.

COLUMBUS, OHIO, July 23, 1928.

Industrial Commission of Ohio, Columbus, Ohio

2387.

INSURANCE—CONTRACT TO PAY ATTORNEY TO DEFEND ONLY IS NOT CONTRACT OF INSURANCE—PROPRIETY OF CONTRACT DISCUSSED.

SYLLABUS:

1. *An association or league, that undertakes and agrees to employ competent attorneys without charge to the member of such league to defend such member in all legal proceedings against him arising out of alleged wrongful death or other claims for damages arising from the use of his automobile by himself, a member of his family, his agent or employe, said league not assuming or agreeing to pay any judgment or other claim for damages, is not engaged in the insurance business and its contract is not one substantially amounting to insurance.*

2. *Form and substance of contract criticized and disapproved.*

COLUMBUS, OHIO, July 23, 1928.

HON. WILLIAM C. SAFFORD, *Superintendent of Insurance, Columbus, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent communication requesting my opinion as follows:

> "Herewith I hand you a specimen contract of National Motorists League of Columbus, Ohio.

Will you kindly read this document, and at your pleasure, let us have your opinion as to whether the service of the National Motorists League constitutes an insurance business."

Accompanying your letter is a copy of the contract issued by the National Motorists' League in the words and figures following to-wit:

"NATIONAL MOTORISTS' LEAGUE

Columbus, Ohio

This is to Certify that _____is a duly accredited contract holder of National Motorists' League for a period of _____ year, subject to the rules of the League, and is entitled to the services enumerated in the following pages of this service certificate.

No agent has any authority to change or alter this certificate. Any statements made by any agent, other than those embodied in this certificate, shall not be binding on the League.

Description of Car

Make	Style	Year	Motor Number

IMMEDIATE NOTICE OF ACCIDENT MUST BE GIVEN THE LEAGUE IN WRITING. IN EVENT OF FATALITY OR SERIOUS INJURY, TELEGRAPH OR TELEPHONE.

IN WITNESS WHEREOF, This League has caused this certificate to be signed by its duly authorized officer, this _____ day of _____ 19 .

NATIONAL MOTORISTS' LEAGUE.

_____

President.

MANSLAUGHTER

National Motorists' League will employ competent attorneys, without charge to member, to defend him in all legal proceedings against him, arising out of alleged wrongful death of another, growing out of the operation of his said automobile by himself, a member of his family, his agent or employee.

COLLISIONS

National Motorists' League will employ competent attorneys, without charge to member, to represent him in the prosecution of all lawful claims for damages he may have to his said automobile, by or through its use, by himself, a member of his family, his agent or employee.

DAMAGE SUITS AND CRIMINAL PROSECUTION

National Motorists' League will employ competent attorneys, without charge to member, to defend him in all legal proceedings, both criminal and civil, growing out of the use of the said automobile by himself, a member of his family, his agent or employee.

PERSONAL INJURY AND WRONGFUL DEATH

National Motorists' League will employ competent attorneys, without charge to member, to prosecute any claim for damages for personal injuries or wrongful death to himself, growing out of collisions with other vehicles.

RECKLESS DRIVING

National Motorists' League will employ competent attorneys, without charge to member, to defend him in all legal proceedings for damages against him for reckless driving, growing out of the alleged collision of his said automobile with other vehicles, by or through its use, by himself, a member of his family, his agent or employee.

SERVICE

If the automobile of the member becomes totally disabled, National Motorists' League will pay towing charges, up to $1.00 per mile, on said disabled automobile, to his home or to a garage within a radius of five miles from the place of disablement.

ASSIGNMENT OF CERTIFICATE

This Certificate Is Transferable Without Charge Upon Giving Notice Thereof To The League.

	Make	Style	Year	License No.	Motor No.
Assigned By NAME					
ADDRESS					
Assigned To NAME					
ADDRESS					

PROVISIONS

Every claim arising out of the use or possession of any automobile covered by a contract of this League between (owners) holding such contracts shall be settled by arbitration, each owner naming an arbitrator within five days after said claim arises, and upon failure of either or both of said parties to appoint an arbitrator within said time the League shall appoint said arbitrator, or arbitrators, the two named selecting a third; on failure of such arbitrators to select such third arbitrator, within five (5) days thereafter, the League shall upon notification of said failure appoint such third arbitrator and the award in writing of any two of said arbitrators shall be binding and conclusive on the parties thereto, in any suit or action brought by either of said parties, and shall be paid or performed within ten (10) days from the date thereof.

