

levied by the municipality outside of the ten mill limitation, all of which must be used for its debt charges.

Respectfully,

JOHN W. BRICKER,
Attorney General.

5078.

DOMESTIC CORPORATION—AUTHORIZED BY CHARTER TO TRANSACT BUSINESS OF INSURANCE COMPANY, MAY BE LICENSED AS AGENCY WHEN.

SYLLABUS:

A domestic corporation, authorized by its charter to transact the business of insurance agency, may be licensed as an agency for a fire or casualty insurance company where the persons who are to act for such agency corporation possess the qualifications required of an insurance agent and are licensed therefor.

COLUMBUS, OHIO, January 6, 1936.

HON. ROBERT L. BOWEN, *Superintendent of Insurance, Columbus, Ohio.*

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

“Will you kindly give us an opinion on the following questions:

1. Under existing Section 644 of the Ohio General Code, which provides for an examination of certain applicants for insurance agents' licenses, may a domestic corporation be licensed as an agency for a fire or casualty insurance company?

2. If the answer to question 1 is in the negative, may a domestic corporation which, in the past, has been licensed by this Division as an agency for a fire or casualty insurance company, be licensed for a different fire or casualty insurance company, than the company which held the license in the past?

3. If the answer to question 1 is in the negative, may agents' licenses to domestic corporations be renewed by the issuance of new licenses for the same insurance companies on the expiration of existing licenses?”

Section 644, General Code, as amended by the 91st General Assembly (116 O. L. 240), reads as follows:

“No person shall procure, receive, or forward applications for insurance unless a resident of this state and duly licensed by the superintendent of insurance. Upon written notice by an insurance company authorized to transact business in this state of its appointment of a person to act as its agent the superintendent of insurance, if he is satisfied that the appointee is a suitable person and intends to hold himself out in good faith as an agent: *that appointee is honest, trustworthy and understands the duties and obligations of an agent and is familiar with the insurance laws of the state and with the terms and provisions of the policies and contracts of insurance he proposes to effect; that in applying for such license it is not appointee's purpose or intention principally to solicit or place insurance on appointee's own property or that of relatives, employers or employees or that for which they or the appointee is agent, custodian, vendor, bailee, trustee or payee,* shall issue to appointee a license which shall state in substance that the company is authorized to do business in this state and that the person named therein is a constituted agent of the company in this state for the transaction of such business as it is authorized to transact therein. *Such appointee, if he has not theretofore held a license as an insurance agent in this state, shall be required to submit to a hearing and examination as to the above qualifications.* Such notice by an insurance company of its appointment of an agent shall be upon a form furnished by the superintendent of insurance and shall be accompanied by a statement under oath by the appointee which shall give *appointee's* name, age, residence, present occupation, occupation for the five years next preceding the date of the notice and such other information, if any, as the superintendent of insurance may require, upon a blank furnished by him. *Such examination and/or hearing shall be held and decision rendered by the superintendent of insurance within thirty days from date of application for license.* The superintendent of insurance, after the granting of such license, for cause shown, and after a hearing, may determine any persons so appointed, or any person heretofore appointed as agent to be unsuitable to act as such agent, and shall thereupon revoke such license and notify both the company and the agent of such revocation. Unless revoked by the superintendent of insurance or unless *cancelled by him on written notice from the company or the agent that the agent's authority to act for the company has been terminated by the company,* such:

license and any other license issued to an agent or any renewal thereof shall expire on the *30th day of June next after its issue*. But any license issued and in force when this act takes effect or thereafter issued, may, in the discretion of the superintendent, be renewed for a succeeding year or years by a renewal certificate without the superintendent's requiring the detailed information required by this act. A foreign or alien insurance company shall pay a fee of two dollars for every such license and for each renewal thereof.

