

4451.

APPROVAL, AMENDMENT TO THE ARTICLES OF INCORPORATION
OF THE U. S. MUTUAL BENEFIT ASSOCIATION.

COLUMBUS, OHIO, June 23, 1932.

HON. CLARENCE J. BROWN, *Secretary of State, Columbus, Ohio.*

DEAR SIR:—I am returning herewith certificate of the amendment to the articles of incorporation of The U. S. Mutual Benefit Association with my approval endorsed thereon.

Respectfully,
GILBERT BETTMAN,
Attorney General.

4452.

INVESTMENTS—COMPANY SELLING ANNUITY CONTRACT IN BOND
INVESTMENT COMPANY.

SYLLABUS:

A company selling an annuity contract which has many of the characteristics of an annuity contract as ordinarily sold by insurance companies, though not an insurance contract, is a bond investment company within the meaning of Section 697, General Code.

COLUMBUS, OHIO, June 24, 1932.

HON. THEO. H. TANGEMAN, *Director of Commerce, Columbus, Ohio.*

DEAR SIR:—Your letter of recent date is as follows:

“Under date of March 3, 1932, your office furnished the Department of Commerce OPINION NUMBER 4133, construing certain features of the so-called ‘Bond Investment Act,’ found in Sections 697 to 709 of the General Code of Ohio.

Following the receipt of that opinion the Department of Commerce received a copy of a letter directed to the Honorable Carmi A. Thompson referring to this opinion.

In view of Opinion No. 4133, and the letter to Honorable Carmi A. Thompson under date of March 24, 1932, is The Fidelity Investment Association of Wheeling, West Virginia, an Investment Guaranty Company doing business on the Service Dividend Plan?

To aid you in your decision, a copy of said contract is enclosed for your consideration.”

The second branch of the syllabus of Opinion No. 4133, to which reference is made, is as follows:

"In so far as Section 697, General Code, defines every corporation, partnership or association other than a building and loan association which places or sells securities on the partial payment or installment plan as a bond investment company, such section was repealed by implication at the time of the enactment of the first Securities Law in 1913."

Section 697, General Code, provides as follows:

"Every corporation, partnership or association other than a building and loan association, which places or sells certificates, bonds, debentures or other investment securities of any kind, on the partial payment or installment plan, and every investment guaranty company doing business on the service dividend plan shall be deemed a bond investment company."

The foregoing section defines two classes of companies as bond investment companies: First, "every corporation, partnership or association other than a building and loan association, which places or sells certificates, bonds, debentures or other investment securities of any kind, on the partial payment or installment plan"; and, second, "every investment guaranty company doing business on the service dividend plan". As stated in my letter of March 24, to which you refer, "Opinion No. 4133 does not hold that Section 697, General Code, is repealed by implication but merely holds that this last mentioned section is repealed by implication insofar as it defines corporations which sell securities on the partial payment plan as bond investment companies. The opinion does not affect investment guaranty companies which are defined in Section 697 as bond investment companies.

A determination of whether or not The Fidelity Investment Association of Wheeling, West Virginia, is an "investment guaranty company doing business on the service dividend plan" and therefore a bond investment company within the meaning of Section 697, General Code, requires a consideration of the annuity contract which this company sells and which is attached to your communication. This contract is termed "Special Annuity Contract", whereby the purchaser or applicant makes an initial payment of \$60.00 and monthly payments of \$10.00 each for 126 months. After such payments have been made, the Fidelity Investment Association agrees to pay to the annuitant \$200.00 per year for ten years or \$1620.00 in one lump sum. In addition to this, the parties are to have respective rights as set forth in the annuity contract under the heading of "Privileges and Conditions." It is unnecessary to quote these privileges and conditions at length for the purposes of this opinion. It is sufficient to point out several of the more important conditions contained therein. The association agrees to create and maintain a reserve fund for the discharge of its liability on its special annuity contracts and its paid-up annuity contracts. Certain excesses of the reserve fund designated as surplus shall be available for distribution to the annuitants. Further rights and privileges of annuitants are described and set forth in schedules which are the following: Paid-up annuity schedule, advance loan schedule, cash surrender schedule and commuted value schedule.

It is difficult to define just what is an investment guaranty company doing business on the service dividend plan. In my judgment, the statute comprehends such companies as may be said to fall within the twilight zone, between insurance companies on the one hand and security companies on the other. The contract of the Fidelity Investment Association has many of the characteristics of an

annuity contract customarily sold by an insurance company. It is not an insurance contract in that its payment or maturity is unaffected by the death of the annuitant or other casualty. Neither does the contract, although coupons are attached thereto, have the characteristics of a bond or of other securities ordinarily sold by investment dealers. A somewhat similar contract, which was termed an endowment certificate, was considered by this office in an opinion appearing in Opinions of the Attorney General for the year 1926, p. 169, the holding being that the sale of such endowment certificates constituted the issuing company a bond investment company within the meaning of Section 697, General Code.

It is accordingly my opinion that your inquiry should be answered in the affirmative.

Respectfully,
GILBERT BETTMAN,
Attorney General.

4453.

INSURANCE—MUTUAL PROTECTIVE ASSOCIATION—AUTHORIZED
TO ISSUE CLOSED CONTRACTS OF INSURANCE WHERE LEGAL
RESERVE MAINTAINED.

SYLLABUS:

A mutual protective association or company organized under the provisions of sections 9427, et seq., General Code, has the authority to issue closed contracts of insurance, that is, contracts which provide for the payment of stipulated premiums and which are not subject to additional assessments, provided that such association or company maintains as to each of such contracts the reserve required to be maintained by legal reserve companies.

COLUMBUS, OHIO, June 24, 1932.

HON. CHARLES T. WARNER, *Superintendent of Insurance, Columbus, Ohio.*

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

“A certain domestic insurance company, organized under Section 9427, and subsequent sections of the Ohio Statutes, governing mutual protective life, health and accident companies, advertises that their contracts are closed. In other words, that the rates cannot be changed, nor can any extra assessments be levied against the policyholders. They point to the provisions of Section 9427-2 as giving them the right to issue a closed contract.

This company issues certificates, or policies, in which there is no provision for cash values. Against their contracts they maintain a reserve, and the company advertises itself as a legal reserve company.

There has been a distinction here for years between an old line legal reserve life insurance company and other companies writing life insurance. Such a company issues a standard contract which requires standard provisions, and does not allow the four standard prohibitions. The contract