

OPINION NO. 72-060**Syllabus:**

When an alien insurance company, which has made a statutory deposit pursuant to Section 3927.06, Revised Code, discontinues its business in this State, the Superintendent of Insurance, before releasing said deposit pursuant to Section 3905.25, Revised Code, shall be satisfied that all liabilities and obligations of all policyholders residing in the United States, regardless of when or where they became policyholders, have been paid and extinguished.

To: Kenneth E. DeShetler, Superintendent of Insurance, Department of Insurance, Columbus, Ohio

By: William J. Brown, Attorney General, August 4, 1972

I have before me the request of your predecessor for my opinion, which reads in pertinent part as follows:

"When an alien insurance company, which has made a statutory deposit pursuant to Section 3927.06 of the Ohio Revised Code, intends to or

has discontinued its business in this state, is the Superintendent of Insurance, before releasing said deposit pursuant to Section 3905.25 of the Ohio Revised Code, required (1) to be satisfied that all liabilities and obligations of all policyholders residing in the United States, including those policyholders who became policyholders of such company through such company having been authorized to do business in other states, either prior to, during, or subsequent to the period during which such company was authorized to do business in this state, have been paid and extinguished, and that such company has discontinued its business in the United States, or (2) is the Superintendent of Insurance only required to be satisfied that all liabilities and obligations of all policyholders residing in the United States who became policyholders of such company through such company having been authorized to do business in this state, have been paid and extinguished?"

Section 3927.06, Revised Code, formerly Section 9565, General Code, concerns the deposit of securities required by alien insurance companies and reads as follows:

"An insurance company incorporated by or organized under the laws of a foreign government shall deposit with the superintendent of insurance, for the benefit and security of its policyholders residing in the United States, a sum of not less than one hundred thousand dollars in stocks or bonds of the United States, of this state, or of a municipal corporation or county of this state, which shall not be received by the superintendent at a rate above their par value. Stocks and securities so deposited may be exchanged from time to time for other like securities. So long as the company depositing such securities continues solvent and complies with the laws of this state, the superintendent shall permit it to collect the interest or dividends on such deposits." (Emphasis added.)

Section 3905.25, Revised Code, formerly Section 656, General Code, concerns the return of such statutory deposit to an insurance company, and reads as follows:

"When any insurance company or corporation other than life, which has made a deposit with the superintendent of insurance, intends to discontinue its business in this state, the superintendent, upon the application of such company or corporation, shall give notice at its expense of such intention at least once a week for six weeks in three newspapers of general circulation in the state.

"After such publication, the superintendent shall deliver to such company or association its securities held by him, if he is satisfied by the affidavits of the principal officers of the company, and on an examination made by him or by

some competent, disinterested person appointed by him if he deems it necessary, that all liabilities and obligations which said deposit has been made to secure have been paid and extinguished. The superintendent may deliver to such company or its assigns, under like condition, any portion of such securities on being satisfied that an equal proportion of said liabilities and obligations have been satisfied, if the amount of securities retained by him is not less than twice the amount of the remaining liabilities and obligations."

(Emphasis added.)

Section 3905.25 pertains to all deposits made by insurance companies with the Superintendent of Insurance. Thus, in order to effect the return of a deposit made pursuant to Section 3927.06, these two Sections must be construed together. In this case it appears that, "all liabilities and obligations which said deposit has been made to secure", in Section 3905.25, must be modified by "for the benefit and security of its policyholders residing in the United States" in Section 3927.06. Therefore, an insurance company which has made a deposit with the Superintendent of Insurance pursuant to Section 3927.06, must pay and extinguish all of the liabilities and obligations which it owes to its policyholders residing in the United States in order to effect the return of such deposit. Your question concerns whether the phrase, "policyholders residing in the United States", in Section 3927.06, includes policyholders who obtained their insurance in other states or is limited to those policyholders who obtained their insurance in the state of Ohio.

This phrase does not appear to have been previously interpreted as to where such policyholders obtained their insurance. However, two of my predecessors have expressed their opinions, upholding the view that such deposits are for the benefit and security of policyholders residing anywhere in the United States and not just in Ohio. The Syllabus of Opinion No. 508, Opinions of the Attorney General for 1911, reads as follows:

"Sections 9565 and 9373 of the General Code were not repealed by the amendment to section 656.