> This contract is not one of indeminity or insurance and this League is not responsible for any court costs or damages recovered against the owner or any expense incurred in connection with the litigation, except the services of the League's attorneys."

Attached to the above mentioned contract is a so-called bond signed by National Motorists' League by its president but without any surety thereon. The so-called bond is "in a penal sum equal to the amount that may be necessary to carry out the obligations of this League to the holder" of the certificate. It is conditioned that the League shall well and truly keep, do and perform the matters, duties and obligations in the manner specified in said certificate.

An examination of the foregoing specimen contract shows that the company agrees under its contract to "employ competent attorneys without charge to member to defend him in all legal proceedings against him," both criminal and civil, growing out of the use of his automobile by himself, a member of his family, his agent or employee.

Does this contract on the part of the company constitute doing an insurance business, or the entering into a contract substantially amounting to insurance?

Section 665, General Code, provides as follows:

> "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."

In Corpus Juris, Vol. 32, page 975, insurance is defined as follows:

> "Broadly defined, insurance is a contract by which one party, for a compensation called the premium, assumes particular risks of the other party and promises to pay to him or his nominee a certain or ascertainable sum of money on a specified contingency."

In Cooley's second edition on the Law of Insurance, at page 6, the author gives the following definition:

> "Insurance has been defined in general terms as a contract by which one party undertakes to indemnify another against loss, damage or liability arising from an unknown or contingent event."

In the case of *The State ex rel. The Physicians' Defense Company* vs. *Laylin, Secretary of State*, 73 O. S. 90, the Supreme Court of Ohio had under consideration the form or contract made and entered into between the company and its contract holders wherein the company undertook the defense of the physician contract holders in suits for malpractice, but not agreeing to pay the judgment against the physician. It was held in that case that the contract to furnish counsel and pay them for their services in defending such actions was not a contract of insurance.

Judge Crew in writing the opinion of the case, beginning on page 96, used the following language:

> "While we have in Ohio no general statutory definition of insurance, it has been repeatedly held by this court, in numerous cases, that the contract

of insurance, is a contract of *indemnity*. May on Insurance, Section 1, defines it as 'a contract whereby one for a consideration, undertakes to compensate another if he shall suffer loss.' In Joyce on Insurance at Section 24, it is said: 'It is elementary that the contract of insurance, other than that of life and of accident, where the injury results in death, is one of indemnity. By indemnity is meant that the party insured is entitled to be compensated for such loss as is occasioned by the perils insured against, in precise accordance with the principles and terms of the contract of insurance. The right to recover being commensurate with the loss sustained.' Measured by these definitions, and assuming the same to be correct, whether or not The Physicians' Defense Company is an Insurance Company, and the business it proposes to transact is insurance business, must be determined from its charter, and from a consideration of the character, terms, and provisions of the contract it issues and sells.

The purpose of the Company, as defined and declared in and by its charter, is as follows: 'The purpose of this association shall be to aid and protect the medical profession in the practice of medicine and surgery, by the defense of physicians and surgeons against civil prosecutions for malpractice.' And the proposed plan of conducting its said business, as stated in its charter, is as follows:

"The association shall issue to physicians and surgeons, for stated and agreed compensation, contracts by which it will undertake and agree to defend the holder of the contract at its own expense against any action brought against him for damages for alleged malpractice, in relation to or in connection with services performed or which should have been performed within the time covered by the contract. But the association shall not, in any defense contract issued by it, assume, or agree to assume, or pay any judgment for damages for malpractice rendered against the holder of such contract.'

