2246.

INSURANCE—A CASUALTY COMPANY, WRITING AUTOMOBILE INSURANCE, IS NOT CONSIDERED TO BE A FIRE INSURANCE COMPANY WITHIN THE PURVIEW OF SECTION 841 G. C.

SYLLABUS:

A casualty insurance company, writing automobile insurance under the provisions of sub-section four of section 9607-2, General Code, is not considered to be a fire insurance company within the contemplation of the insurance laws of Ohio and is not, therefore, liable for the payment of the one half of one per cent state fire marshal tax required of a fire insurance company in section 841, General Code.

COLUMBUS, OHIO, March 2, 1925.

HON. HARRY L. CONN, *Superintendent of Insurance, Columbus. Ohio.*

DEAR SIR:—This will acknowledge receipt of a letter from your predecessor, requesting the opinion of this department as follows:

> "Will you please advise this Division if it is proper for it to require casualty companies writing fire insurance upon automobiles and other property in this state to pay the tax of one-half of one per cent for the purpose of maintaining the Department of the State Fire Marshal, under section 841 of the General Code of Ohio, and to require all such companies to make proper returns to this office from which such tax can be computed?"

Section 841, General Code, provides as follows:

> "For the purpose of maintaining the department of state fire marshal and the payment of the expenses incident thereto, each fire insurance company doing business in this state shall pay to the state in the month of November each year, in addition to the taxes required to be paid by it, one-half of one per cent on the gross premium receipts after deducting return premiums and considerations received for reinsurance as shown by the next preceding annual statement of such company made pursuant to section fifty-four hundred and thirty-two and section ninety-five hundred and ninety of the General Code. The money so received shall be placed to the credit of a special fund for the maintenance of the office of state fire marshal. If any portion of such special fund remain unexpended at the end of the year for which it was required to be paid, and the state fire marshal so certifies, it shall be transferred to the general fund of the state."

It will be observed in the first instance that the tax referred to in the above mentioned section is required to be paid by "each fire insurance company doing business in this state." Your inquiry is whether "casualty companies writing fire insurance upon automobiles" are required to pay.

Section 9607-2, sub-section one, of the General Code of Ohio, defines fire insurance, whether it be mutual or stock. The things that a fire insurance company may do are specified in this sub-section one.

Sub-section four of this same section is designated "automobile insurance" and the following language is used:

> "Against loss, expense and liability resulting from the ownership, maintenance or use of any automobile or other vehicle, provided no policies shall be issued under this sub-section against the hazard of fire alone."

It will be observed that one of the requirements of section 9607-2 is that a "mutual or a stock company may transact only the first kind of insurance, or may transact such as it may elect of the other kinds of insurance." That is to say, an insurance company writing property insurance may write either fire insurance as provided in sub-section one, or it may write liability insurance as provided in sub-section two, disability insurance as provided for in sub-section three, automobile insurance as in sub-section four, steam boiler insurance as in sub-section five, use and occupancy insurance as in sub-section six, or miscellaneous insurance as in sub-section seven; but it may not write fire insurance and any of the other kinds of insurance provided for in sub-sections two to seven, inclusive. It may write any of the kinds or all of the kinds as provided in sub-sections two to seven, inclusive, but it dare not include with all or any of these subjects the subject of fire insurance.

The question necessary for the determination of an answer to your inquiry, it seems to me, is, Is a company of the character you mention in your inquiry a fire insurance company by reason of the fact that it writes fire insurance in connection with another subject on an automobile, usually fire and theft, in one policy risk? By the provisions of sub-section four, above mentioned, a casualty company is expressly prohibited from writing "against the hazard of fire alone." Most casualty companies have the powers enumerated in sub-sections two, three, four, five, six and seven, and, having those powers, either one or all, they are expressly prohibited from doing a "fire insurance business" within the language of section 9607-2, General Code.