The action of the superintendent of insurance in granting, revoking, renewing or refusing to grant, revoke or renew such license shall be subject to review by appeal to the court of common pleas of Franklin county, Ohio, provided such appeal shall be filed by any interested party within thirty days after such action by the superintendent. Said cause shall proceed as a new civil action with the right of either party to submit evidence and to prosecute error or to appeal and said court shall have jurisdiction, upon reasonable notice to the superintendent of insurance and after a hearing, to restrain said action of the superintendent and in the event such restraining order is granted, said cause shall be tried as soon as it can be conveniently heard.

An insurance company shall be bound by the acts of the person named in the license within his apparent authority as its agent.

This section shall not apply to life insurance companies, including fraternal nor to domestic mutual protective assessment fire associations as defined in section 9593 of the General Code nor affect the provisions of section 644-2 thereof."

The above italicized portions are the additions which have been made in said statute by the last amendment. Otherwise, the statute is substantially the same as it was prior thereto.

A corporation is a person and whether a corporation is included within the meaning of the word "person" as used in a statute or whether such word is limited in its application to a natural person depends upon the sense in which it is used in that particular statute. The following is stated in 14 C. J. 64:

"Since a corporation is for corporate purposes a legal entity and an ideal person in the law, it is regarded as a 'person,' 'party,' 'defendant,' 'debtor,' 'creditor,' etc., within the meaning of contract and statutory or constitutional provisions, if it is within the reason and purpose of such provisions and is not expressly or impliedly excluded from their operation; and sometimes this rule is expressly declared by statute."

The word "person" as used in various statutes has been held to include corporations in the following cases: *Allen v. State*, 10 O. S. 287; *Carder v. Commissioners*, 16 O. S. 353; *Norris v. State*, 25 O. S. 217; *Springfield v. Walker*, 42 O. S. 543; *Insurance Co. v. Hard*, 59 O. S. 248.

In an opinion of the Attorney General for 1927, Vol. I, page 55, it was held that a corporation may be licensed as an insurance agent under Section 644, General Code, as it then existed and such statute has always been construed by the Division of Insurance to permit the licensing of corporations where the persons who acted as agents for such corporations in doing the business of insurance agents were licensed therefor. The question, therefore, is presented as to whether the recent amendment of this statute requires a different construction which would prevent a corporation from doing the business of an insurance agency.

The statute now sets forth in detail the qualifications which an applicant for a license must possess but such qualifications all go to the matter of suitability. If, prior to the recent amendment, an applicant did not have any one of these qualifications, the Superintendent of Insurance would have been justified in finding that such applicant was not a suitable person and in refusing to issue a license. The statute also now provides for a hearing and examination of the applicant, but this only provides the means of obtaining proof of an applicant's suitability. Prior to the amendment, the Superintendent of Insurance doubtless could have demanded such proof as was reasonably necessary to satisfy him as to the applicant's suitability. While it may be contended with some force that the provisions of this statute, standing alone, show that the legislature intended that only natural persons should be permitted to act as insurance agents and that corporations are thereby prevented from doing the business of insurance agency, it seems to me that such contention could have been made with almost equal force prior to the amendment referred to. A corporation can act only through natural persons and where the persons who act for a corporation in doing the insurance agency business possess the qualifications required of an insurance agent, it can properly be said that such a corporation is a suitable person within the meaning of this statute, especially when construed in connection with the other statutes to which reference will later be made.

In the case of *Rogers v. Ramey*, Insurance Commissioner, 198 Ky. 138, the statute under consideration provided as follows:

"Such license shall not be issued until the commissioner shall satisfy himself that such proposed agent intends to hold himself out in good faith as an insurance agent, is a person of good moral character, and a proper person to be so licensed, and if the application is for a stock fire insurance company, that he is a bona fide resident of the Commonwealth."

The court held :

“The requirement of the statute that an applicant for license as insurance agent shall be a person of good moral character does not prevent a corporation from acting as such agent if it acts through persons who themselves possess the character and other qualifications necessary to entitle them to a license.”

