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FIRE INSURANCE COMPANIES — HOME OWNERS' LOAN CORPORATION — STOCK COMPANY ASSOCIATION — STATE — CONTRACT — POWER OR AUTHORITY TO REGULATE, TAX, LIMIT OR PROHIBIT TRANSACTIONS BETWEEN FEDERAL GOVERNMENT, PERSON OR CORPORATION.

SYLLABUS:

Certain legal questions raised by agreement between Home Owners' Loan Corporation and Stock Company Association discussed.

Columbus, Ohio, December 5, 1941.

Hon. John A. Lloyd, Superintendent of Insurance,
State House Annex, Columbus, Ohio.

Dear Sir:

Your recent request for my opinion is as follows:

"A group of insurance companies, known as Stock Company Association, most of which are authorized to do fire insurance business in the State of Ohio, have entered into a contract with the Home Owners' Loan Corporation, effective May 1, 1941, which involves the placing of insurance on dwellings, situated or located in this state, which are mortgaged to the Home Owners' Loan Corporation. We enclose herewith a copy of that Agreement styled 'Amended Agreement and Supplemental Agreement: Effective May 1, 1941: H.O.L.C. — Stock Company Association,' a copy of the 'Constitution and By-Laws of the Stock Company Association,' a copy of the 'Rules of Practice of Stock Company Association' and an unexecuted copy of the 'Membership Agreement Stock Company Association.'

We will appreciate receiving your opinion as to whether the arrangement is contrary to the laws of this state, particularly in respect to the statutes and questions raised below:

1. In the document styled 'Amended Agreement' ('Part One — General Provisions,' Paragraph 101, sub-division (b) in the 'Constitution (Article X),' in the 'Rules of Practice (Article Ia.),' and in the 'Membership Agreement,' there are references to the nature of the liability assumed by the insurance companies comprising the Stock Company Association. Is this assumption of liability contrary to Section 9592-10, O.G.C.?

2. Under Paragraph 105, sub-division (a), of the 'Amended Agreement,' the Stock Company Association agrees to pay a commission of 20% to designated insurance agents on all business written. Is this contrary to Section 9563, O.G.C., which provides a penalty for any company entering into any compact for the purpose of controlling the rates per cent amount of commission?

3. Of the list of Stock Company Association members included in the enclosed Agreement, twenty-three are not authorized by this Division to engage in the fire insurance business in the State of Ohio. In view of the liability provisions referred to above in question I of this request, is this contrary to Section 660, O.G.C., or Section 5439, O.G.C., or both?

4. In the portion styled 'Amended Agreement' (Paragraph 104), it is provided that any insurance effected thereunder may be cancelled by the Home Owners' Loan Corporation within a period of forty-five days of inception without cost to the Home Owners' Loan Corporation, or the assured. Is this contrary to Section 9592-8, O.G.C., or Section 9589-1, O.G.C.?

5. In the provision for liability in the 'Amended Agreement' (Paragraph 101, sub-division (b)) referred to above, it is provided that the insurance attaches with the effective date of the Agreement, namely, May 1, 1941. In view of the provisions of Section 5438, O.G.C., and the decision in State, ex rel. Allstate Insurance Co. v. Bowen, 130 O.S. 347, is this contrary to the laws of this state?

6. In the portion of the contract styled 'Supplemental Agreement,' which is incorporated by reference into the portion styled 'Amended Agreement' by paragraph 2 of the 'Supplemental Agreement,' the Stock Company Association, in paragraph 10, agrees to pay to the Home Owners' Loan Corporation, monthly, such sums as may be agreed upon between them. Is this contrary to Section 644-4, O.G.C., or Section 9592-8, O.G.C., or Section 9589-1, O.G.C., or any or all of those Sections? For your information, the Home Owners' Loan Corporation is not licensed as an insurance agency in the State of Ohio by this Division."

The Stock Company Association is an organization, apparently unincorporated, composed of more than two hundred fire insurance companies. The constitution and by-laws, rules of practice, and membership agreement are too voluminous to be quoted herein. I have, however, read and carefully considered the copies thereof which you have submitted with your letter. The purpose of the organization of the association seems to have been to make possible the participation by all stock fire insurance companies, which desire to become members of the association, in insurance coverage to the Home Owners' Loan Corporation and other agencies of the Federal Government.

