

1370.

INSURANCE COMPANY—DEALER'S LICENSE REQUIRED FOR BROKER  
HAVING EXCLUSIVE SALE OF STOCK OF INSURANCE COMPANY—  
AUTHORITY OF SUPERINTENDENT OF INSURANCE.

*SYLLABUS:*

1. *An individual acting as broker in the exclusive sale of the shares of stock of an insurance company, which shares have been authorized to be sold by the superintendent of insurance as blue sky commissioner, is required to have a dealer's license and furnish bond under the provisions of Sections 6373-1 and 6373-3 of the General Code of Ohio.*

2. *The superintendent of insurance is the "commissioner" under the blue sky law of Ohio, not only to issue his certificate, properly authenticating the issue of the stock, in insurance cases, but he also has the authority to designate the terms and conditions under which the stock of an insurance company may be sold.*

3. *The superintendent of insurance in being designated as the "commissioner" of securities, is limited to Sections 14 and 16 of the Securities Act and the licensing of the dealer is left to the general provisions of the blue sky law.*

COLUMBUS, OHIO, December 14, 1927.

HON. NORMAN E. BECK, *Chief of Division of Securities, Columbus, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent communication requesting my opinion as follows:

"An individual acting as broker, proposes to dispose of certain shares of stock of an insurance company, which shares have been authorized for issuance and disposal in this state, by the State Superintendent of Insurance.

Question: Is it necessary for the individual acting as broker in the exclusive sale of the shares referred to, to secure a dealer's license and furnish bond under Section 6373-1 and Section 6373-3 of the General Code of Ohio?

Question: If, in your opinion, it is necessary for this individual to secure a dealer's license before disposition of securities mentioned, by whom should such dealer's license be issued, the Division of Securities or the Department of Insurance, State of Ohio?"

Section 6373-1, General Code, is as follows:

"Except as otherwise provided in this act (G. C. Sections 6373-1 to 6373-16, 6373-24), no dealer shall, within this state, dispose or offer to dispose of any stock, stock certificates, bonds, debentures, collateral trust certificates or other similar instruments (all hereinafter termed 'securities') evidencing title to or interest in property, issued or executed by any private or quasi-public corporation, co-partnership or association (except corporations not for profit,) or by any taxing subdivision of any other state, territory, province or foreign government, without first being licensed so to do as hereinafter provided."

Section 6373-3, General Code, is as follows:

"Before such license shall be issued to any dealer, there shall be filed by him with the commissioner of securities designated in this and the preceding and following sections of this chapter (G. C. Sections 6373-1 to 6373-24) as the

'commissioner,' together with a filing fee of five dollars, an application for such license, together with information in such form as shall be determined by such 'commissioner,' setting forth:

(a) The names and addresses of the directors and officers, if such applicant be a corporation or association, and of all partners, if it be a partnership, and of the person if the applicant be an individual, together with the names and addresses of all agents of such applicant assisting in the disposal of such securities;

(b) Location of the applicant or applicants' principal office and of such principal office in the state, if any;

(c) The general plan, including a detailed statement of the character of the business of said applicant or applicants, together with references thereto, which the 'commissioner of securities' shall verify by investigation such as may be deemed necessary in determining the repute in business of such applicant, directors, officers, partners and agents;

(d) Every such applicant shall execute and file a bond to the State of Ohio in such sum in no case to be less than ten thousand dollars and with such surety as the commissioner requires, and shall also execute and file a bond to the State of Ohio in such sum as the commissioner may require, but not to exceed twenty-five hundred dollars with such surety as the commissioner requires, for each agent named in such application or in any supplemental application made thereto. Such bonds shall be filed with the commissioner of securities and kept by him in his office. Such bonds shall be conditioned upon the faithful observance of all of the provisions of this act, and shall also indemnify any purchaser of securities from such dealer or agent who suffers a loss by reason of misrepresentations in the sale of such security by such dealer or agent. Any purchaser claiming to have been damaged by misrepresentation in the sale of any security by such dealer or agent may maintain an action at law against the dealer or agent making such misrepresentations; or both the dealer and agent where the agent makes such misrepresentations; and may join as parties defendant the sureties on the bonds herein provided for.