The court said in the opinion :

“Another contention is that a corporation may not act as an insurance agent. The basis of this contention is that the provision of the statute requiring the applicant for a license to be a person of good moral character, considered in connection with other provisions of the statute, shows that the legislature intended that only natural persons should be licensed to act as insurance agents. In the case of *William Messer Co. v. Rothstein*, 129 App. Div. 215, 113 N. Y. S. 772, the fact that the statute required every plumber to have a certificate of competency was held not to preclude a corporation so authorized by its charter from carrying on the plumbing business through agents who had received the necessary certificates; and we see no reason why a corporation authorized to act as insurance agent may not do so through a person who possesses the moral character and other qualifications necessary to entitle him to a license.”

The statute in the New York case referred to provided :

“A person desiring or intending to conduct the trade, business or calling of a plumber or of plumbing in a city of this state as employing or master plumber shall be required to submit to an examination before such examining board of plumbers as to his experience and qualifications for such trade, business or calling, and it shall not be lawful in any city of this state for a person to conduct such trade, business or calling unless he shall have first obtained a certificate of competency from such board of the city in which he conducts or proposes to conduct such business.”

In *Breweries Co. v. Murphy*, 81 Conn. 145, the following was held :

“Under Section 2643 of the General Statutes, empowering the county commissioners to license in writing suitable ‘persons’ to sell intoxicating liquors, a corporation may be licensed.”

See also *State, ex rel. v. Michel*, 113 La. 4.

However, in the case of *Shehan v. Tanenbaum Son and Co.*, 121 Md. 283, it was held that the act relating to licenses for the carrying on of the business of insurance brokers does not apply to a corporation, the court basing its conclusion upon the provision of the statute that:

“No license shall be issued to permit more than one person or the members of a bona fide copartnership to act thereunder.”

and also upon the ground that the main purpose of the act was to raise revenue.

The statutes relating to the regulation of the business of insurance must be construed together, as was stated in the case of *Brand v. Safford*, 118 O. S. 56:

“It is our opinion that the various sections of the General Code defining the powers and duties of the superintendent of insurance are in *pari materia*, and that it is the duty of the superintendent of insurance, and of this court, not only to so construe them as to give force to all, but also that recourse may be had to the several sections for the purpose of arriving at a correct interpretation of any one of such sections.”

Under Section 644-1, providing for the licensing of solicitors, the Superintendent of Insurance must be satisfied:

“that the applicant is a suitable person and intends to hold himself out in good faith as a solicitor; that the applicant is honest and trustworthy; that he has training or instruction in the business and understands the duties and obligations of a solicitor; that he is familiar with the insurance laws and with the provisions of the policies and contracts of insurance he proposes to solicit and that in applying for such license it is not appointee’s purposes or intention principally to solicit or place insurance on appointee’s own property or that of relatives, employers or employees or that for which they or the appointee is agent, custodian, vendor, bailee, trustee or payee”.

The statement required to be furnished by the applicant must:

“give his name, age, residence, present occupation, his occupation for the five years next preceding the date of the notice, the kinds of insurance for which he wishes license to solicit, and such other information, if any, as the superintendent of insurance may require, upon a blank furnished by him.”

This section also provides for a hearing and examination as to qualifications. It is to be noticed that this statute, which is quite similar to Section 644, expressly limits the licensing of solicitors to natural persons. It provides :

“The issuance of a solicitor’s license shall be limited to a natural person who is a resident of the state of Ohio.”

Under Section 644-2, the Superintendent of Insurance must be satisfied :

“that the applicant is trustworthy, competent and suitable according to the provisions hereof and intends to hold himself out and carry on business in good faith as an insurance broker according to the provisions hereof he shall issue the license to the applicant, but no license shall be issued hereunder to any applicant who has any direct or indirect financial interest in any insurance agency, agent or solicitor licensed in this state, nor to any applicant who has any direct, indirect, exclusive, special, partial or other interest in or control or management of any agency, agent or solicitor licensed to transact insurance business in this state.”