Each company which is a member of the association is required to execute a membership agreement whereby it promises to abide by, carry out and perform the provisions of the constitution, by-laws and rules of practice of the association and any amendments or additions thereto and all recommendations, orders or decisions of the executive committee of

the association and of the association. The agreement further contains a power of attorney whereby the persons appointed are empowered on behalf of the company signing same to execute contracts between the association and agencies, departments and corporations of the Federal Government when such contracts have been approved by the executive committee of the association.

In cases where the owners of property mortgaged to the Home Owners' Loan Corporation fail to provide satisfactory insurance coverage on the property mortgaged, the corporation procures such insurance itself. It accomplishes this by placing an order therefor with the Stock Company Association which in turn directs the issuance of the policy. The policy is issued in the name of one of the member companies and is countersigned by a local resident agent. The contract between the Home Owners' Loan Corporation and the Stock Company Association provides that the corporation will endeavor to furnish to the association the name and address of the agent through whom the expired insurance policy was issued or such agent might be designated by the mortgagor, and the association agrees wherever possible to cause the insurance policy to be issued through such agent. The association further agrees to pay such agent a commission of twenty per cent of the business so written through him. The profit, if any, occurring by reason of such business does not inure alone to the articular company the policy of which may happen to have been issued, nor, in case of a loss on such policy, does such company bear the loss alone. The losses or profits arising from business done by the association are shared by the various members of the association in the ratio provided in the constitution of the Stock Company Association.

The above description of the modus operandi of the Stock Company Association is not intended to be at all exhaustive and is in the nature of prefatory remarks which I hope will make my discussion of the questions involved more easily understood. Your questions will now be discussed in the order in which they are set forth in your letter.

1. Subparagraph (b) of paragraph 101 of the amended agreement of May, 1941, entered into between the Stock Company Association and the Home Owners' Loan Corporation, provides:

> "The liability assumed by the insurance companies comprising the Association under this Agreement attaches simultaneously with the interest of the Corporation upon the effective date of this Agreement and continues so long as the interest of the Corporation continues, whether as mortgagee, vendor or lessee."

Article X of the constitution provides that if any member of the association delays in making prompt settlement of the liabilities assumed pursuant to the arrangement in question and fails to meet such obligation within one week after notice of its default, its membership in the association shall cease and the outstanding liabilities of such defaulting member shall be distributed among and assumed by the remaining members of the association. Subparagraph 2 of paragraph 1 of the rules of practice of the association provides that the liability of insurance companies comprising the association under binders, certificates and policies issued pursuant to the arrangement shall be joint and several. You ask whether such assumption of liability is contrary to the provisions of Section 9592-10, General Code, which provides:

> "Except as contained in the policy and the usual agreement for other insurance, no such insurance company or insurer or rating bureau shall make any contract or agreement with any person insured or to be insured that the whole or any part of any insurance shall be written by or placed within any particular company, insurer, agent or any group of companies, insurers or agents."

In the first place, it should be noted that the prohibition contained therein operates only against insurance companies, insurers or rating bureaus making contracts or agreements with persons insured or to be insured and does not refer at all to agreements between insurance companies themselves. In this connection, I therefore attach little or no significance to the provisions contained in the rules of practice of the Stock Company Association or the membership agreement because obviously these are not agreements made by an insurance company, an insurer or a rating bureau with a person insured or to be insured but merely regulate and prescribe legal relations between the member companies of the Stock Company Association. It remains, however, to be considered whether the amended agreement itself violates the provisions of this statute.

This section was considered by one of my predecessors in Opinion No. 6170 found at page 1510 of the Opinions of the Attorney General for 1936. In that opinion the question was whether the Superintendent of Banks might select an insurance company which would insure the property of insolvent banks with the understanding, however, that such company retain only ten per cent of such business and reinsure ninety per cent with all the fire insurance companies admitted to do business in

the state and writing one-fourth of one per cent of the fire premiums in the state during the year 1934. Concerning this plan, my predecessor said:

> "In the proposed plan, there is no agreement binding the officers in question to place all insurance with the insurance company to be selected except such as is contained in the master policy and such other policies as may be issued covering individual risks. It is quite customary to issue blanket policies and their legality has never been questioned. I am of the view, therefore, that such proposed plan as outlined by you would not violate either Section 9563 or Section 9592-10, General Code."

It will be noted that my predecessor reached his conclusion that the plan there under consideration did not violate the statute because there was no agreement binding the Superintendent of Banks or the Superintendent of Building and Loan Associations to place all insurance with the insurance company selected. The arrangement which I now have under consideration, however, requires the Home Owners' Loan Corporation to place all the insurance which it requires with the Stock Company Association. Subparagraph (d) of paragraph 101 of the amended agreement of May, 1941, provides:

> "The Corporation agrees to exercise its best efforts to keep properties in which it has an insurable interest as hereinafter defined in Section 201 covered to the full extent of such interest with appropriate insurance."