The contract issued by the Company under this provision of its charter, a copy of which contract is hereinbefore set out, is neither in form nor legal effect, anything more than a contract for services. And said contract imposes upon the Company no duty or obligation other than that of defending the physician or surgeon who may hold such contract, against any action that may be brought against him for alleged malpractice. By its contract the Company does not undertake or agree to idemnify or protect its contract holder against loss that may result to him because of any judgment that may be rendered against him in such suit, but any intention or purpose on its part to assume such risk or liability, is in express terms directly negatived by the language of the contract itself, which as we have seen provides: 'Said Company does not obligate itself to pay, or to assume, or to secure the payment of, any judgment rendered against the holder thereof in any suit defended by it.' The undertaking of the Company is not that it will compensate the physician or surgeon for loss or injury he may actually sustain, but only that it will, after suit brought against him, undertake and conduct for him his defense, and thereby, it may be, protect him against *liability* to loss, by preventing judgment being obtained against him. If the Company successfully performs its contract no loss or injury results to the defendant. But if not, and judgment be obtained against him, there is no obligation or liability on the part of the Company to pay or satisfy said judgment or any part of it. Obviously, we think, such contract is not one for *indemnity*, for under it the liability of the Company ceases, at the precise point and time, that the right to indemnity attaches or begins. We are of opinion, therefore, that the plaintiff Company is not an insurance company, nor the contract it issues an insurance contract."

An examination of the language of the sample contract enclosed with your letter and the terms and conditions attached thereto, fails to disclose a contract of indemnity substantially amounting to insurance.

Specifically answering your question therefore, it is my opinion that the same is required to be answered in the negative.

In passing I desire to make the observation, however, that, while rendering the foregoing as my opinion, I do not approve of the form or substance of the contract as such. It will be observed that the statement of the League's activities omits any reference as to whether it is an association or a corporation. My information, however, is that it is not a corporation. Its omission to incorporate is probably intentional with the thought that its activities will not be in violation of any statute prohibiting the practice of law by a corporation.

Moreover, for any member of the bar to engage in furnishing professional services as contemplated in the above quoted contract of the League would be unethical and would subject such attorney to disciplinary action. The impropriety of a lawyer associating himself with laymen in the practice of the law, or in sharing his fees with a lay agency engaged in procuring business, is obvious. On the other hand, if the promoters of the League are all attorneys their conduct is improper in that they are engaged in soliciting business in such a way as to merit the strongest condemnation.

That such conduct is unethical and improper was held by the Committee on Grievances of the Ohio State Bar Association, whose report was adopted by the association at the midwinter meeting held on January 28, 1926, at Cincinnati. This report is contained in Vol. XLVI of the Proceedings of the Ohio State Bar Association, page 149, and reads in part as follows:

> "The Bar Association of a metropolitan city has requested the committee to consider the following statement of facts, and express its opinion as to the propriety of the activities of the attorneys involved.
>
> An automobile club charges its members yearly dues for the privileges furnished them. In soliciting membership from the public it offers to furnish its members with certain services of its 'Legal Department' in connection with their ownership and operation of automobiles. It engages in other activities general in character and for the benefit of its collective membership, such as legislative efforts to improve traffic and road conditions, the marking of highways, the furnishing of information as to roads and road conditions, etc.
>
> This 'Legal Department' consists of certain attorneys who are engaged in general practice and who devote to this service only such of their time as is necessary. They are paid a stipulated monthly amount. When the matters on which they are consulted by members result in suit or other legal proceedings they are also entitled to charge such members their usual and customary fees.
>
> * * *
>
> The committee's opinion was stated by Mr. Howe.
>
> In order to clearly perceive the fundamental questions involved, it is first necessary to denude the facts of any specious garments of apparent propriety with which they may be clothed. That there may be no misconception let it be noted that the club does not employ these attorneys for the purpose of advising it or its members on questions affecting its interests or on questions of collective interest to its membership as a whole, but employs them for the purpose of advising its members in respect to their individual affairs. In other words, it furnishes the services of these attorneys to such members of the public as are willing to pay its membership fee therefor. That the membership fee may, or may not, at the same time purchase for the payer other

direct or indirect benefits is of little moment so long as the legal service is one of the specific and substantial benefits that it does purchase. It is apparent that the furnishing of these legal services is a substantial inducement to membership.

