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MOTOR VEHICLE FIRE INSURANCE IS "FIRE INSURANCE" WITHIN THE MEANING OF §§2919.08 AND 2919.09, R.C., AND COMES WITHIN THE PROHIBITION OF THOSE ACTIONS. §§2919.08, R.C., 2919.09, R.C., 3937.01, R.C., 3937.02, R.C., 1.24, R.C., 9592-19, G.C., 9592-20, G.C., 3929.01, R.C., 3925.34.

SYLLABUS:

Motor vehicle fire insurance, when sold as part of a policy of motor vehicle physical damage insurance, theft insurance, or liability insurance is "fire insurance" within the meaning of Sections 2919.08 and 2919.09, Revised Code, and the sale of such insurance by a public official or employee for the use of a county, township, municipal corporation, board of education, or public institution comes within the prohibitions of those sections.

Columbus, Ohio, March 28, 1962

Hon. G. William Brokaw, Prosecuting Attorney
Columbiana County, Lisbon, Ohio

Dear Sir:

Your request for my opinion reads as follows:

"A question has been put to me as to the Application of Revised Code Section 2919.08 and 2919.09 to automobile insurance sold by a public officer or employee. Under these sections, the sale of 'fire insurance' is prohibited in certain circumstances. The question at issue is whether physical damage insurance on motor vehicles, such as comprehensive insurance or fire and theft insurance, on vehicles, comes within the prohibition of these sections.

"Chapter 3937 of the Revised Code covers casualty insurance. The definition of casualty insurance under Section 3937.01 includes all forms of motor vehicles insurance. No rulings have been found regarding the specific points as to whether 'fire insurance' as used in aforementioned sections applies to insurance on motor vehicles, which includes fire coverage. Since the definition of 'casualty insurance' includes motor vehicle insurance, it would appear that no motor vehicle insurance would come under the prohibition contained in the criminal code.

"Under the 'multiple line' powers recently granted to most insurance companies, most motor vehicle insurance policies include both liability and physical damage in the same policy, and

the fire coverage is a very small portion of the total premium of the policy. Would the sale of a standard automobile insurance policy, which includes fire coverage, come within the prohibitions contained in Section 2919.08 and 2919.09 of the Revised Code, if written by an officer or employee of a political subdivision?

Your opinion on this question is respectfully solicited.”

Sections 2919.08 and 2919.09, Revised Code, to which your letter refers, read as follows:

Section 2919.08:

“No person, holding an office of trust or profit by election or appointment, or as agent, servant, or employee of such officer or of a board of such officers, shall be interested in a contract for the purchase of property, supplies, or fire insurance for the use of the county, township, municipal corporation, board of education, or a public institution with which he is connected.

“Whoever violates this section shall be imprisoned not less than one nor more than ten years.”

Section 2919.09:

“No person, holding an office of trust or profit, by election or appointment, or as agent, servant, or employee of such officer or of a board of such officers, shall be interested in a contract for the purchase of property, supplies, or fire insurance for the use of the county, township, municipal corporation, board of education, or a public institution with which he is not connected, if the amount of such contract exceeds the sum of fifty dollars, unless such contract is let on bids advertised as provided by law.

“Whoever violates this section shall be imprisoned not less than one nor more than ten years.”

These sections, as they pertain to the question you have raised, generally prohibit public officials and employees from selling fire insurance for the use of counties, townships, municipal corporations, boards of education, and public institutions. You question whether motor vehicle liability and physical damage insurance, which includes a very small amount of fire coverage, is “fire insurance” within the meaning of Sections 2919.08 and 2919.09, *supra*. You cite the fact of Chapter 3937., Revised Code, applying to both casualty and motor vehicle insurance as evidence that motor vehicle insurance is not fire insurance. You write that “the definition of casualty insurance under Section 3937.01 includes all forms of motor vehicles insurance,” and you conclude that “since the definition of

'casualty insurance' includes motor vehicle insurance, it would appear that no motor vehicle insurance would come under the prohibition contained in the criminal code." With this I cannot agree.

Chapter 3937., Revised Code, to which you refer, governs only rate setting and rating organizations, and groups casualty insurance and motor vehicle insurance together only for purposes of applying common rate setting rules to both. The only provisions in Chapter 3937., that could be construed as indicating that fire coverage provisions of motor vehicle insurance might not constitute "fire insurance" within the meaning of Sections 2919.08 and 2919.09, *supra*, appear in Sections 3937.01 and 3937.02, Revised Code. Section 3937.01, Revised Code, reads in part as follows:

"Sections 3937.01 to 3937.17, inclusive, of the Revised Code apply to casualty insurance including fidelity, surety, and guaranty bonds, and to all forms of motor vehicle insurance, * * *

* * * * * * * *

Section 3937.02, Revised Code, reads in part as follows:

"*All casualty rates* shall be made in accordance with the following:

* * * * * * * *

(Emphasis added)

The tests set out in Section 3937.02, *supra*, for establishing rates, apply to both casualty insurance and motor vehicle insurance. Since the term "all casualty rates" is used in Section 3937.02, *supra*, to include both casualty rates and motor vehicle rates, your conclusion that motor vehicle fire insurance is a form of casualty insurance is understandable. On further investigation, however, this view proves unsupportable.