The amended agreement therefore does require the corporation to place its insurance with the association and the agreement therefore falls within the prohibition contained in the section in question.

2. Section 9563, General Code, to which you refer in your letter, in so far as it is pertinent to your inquiry, provides:

> "If such company, association or partnership doing business in this state, * * * enters into any compact or combination with other insurance companies, or requires its agents to enter into any compact or combination with other insurance agents or companies, for the purpose of controlling the rates charged for fire insurance on property in this state, or of controlling the rates per cent amount of commission or compensation to be allowed agents for procuring contracts for such insurance on such property, the superintendent of insurance forthwith shall revoke and recall the license to it to do business in this state, and no renewal thereof shall be granted for three years after its revocation.

Such company, association or partnership also shall be prohibited from transacting any business in this state until again duly licensed and authorized."

It will be noted that this section inter alia prohibits insurance companies from entering into any compact or combination with other insurance companies for the purpose of controlling the rates per cent amount of commission or compensation to be allowed agents for procuring contracts for insurance on property. The plan which is now before me for consideration does not contemplate that insurance agents will procure any of the contracts of insurance at all; so this particular portion of the statute can have absolutely no application to the arrangement in question.

3. You state that of the member companies of the Stock Company Association twenty-three are not authorized by your Division to engage in the fire insurance business of Ohio and you ask whether, in view of the joint and several liability assumed by all member companies, the arrangement therefore violates the provisions of Sections 660 and 5439, General Code. These two sections respectively provide:

Section 660.

"The superintendent of insurance may issue licenses to citizens of this state, subject to revocation at any time, permitting the person named therein to solicit and issue fire, lightning, tornado, explosion, automobile or marine insurance on property in this state in insurance companies not authorized to transact business in this state. Each such license shall expire on the thirty-first day of March next after the year in which it is issued, and may be then renewed;

Provided, however, any officer, agent, solicitor, broker, inspector, adjuster, or employee of any unauthorized insurance company not licensed under section 660, or any agent, broker or other representative of the owner of property in this state, or any adjuster, agent or person who shall take or receive any application for insurance upon property in this state, or receive or collect a premium or any part thereof for any unauthorized insurance company, or adjust any loss thereon, or make any inspection thereof, or shall attempt or assist in any such act, or perform any act in this state relating to or concerning any policy or contract of insurance of any unauthorized insurance company, shall be punished by a fine of not less than $25.00 nor more than $500.00 or by imprisonment in the state penitentiary for not exceeding one year, or by both such fine and imprisonment."

Section 5439.

"No fire insurance company or association, authorized to do business in this state, shall reinsure, dispose of, cede, pool, divide or in any manner or form, reduce a portion of its risk or liability, covering property wholly or partially located in this state, in or with a company, association, person or persons, incorporated or otherwise, not authorized by law to do the business of fire insurance in this state, or to reinsure, or assume as a reinsuring company or otherwise, in any manner or form, the whole or part of a risk or liability, covering property wholly or partially located in this state, of or for an insurance company, association, person or persons, incorporated or otherwise, not authorized by law to do the business of fire insurance in this state."

Your third question as phrased divides itself into two parts.

Section 660, General Code, is a criminal statute and can, of course, have no extraterritorial operations. I believe that the execution of the agreement by the parties thereto outside the State of Ohio does not constitute a violation of the provisions of Section 660, General Code.

However, if premiums are collected in this state or inspections made of property located in this state or any other act relating to the policy or contract of insurance is performed in this state, it would appear that the provisions of this section are violated because a portion of the liability is assumed by companies not authorized to do business herein.

The provisions of Section 5439, General Code, are so clear as to require no comment or explanation. Inasmuch as every member company of the Stock Company Association is jointly and severally liable for all the risks assumed by the association, the member companies thereof which are authorized to do business in Ohio might become liable for the share of the risk assumed by companies not so authorized and, contrariwise, companies not authorized to do business in Ohio might be liable for the share of the risk assumed by Ohio companies. The arrangement in question clearly violates the provisions of this section.

4. Paragraph 104 of the amended agreement provides that any insurance effected pursuant thereto may be canceled by the Home Owners' Loan Corporation within forty-five days from inception of such insurance without cost to the corporation or the assured, provided no claim for loss has been or will be made. You ask whether this is contrary to the provisions of Sections 9592-8 and 9589-1, General Code. These two sections respectively provide:

Section 9592-8.