"The deposit with the superintendent of insurance in compliance with sections 9373 and 9565 of the General Code is a trust fund whose conditions and limitations were neither enlarged nor diminished by the amendment to section 656. Said deposit is absolutely 'for the benefit and security of policyholders residing in the United States and it cannot be withdrawn until all debts and liabilities which the deposit is made to secure * * * are paid and extinguished.'"

In Opinion No. 325, Opinions of the Attorney General for 1923, my predecessor quoted favorably from Opinion No. 508, supra, and reached the conclusion that the Superintendent of Insurance must decide if such liabilities and obligations have been paid and extinguished. These two Opinions are the only previous Opinions of this office concerning Section 3927.06, which was carried over verbatim from Section 9565, General Code.

The only case to substantively consider Section 3927.06 or Section 9565, was South British Insurance Co. v. Younger, 58 F. 2d 1049 (1932). In that case, the Court held that a foreign insurance company could not withdraw its deposit on terminating its obligations to policyholders in Ohio because there were policyholders in other states, and such deposit was made for the benefit of its policyholders in the whole United States. The Court stated as follows:

"The Ohio statute (Section 9565, General Code), in force at the time the deposit was made, and now in force, provides that the deposit shall be, 'for the benefit and security of its policy holders residing in the United States * * *.' Prior to the amendment of this Act some years ago, and before the plaintiff company qualified to do business in this state, the deposit was to be for the benefit and security of policy holders in Ohio only. By the amendment, the Legislature saw fit to apply it nationally. There seems to be no ambiguity in the language used in the statute as amended."

Several cases and one of my predecessors have held that certain deposits of insurance companies in Ohio are required to be held for the primary benefit of Ohio policyholders. State, ex rel. v. Bowen, 131 Ohio St. 310 (1936); State, ex rel. v. Safford, 117 Ohio St. 412 (1927); State, ex rel. v. Union Casualty Insurance Co., 8 Ohio App. 285 (1917); Opinion No. 2197, Opinions of the Attorney General for 1952. However, these Opinions can be distinguished from the instant situation because the deposit concerned in each case was made pursuant to Section 9510, General Code, now Section 3929.01, Revised Code. Section 9510 states that such deposit is "for the benefit and security of all of its policyholders" and this phrase has been interpreted to mean for the primary benefit of Ohio policyholders. However, the critical difference between Section 9510 and Section 9565, now Section 3927.06, Revised Code, is that Section 9565 contains the additional phrase, "residing in the United States", modifying the word "policyholders". Since the language is different, the interpretation which has been given to Section 9510 should not be applied to this Section.

I believe the Court in State, ex rel. v. Union Casualty Insurance Co., *supra*, set forth a standard which can be appropriately applied to the problem at hand. The Court stated at page 292 as follows:

"Where the legislature provides for a deposit as a condition precedent to the right of a foreign corporation to do business within the state, we think the primary inference is that such deposit was required for the purpose of protecting the policy holders whose policies were issued within the state, and, in order to extend the benefit of such deposit to the general policy holders of the company, we think the statute should clearly express such intention."

Applying this standard to the instant case, it would appear that the amendment to Section 9565 of April 25, 1904, expanding the benefit of the deposit from Ohio policyholders to policyholders in the United States, clearly expresses the intention of the legislature to protect all policyholders in the United States and not just those in the state of Ohio. In addition, the fact

that Section 3927.06, formerly Section 9565, conditions such benefit upon the residence of policyholders in the United States and contains no conditions concerning the state where the policyholders obtained their insurance, implies that the legislature intended to protect all policyholders residing in the United States, regardless of where they purchased their insurance. To hold otherwise would be to usurp the function of the legislature by adding additional terms to an unambiguous statute.

Therefore I must conclude, based on the foregoing discussion, that the deposit required by Section 3927.06 is to be held by the Superintendent of Insurance for the benefit and security of the policyholders of the company making the deposit, including all such policyholders residing in the United States, regardless of when or where they became policyholders.

In specific answer to your question it is my opinion, and you are so advised, that when an alien insurance company, which has made a statutory deposit pursuant to Section 3927.06, Revised Code, discontinues its business in this State, the Superintendent of Insurance, before releasing said deposit pursuant to Section 3905.25, Revised Code, shall be satisfied that all liabilities and obligations of all policyholders residing in the United States, regardless of when or where they became policyholders, have been paid and extinguished.