Sections 3937.01 and 3937.02, *supra*, stand as enacted by House Bill No. 1 of the 100th General Assembly, effective October 1, 1953, the general code revision bill. By reason of Section 1.24, Revised Code, the provisions of Sections 3937.01 and 3937.02, *supra*, must be deemed to be a mere restatement without substantive change of the provisions of former Sections 9592-19 and 9592-20, General Code. Section 1.24, Revised Code, reads as follows:

"That in enacting this act it is the intent of the General Assembly not to change the law as heretofore expressed by the

section or sections of the General Code in effect on the date of enactment of this act. The provisions of the Revised Code relating to the corresponding section or sections of the General Code shall be construed as restatements of and substituted in a continuing way for applicable existing statutory provisions, and not as new enactments.

The pertinent portions of former Sections 9592-19 and 9592-20, General Code, are as follows:

Section 9592-19:

“This act applies to casualty insurance including fidelity, surety and guaranty bonds, and to all forms of motor vehicle insurance, * * *.

“* * *

* * *

* * *”

Section 9592-20:

“(a) *All rates* shall be made in accordance with the following provisions:

“* * *

* * *

* * *”

(Emphasis added)

The compilers of the Revised Code changed the term “all rates”, used in Section 9592-20, General Code, to read “all casualty rates” in Section 3937.02, Revised Code. This change cannot be deemed to indicate that the legislature has classified motor vehicle fire insurance as a form of casualty insurance. By reason of Section 1.24, *supra*, Section 3937.02, Revised Code, must be treated as a restatement of Section 9592-20, General Code. Section 9592-20, General Code, does not classify motor vehicle fire insurance as a form of casualty insurance. Therefore, due to the operation of Section 1.24, *supra*, neither does Section 3937.02, Revised Code. Thus, the provisions of Chapter 3937., Revised Code, do not support the proposition that motor vehicle fire insurance is not “fire insurance” within the meaning of Sections 2919.08 and 2919.09, *supra*.

“Fire insurance” is defined by Webster’s Third New International Dictionary (1961) as “insurance against loss from damage or destruction of specified property by fire.” At 44 Corpus Juris Secundum, 989, the matter is discussed as follows:

“In general every interest of advantage in property, corporeal or incorporeal, is insurable against loss by fire at actual value and full indemnity; anything in which a property right may

exist is insurable whether or not it has what is properly called a value or price.”

Since a motor vehicle is a thing in which a property right may exist, it is evident that a motor vehicle may be the subject of fire insurance. And, under the above definitions the fact that a small amount of fire insurance is sold in conjunction with other insurance coverage in no way changes the character of the fire insurance.

In Ohio, insurance companies other than life, whether domestic or foreign, may be organized or admitted to insure houses, buildings, and all other kinds of property against loss or damage by fire. 30 Ohio Jurisprudence 2d, 92. This is provided by Section 3929.01, Revised Code, which reads in part as follows:

“A company may be organized or admitted to carry on the following types of insurance:

“(A) It may insure houses, buildings, and all other kinds of property in and out of the state against loss or damage by fire, * * *

“* * *

* * *

* * *”

Section 3925.34, Revised Code, provides, insofar as is pertinent here, that companies authorized to sell fire insurance may also sell automobile theft insurance, automobile physical damage insurance, and motor vehicle collision, explosion, and hazard insurance. Section 3925.34, Revised Code, reads in part as follows:

“All companies, organized or admitted to do business for the purpose of insuring against loss or damage by fire, may insure against any of the following:

“* * *

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* * *

“(B) Loss by the theft of automobiles and accessories and damage thereto from this cause;

“* * *

* * *

* * *

“(G) Loss or damage to automobiles, * * *, or interest therein, whether stationary or operated under their own power;

“(H) Loss or damage by any of the causes or risks specified in this section, including also transportation collision, explosion, or any peril or hazard resulting from the ownership maintenance, or use of automobiles or motor vehicles, * * * including burglary and theft, vandalism, malicious mischief, or the wrongful conversion, disposal, or concealment thereof and the accessories

thereto, whether held under conditional sale contract or subject to chattel mortgage, and to effect reinsurance of any risk taken, but not including loss or damage by risk of bodily injury to the person.”

By this section the legislature has sanctioned the sale of motor vehicle theft, property damage, collision, and hazard insurance in conjunction with motor vehicle fire insurance. By this section also, the legislature recognizes motor vehicle fire insurance as something distinct from motor vehicle physical damage insurance.

It is therefore my opinion, and you are advised, that motor vehicle fire insurance, when sold as part of a policy of motor vehicle physical damage insurance, theft insurance, or liability insurance is “fire insurance” within the meaning of Sections 2191.08 and 2191.09, Revised Code, and the sale of such insurance by a public official or employee for the use of a county, township, municipal corporation, board of education, or public institution comes within the prohibitions of those sections.

Respectfully,
MARK McELROY
Attorney General