"No fire insurance company or other insurer against the risk of fire or lightning, nor any rating bureau, shall fix or charge any rate for fire insurance upon property in this state which discriminates unfairly between risks in the application of like charges and credits, or which discriminates unfairly between risks of essentially the same hazards and having substantially the same degree of protection against fire."

Section 9589-1.

"No corporation, association or co-partnership engaged in the state of Ohio in the guaranty, bonding, surety or insurance business, other than life insurance, nor any officer, agent, solicitor, employe or representative thereof shall pay, allow or give, or offer to pay, allow or give, directly or indirectly, as inducements to insurance, and no person shall knowingly receive as an inducement to insurance any rebate of premium payable on the policy, nor any special favor or advantage in the dividends or other benefits to accrue thereon, nor any paid employment or contract for services of any kind or any special advantage in the date of the policy or date of the issue thereof, or any valuable consideration or inducement whatsoever not plainly specified in the policy or contract of insurance or agreement of indemnity, or give or receive, sell or purchase, or offer to give or receive, sell or purchase, as inducements to insurance or in connection therewith any stock, bonds, or other obligations of an insurance company or other corporation, association, partnership or individual. But the provisions of this act shall not apply, however, to prevent the payment to a duly authorized official, agent or solicitor of such company, association or co-partnership of commissions at customary rates on policies or contracts of insurance effected through him by which he himself is insured, provided such officer, agent or solicitor holds himself out as such and has been engaged in such business in good faith for a period of six months prior to any such payment; nor shall this act prohibit a mutual fire insurance company from paying dividends to policy holders at any time after the same has been earned."

It does not appear from your letter that the rate to be charged the Home Owners' Loan Corporation is any different from that charged other assureds for similar risks and I am therefore of the opinion that the provisions of Section 9592-8, General Code, do not appear to be violated.

The prohibitions contained in Section 9589-1, General Code, supra, apply only when the forbidden act is used as an inducement to insurance. It may well be doubted whether the cancellation privilege contained in paragraph 104 of the amended agreement is an inducement to insurance. Paragraph 207 of the amended agreement provides that where the owner

supplies adequate and acceptable insurance to the Home Owners' Loan Corporation within forty-five days after the expiration of his previous policy covering the risk, then the corporation may cancel its insurance on such risk without cause. Subparagraph (a) of this paragraph provides that in the event the owner does not furnish adequate and acceptable insurance within forty-five days, then the corporation will pay the premium for the insurance ordered by it. When these provisions are considered together, it becomes obvious that the corporation may cancel only when the owner furnishes adequate and acceptable insurance within the forty-five-day period. If the owner fails to do this, then the corporation is bound to pay for the insurance ordered by it. The purpose of the cancellation privilege is, therefore, that the same risk may not have been doubly insured.

On the whole, I am of the opinion that the provision in question, when considered in relation to other provisions of the agreement, does not violate either Section 9589-1 or 9592-8, General Code.

5. Subparagraph (b) of paragraph 101 of the amended agreement reads as follows:

> "The liability assumed by the insurance companies comprising the Association under this Agreement attaches simultaneously with the interest of the Corporation upon the effective date of this Agreement and continues so long as the interest of the Corporation continues, whether as mortgagee, vendor or lessee."

Paragraph 302 thereof provides that the effective date and time of commencement is twelve o'clock noon on the first day of May, 1941.

The member companies of the Stock Company Association, therefore, insured the Home Owners' Loan Corporation as in the amended agreement provided from the first day of May, 1941. Section 5438, General Code, provides in part:

> "An insurance company or agent legally authorized to transact insurance business in this state shall not write, place or cause to be written or placed, a policy, renewal of policy or contract for insurance upon property, situated or located in this state, except through a legally authorized agent in this state, who shall countersign all policies so issued and enter the payment of the premium upon his record. * * * "

As to those companies, therefore, which are authorized to transact business in this state, the amended agreement clearly constitutes a violation of Section 5438, General Code. By reason of the amended agreement, such companies insured property situated in the State of Ohio but the contract of insurance was not placed through a legally authorized agent nor was it countersigned by such an agent. There was, of course, no compliance with the provision of the statute requiring payment of the premium to be entered upon the record of the agent.

6. Paragraph 10 of the so-called supplemental agreement provides:

> "The Association agrees to pay the Corporation monthly for the services rendered by it under the terms of this supplemental agreement such sum as may be agreed upon by the Corporation and the Association, as reasonable compensation for such services."