The application for such a license must state :

“the name, age, residence, place of business and occupation of the applicant at the time of making application, occupation for the five years next preceding the date of filing the application, that the applicant has read and is familiar with the insurance laws of this state, and shall state that the applicant intends to hold himself out and carry on business in good faith as an insurance broker, and furnish the information if the applicant has ever been refused a license to transact insurance business in any state of the United States, if the license of the applicant to do insurance business has ever been revoked or suspended in any state of the United States, if the applicant has any direct or indirect financial interest in any insurance agency, agent or solicitor licensed to transact insurance business in this state, and such other information as the superintendent may request, so that the superintendent may determine the trustworthiness, competency and suitability of the applicant to act as an insurance broker as herein provided for.”

This statute also expressly limits the licensing of foreign brokers to :

“any suitable natural person resident in any other state, who has been licensed to solicit or place insurance other than life insurance by the proper insurance authority in the state of which said person is a resident.”

Section 654-4, General Code, provides in part :

“Upon written notice by a life insurance company authorized to transact business in this state of its appointment of a person to act as its agent herein, and certificate, verified by an executive officer or managing agent thereof, that such company has duly investigated the character and record of such person, and satisfied itself that he is trustworthy and qualified to act as its agent, the superintendent of insurance shall, on receipt of such certification, furnish to the agent an application for agent’s license, which shall contain such questions touching the applicant’s fitness to be licensed as such agent as the superintendent of insurance shall determine ; and unless it appears that the appointee is not of good reputation and character, a trustworthy person, or suitable to be licensed, issue to him a license which shall state, in substance, that the company is authorized to do business in this state, and that the person named therein is a constituted agent of the company in this state for the transaction of such business. Each notice and certificate shall be upon forms furnished by the superintendent of insurance and shall be accompanied by a statement under oath by the appointee which shall give his name, age, residence, present occupation, his occupation for the five years next preceding the date of the notice, and such other information, if any, as the superintendent of insurance may require, upon a blank furnished by him.”

While it may be said that the provisions of Section 654-4 show the intention to limit the licensing of life insurance agents to natural persons, the legislature in Section 654-3 has expressly limited it to natural persons. If the provisions of Sections 644-1, 644-2 and 654-4, which are quite similar to the provisions of Section 644, were sufficient to limit the issuance of the licenses therein provided for to natural persons, it would have been unnecessary to make express provision therefor. Where the legislature in similar statutes has expressly made such limitation and as to Section 644 has never made such express limitation in any of its amendments, it must be presumed that the law-making body did not intend that the issuance of the licenses provided for in said section should be

limited to natural persons. Furthermore, Section 644-4 provides as follows:

“It shall be unlawful for any insurance company authorized to do business in this state to pay or allow or cause to be paid or allowed for negotiating any contract of insurance on any property within the state of Ohio any commission, consideration, money or other thing of value to any person, firm or corporation not licensed in accordance with the provisions of this act.”

It is implied by this section that corporations may be licensed as insurance agents under Section 644.

I am of the opinion, therefore, that a domestic corporation, authorized by its charter to transact the business of insurance agency, may be licensed as an agency for a fire or casualty insurance company where the persons who are to act for such agency corporation possess the qualifications required of an insurance agent and are licensed therefor.

Respectfully,

JOHN W. BRICKER,
Attorney General.

5079.

APPROVAL—BONDS OF VILLAGE OF SEBRING, MAHONING COUNTY, OHIO, \$1,000.00.

COLUMBUS, OHIO, January 6, 1936.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

5080.

APPROVAL—BONDS OF STRASBURG VILLAGE SCHOOL DISTRICT, TUSCARAWAS COUNTY, OHIO, \$73,500.00.

COLUMBUS, OHIO, January 6, 1936.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.