In the case of *State, ex rel. Automobile Underwriters, Inc., vs. Gearhart, Superintendent of Insurance*, 103 Ohio St. 263, the Court, while dealing with the section relating to "reciprocal insurance companies" under section 9556-1, recognized the clear distinction between a fire insurance company and an automobile insurance company, in the use of the following language on page 266:

> "The presence of the word 'reciprocal' in the section dealing with fire insurance companies, to wit, section 9556-1, is significant and controling as to such fire insurance. Its absence in reference to sub-section 4 of section 9607-2 is equally significant as indicating a contrary purpose on the part of the legislature. The expression through the word 'reciprocal' of the right of reciprocity, as to fire insurance, clearly excludes the right of reciprocity as to all other insurance, unless expressly and 'especially designated therein.' There is no such provision. The use of the word 'reciprocal' in the first instance, and refusal to use it in the second, should leave no doubt as to the legislative intent."

In that case, the court refused to order the license issued to the company, for the reason that a company such as this was not considered a "fire insurance company."

The question is not whether a casualty company should be required to pay a tax on their fire premiums, but whether a company such as this is considered a fire insurance company. It may be observed, in passing, that, in keeping with the provisions of sub-section four, providing "No policy shall be issued under this sub-section against the hazard of fire alone," casualty companies without exception combine "fire and theft" under one policy hazard.

In the case of *Anderson* vs. *Durr*, 100 Ohio St. 261, it is held:

> "A statute purporting to levy a tax is to be construed strictly in favor of the citizen and against the taxing authority."

And again, in the case of *State* vs. *Harris*, 229 Fed. 892, in the consideration of the Ohio Corporation Franchise Tax, the Court of Appeals for the Sixth Circuit said:

> "For it is a long settled and familiar doctrine, applicable to all forms

> of taxation, that the legislative body must express its intention to tax in definite and unambiguous language. The language employed cannot be extended, by modification, beyond its clear import, and well founded doubts engendered in attempting to apply the statute must be resolved in favor of the taxpayer."

Upon a consideration of the provisions of section 841 of the General Code, it will be noted that the language is limited to a "fire insurance company," for the purpose of maintaining the department of state fire marshal and the payment of the expenses incident thereto.

By the provisions of sections 833 to 837, General Code, inclusive, the duties of the fire marshal authorize him to enter upon and examine any building or premises, and his deputies and subordinates may enter into all buildings and upon all premises for the purpose of examination, and if he find upon examination or inspection that a building or other structure should be condemned as being liable to fire or endangering other buildings, he shall order such building or buildings to be repaired or even demolished.

It will be observed that these duties are in the line of inspection, regulation and condemnation of buildings. If these buildings should happen to contain automobiles, the owner of the automobile, as a matter of course, would be benefited by this inspection and examination of the building. But this examination and inspection of the building is made, regardless of the contents of the building.

However, the main question to be determined in answering your inquiry is, Is a casualty company, such as you mention, writing automobile insurance of the character you mention, considered to be a "fire insurance company" under the laws of Ohio?

Upon a careful consideration of all of the elements necessarily involved in your inquiry, I am of the opinion that it is not and that your question should therefore be answered in the negative.

Respectfully,
C. C. CRABBE,
Attorney-General.

2247.

INSURANCE—A MINOR CONTRACTING FOR LIFE INSURANCE MAY ONLY DO THE THINGS SPECIFICALLY MENTIONED IN SECTION 9392-1 G. C.

SYLLABUS:

Section 9392-1 G. C. permitting a minor to contract for life insurance, being in derogation of the rule of the common law, is required to be strictly construed, and the minor may only do the things therein specifically mentioned, and may not execute valid promissory notes in connection therewith.

COLUMBUS, OHIO, March 2, 1925.

HON. HARRY L. CONN, *Superintendent of Insurance, Columbus, Ohio.*

DEAR SIR:—This will acknowledge receipt of a letter of your predecessor, requesting the opinion of this department, as follows:

> "We have had several inquiries as to the force and effect of the provisions of section 9392-1 of the General Code of Ohio, providing for minors' contracts for life insurance, as to the preliminary negotiations and the resulting obligations of the company and the insured involved in the trans-