* * *

* * * Those interested in what constitutes the practice of law are referred to the comprehensive report of a special committee appointed to consider the subject by the Conference of Bar Association Delegates, which report was adopted by the Conference on August 24, 1920. This report treats of the matter at length and quotes from the decisions then available. These decisions have been affirmed and strengthened by subsequent important decisions to the same effect. It will be noticed that these decisions are a unit in stating that a lay agency does not change the character of its acts by furnishing duly licensed attorneys to render the service which it agrees to perform, as these attorneys are merely its agents, under its control and in its employ for that purpose. If a lay agency is not entitled to practice law directly, it is not entitled to do so indirectly, by employing licensed attorneys to carry on that portion of its activities for it.

In furnishing these legal services to its members and in charging them a membership fee which includes payment for these services, the club, in effect, is selling and exploiting the lawyer's professional services to its own benefit or profit. That the benefit may be indirect or the profit indefinite will not vary this conclusion. The sale of an item is no less a sale because the price paid for it, or the consideration given, is lumped with other items so that it cannot be segregated. Even if the club is not organized for profit, the conclusion is the same. In that case its owners (the membership) may not receive any direct money benefit, but the club as an entity may profit from this particular activity to the benefit of its other activities and the membership thereby receive an indirect benefit or profit. Neither are these conclusions varied by the conditions under which the club employs these lawyers. Irrespective of whether they give all or only a portion of their time to the service furnished by the club, and of whether they receive a salary, or are paid a percentage, or are paid for each separate item of work, the result is the same so long as a lay agency pays a lawyer one amount for his services and for those services charges a different amount to the person to whom thay are rendered.

Having thus analyzed this activity of the club we may now consider the propriety of the relations thereto of the attorneys it employs. Society has seen fit, for its own benefit and protection, to limit the practice of law to those individuals whom it has found duly qualified in education and character. The permissive right conferred on the lawyer is an individual and limited privilege subject to withdrawal if he fails to maintain proper standards of moral and professional conduct. Neither this privilege, nor any responsibility or duty connected therewith, can be delegated to or shared with a layman. As the lawyer cannot share his professional responsibility with a layman or lay agency, he cannot properly share his professional emoluments with them. This of itself is sufficient to render it improper for a lawyer to allow his services to be sold or dealt in by any layman or lay agency. But there is yet another reason why such a practice is abhorrent. The essential dignity of the profession forbids a lawyer to solicit business or exploit his professional services. It follows that he can not properly enter into any relation with another to have done for him that which he cannot properly do for himself.

It must therefore be held that the furnishing, selling or exploiting of the legal services of members of the Bar is derogatory to the dignity and self-

respect of the profession, tends to lower the standard of professional character and conduct and thus lessens the usefulness of the profession to the public, and that a lawyer is guilty of misconduct, when he makes it possible, by thus allowing his services to be exploited or dealt in, for others to commercialize the profession and bring it into disrepute.

The conduct of the lawyers in question must be therefore disapproved on the ground that their relations with the club amounts to a division of professional fees with a lay agency and to an agreement with this lay agency for the exploitation of the lawyers' professional services."

Respectfully,
EDWARD C. TURNER,
Attorney General.

2388.

APPROVAL, BONDS OF KITTS HILL SCHOOL DISTRICT, LAWRENCE COUNTY, OHIO—$10,360.00.

COLUMBUS, OHIO, July 24, 1928.

Industrial Commission of Ohio, Columbus, Ohio.

2389.

APPROVAL, TWO GAME REFUGE LEASES.

COLUMBUS, OHIO, July 24, 1928.

Department of Agriculture, Division of Fish and Game, Columbus, Ohio.

GENTLEMEN:—This will acknowledge receipt of your letter of July 23, 1928, enclosing the following Game Refuge Leases, in duplicate, for my approval:

No.	*Lessor*	*County*	*Township*	*Acres*
1134	J. M. & R. F. Coppess	Darke	Richland	180.48
1144	Alice Guy Underwood et al	Madison	Pike	420

I have examined said leases, find them correct as to form, and I am therefore returning the same, with my approval endorsed thereon.

Respectfully,
EDWARD C. TURNER,
Attorney General.