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FEE—PAYMENT BY BOND INVESTMENT COMPANY OF FEE “FOR EACH COPY OF PAPER FILED * * *.”—OFFICE OF SUPERVISOR OF BOND INVESTMENT COMPANIES—LANGUAGE REFERS TO FEE TO BE CHARGED FOR MAKING COPIES OF PAPERS FILED AND NOT FEE FOR FILING DOCUMENTS—1928 O. A. G. 2995 PAGE 2798 REVERSED.

SYLLABUS:

The provision of Section 704, General Code, with respect to payment by a bond investment company of a fee “For each copy of paper filed * * *” in the office of the supervisor of bond investment companies refers to the fee to be charged for *making* copies of papers filed and not the fee for *filing* documents. Reversing 1928 Opinions, Attorney General No. 2995, p. 2798.

Columbus, Ohio, September 16, 1949

Hon. Walter A. Robinson, Superintendent of Insurance
Columbus, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“Some controversy has arisen over the application of Section 704 of the General Code, in particular the following provision:

‘For each copy of paper filed in his office, fifty cents per folio.’

“We are aware of Opinion No. 2995 (dated December 10, 1928) given by your office. Collateral papers deemed necessary in the acceptance of securities have projected the problem for reconsideration.

“As you are aware, the bond investment companies are permitted by law to deposit with me, securities which include mortgages on unincumbered real estate. In accordance with the foregoing and in line with this Division’s requirements, the companies send us:

1. Note (secured by mortgage or deed of trust)
2. Mortgage or deed of trust
3. Assignment of deed of trust or mortgage
4. Insurance policy protecting assignee’s interest
5. Trustee’s acknowledgment of assignment
6. Title insurance.

“Are these instruments considered ‘folios’ within the purview of the aforementioned provision of Section 704, and if so, is this division required to assess the company for each of them?”

(Parenthetical matter the writer’s.)

In effect you request my opinion concerning interpretation of the cited provision of Section 704 of the General Code of Ohio, and in this connection you suggest reconsideration of Opinion of the Attorney General No. 2995 dated December 10, 1928, the syllabus of which reads as follows:

“Section 704, General Code, provides a fee of fifty cents per folio to be charged by the Department of Commerce for filing each copy of papers required to be filed by a bond investment company, in those instances wherein said section does not otherwise specifically provide a filing fee for certain instruments.”

I think it appropriate to review briefly the opinion referred to. The request for the opinion noted that it had been the practice under the statutory provision in question to collect a fee of 50c per folio for each paper or copy of paper filed in the office of the supervisor of bond investment companies by a bond investment company complying with Section 701 of the General Code. A new company recently admitted to do business in Ohio questioned that interpretation and suggested that the charge should be for copies *made* by the office of the supervisor and not a fee for copies of papers *filed* by bond investment companies. In reaching the conclusion recited in the syllabus quoted above the then attorney general, in accordance with a generally accepted principle of law, placed considerable weight upon the administrative interpretation given to the statutory provision.

Perhaps at this point I should mention that at the time the above opinion was rendered supervision of bond investment companies was in the hands of an assistant director of commerce. It was not until 1933 that legislation was enacted designating the superintendent of insurance “by virtue of his office” to be the supervisor of bond investment companies. See Section 696, General Code, and 1933 Opinions of the Attorney General No. 799, page 672. You place in issue construction of a statutory provision which while being administered by another state official had a history of administrative interpretation fortified by an opinion of the attorney general, favoring a construction contrary to the one followed by you as the present administrator of the law.

I believe it appropriate to re-examine Section 704 of the General Code. Said section provides as follows:

“A bond investment company shall pay to the supervisor of such companies the following fees:

“For filing each application for admission to do business in this state, one hundred dollars;

“For filing each certificate of authority and annual renewal of certificate, fifty dollars;

“For filing each annual statement, twenty-five dollars;

“For issuing license or renewal thereof to each agent, two dollars;

“For each copy of paper filed in his office, fifty cents per folio;

“For affixing seal and certifying any paper, one dollar.

“The fees provided for herein shall be deposited by the supervisor with the treasurer of state, upon the certificate of the auditor of state.”

Upon a careful reading of the above section, I am inclined to agree with your interpretation thereof. In trying to determine the meaning of a particular clause or phrase in a sentence it is appropriate to examine the framework of the sentence. With this in mind, it is seen that the first two subsidiary clauses of the first sentence of Section 704 provide a fee for filing certain documents submitted by a bond investment company; the next clause provides a fee for issuing a license or a renewal thereof to each agent of such company; the next clause—which is the one in issue—I shall pass over for the moment; the final clause of the sentence provides a fee for affixing the seal and certifying any paper for a bond investment company. The clause in question either provides a fee for filing documents or a fee for copying papers filed. In my opinion, if the legislature had intended that the fee was to be for filing documents the clause would have been placed immediately following the first two clauses which clearly provide for a filing fee. Since the clause was not so placed, it must be assumed that the legislative intent was to provide a fee for services performed other than the filing of documents.

I believe the conclusion suggested in the preceding paragraph based upon the location within the sentence of the clause in question may be

strengthened by reference to the fact that the measure of the fee to be collected is so much per "folio". The term folio is used in law to refer to a division in a document for purposes of measurement or reference. In this country a folio generally consists of one hundred words. See Words and Phrases, vol. 17, perm. ed., page 203. In my experience, the term is most generally used in law in connection with determining the fee to be charged for typing a document, preparing a record, or in a similar fashion. I do not recall seeing the term used in connection with measuring the fee to be charged for filing a document.

In specific answer to your question, in view of the preceding, I am of the opinion that the provision of Section 704, General Code, requiring you to charge a fee "For each copy of paper filed * * *" in the office of the supervisor of bond investment companies refers to the fee to be charged for *making* copies of papers filed and not the fee for filing documents.

Respectfully,

HERBERT S. DUFFY,
Attorney General.