If the applicant be a corporation organized under the laws of any other state, territory or government, or have its principal place of business therein, it shall also file a copy of its articles of incorporation, certified by the proper officer of such state, territory or government, and of its regulations and by-laws; and if it be an unincorporated association, a certified copy of its articles of association, or deed of settlement.

The applicant at the same time shall also file with said 'commissioner' a duly executed written instrument, irrevocably consenting that any action brought against such applicant, arising out of and founded upon the fraudulent disposal of such securities by him or his agents, may be brought in Franklin County, and that, in the event that proper service of process can not be had upon such applicant in such county, service of process made therein by the sheriff of such county, by sending a copy thereof by registered mail, at least thirty days prior to taking judgment in such case, addressed to such applicant at the place of his principal office named in his application or such other place as the applicant may thereafter designate in writing filed with the 'commissioner,' shall have the same effect as if personally made upon the applicant according to the laws of this state."

Section 6373-19, General Code, provides as follows:

"If the issuer of such securities be a company incorporated, organized or formed to make any insurance named in Subdivisions I and II, Division III, Title IX of the General Code, the 'commissioner,' for all the purposes named in Sections 14 and 16 of this act (G. C. Sections 6373-14 and 6373-16), shall be the Superintendent of Insurance of this state. In addition to the powers given to, and the duties prescribed to be performed by, such 'commissioner,' under said sections, the Superintendent of Insurance shall have, over any such company disposing or attempting to dispose of any of its securities within this state, the powers of regulation, supervision and examination conferred on him by law, with reference to companies licensed to transact the business of insurance within this state."

In Opinion Number 1031, Opinions of the Attorney General for 1923, Vol. I, page 832, the syllabus is as follows:

"The Superintendent of Insurance is the 'commissioner' under the blue sky law of Ohio, not only to issue his certificate as provided in Sections 6373-14 and 6373-16, G. C., in proper insurance cases and therein designate the terms and conditions under which the stock of an insurance company should be certificated, but also if an examination thereof discloses that the securities in question are within the exempted class, that he also has the implied authority at least as such commissioner to issue a certificate of exemption therefor."

In view of the specific provisions of the above section, I am constrained to the belief that it was the intention of the legislature to confer upon the Superintendent of Insurance the powers, rights and duties of examining into and passing upon the matter of whether or not such securities should be exempted or certificated under the blue sky law, and if certificated, upon what terms.

The fact that the capital, the assets and the accumulated funds of insurance companies are to be invested in accordance with distinct provisions of the insurance laws of our state, and in this respect differ from the requirements of a general corporation, constitutes an added reason why the legislature intended that the Superintendent of Insurance was to be the "commissioner" if the issuer be an insurance company.

However, Sections 6373-14 and 6373-16 contain no provisions relative to the licensing of dealers, that subject being covered by Sections 6373-1 and 6373-3, General Code, *supra*.

It is therefore my opinion that:

1. An individual acting as broker in the exclusive sale of the shares of stock of an insurance company, which shares have been authorized to be sold by the Superintendent of Insurance as blue sky commissioner, is required to have a dealer's license and furnish bond under the provisions of Sections 6373-1 and 6373-3 of the General Code of Ohio.

2. The Superintendent of Insurance is the "commissioner" under the blue sky law of Ohio, not only to issue his certificate, properly authenticating the issue of the stock, in insurance cases, but he also has the authority to designate the terms and conditions under which the stock of an insurance company may be sold.

3. The Superintendent of Insurance in being designated as the "commissioner" of securities, is limited to Sections 14 and 16 of the Securities Act, and the licensing of the dealer is left to the general provisions of the blue sky law.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*