Briefly, the services for which the association agrees to pay the corporation consist of the following: making available to the association its appraisals and reappraisals and giving to the association such information as it (the corporation) has concerning the conditions, uses and standards of maintenance affecting its properties; conducting of fire prevention program in collaboration with the association which shall include special inspections by field representatives of the corporation; obtaining from the owners and occupants reports on forms and questionnaires of steps taken to eliminate dangerous practices and correct adverse conditions; and other activities of a like nature. The corporation further agrees in the supplemental agreement to assist and cooperate fully in an effort to secure fair, prompt and equitable adjustments of losses when so requested by the association. You ask whether this particular agreement violates the provisions of Sections 644-4, 9589-1 and 9592-8, General Code. Sections 9589-1 and 9592-8, General Code, have heretofore been quoted herein and will not be repeated now. Section 644-4, General Code, 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 will be noted that this section prohibits any insurance company authorized to do business in this state from paying or allowing or causing

to be paid or allowed for negotiating any contract for 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 as an insurance agent. On its face, the supplemental agreement does not require the association to pay to the corporation any sum as commission or consideration for negotiating contracts for insurance and it does not therefore appear to violate the provisions of Section 644-4, General Code.

Neither does it appear that this payment is made by the association to the corporation as an inducement to insurance. Section 9589, General Code, prohibits such payment only where it is made as an inducement to insurance.

Section 9592-8, General Code, prohibits any insurer from charging any rate for fire insurance upon property in this state which discriminates unfairly between risks of essentially the same hazards. The payment made under the supplemental agreement does not enter into the rate charged for insurance. By reason of the provisions of the supplemental agreement the payment is made for services rendered by the corporation to the association which an insured ordinarily is neither bound to nor does render to the insurer.

On the face of the agreement, therefore, it does not appear to violate the provisions of any of the statutes which you have mentioned nor any other statute of which I have knowledge. Of course, if upon investigation it should appear that the supplemental agreement is merely a subterfuge used to evade any of the statutes in question, an entirely different question would be presented. However, in my consideration of this matter and in the absence of any showing to the contrary, I must assume that the supplemental agreement is merely what it purports to be and, based upon such assumption, I am of the opinion that the supplemental agreement does not violate any provision of the Ohio laws.

Thus far, I have not discussed nor have I given any consideration to what effect, if any, the status of the Home Owners' Loan Corporation may have upon the questions you propound. This corporation was created pursuant to an act of Congress. See Title 12, Sections 1462, et seq., U.S.C. It is expressly declared in Section 1463 of Title 12 that the corporation is an instrumentality of the United States. In Pittman v.

Home Owners' Loan Corporation, 308 U.S., 21, 32, 84 L.Ed., 11, 16, the Supreme Court of the United States, through Mr. Chief Justice Hughes, said "that the creation of the Home Owners' Loan Corporation was a constitutional exercise of the congressional power and that the activities of the Corporation through which the national government lawfully acts must be regarded as governmental functions and as entitled to whatever immunity attaches to those functions when performed by the government itself through its departments."

For a great many years it was regarded as a settled proposition of law that a state had no power or authority to regulate, tax, limit or prohibit transactions between the Federal Government and a person or corporation with whom it contracted. These holdings were premised upon the theory that the right of the United States to make necessary contracts is derived from the Federal Constitution and the right of persons and corporations to contract with the United States is not dependent upon state laws but flows from the power of the Federal Government to adopt such means of carrying on its functions as it deems appropriate. Thus, in Osborne v. The Bank of the United States, 9 Wheat., 738, 867, 6 L.Ed., 204, 235, the court, through Mr. Chief Justice Marshall, said:

> "Can a contractor, for supplying a military post with provisions, be restrained from making purchases within any state, or from transporting the provisions to the place at which the troops were stationed? or could he be fined or taxed for doing so? We have not yet heard these questions answered in the affirmative. It is true, that the property of the contractor may be taxed, as the property of other citizens; and so may the local property of the bank. But we do not admit that the act of purchasing, or of conveying the articles purchased, can be under state control."

In Pembina Consolidated Silver Mining and Milling Company v. Pennsylvania, 125 U.S., 181, 186, 31 L.Ed., 650, 652, Mr. Justice Field, in delivering the opinion of the court, quoted with approval from a decision of Mr. Justice Bradley made on circuit in the case of Stockton v. Baltimore and N.Y.R. Company, 32 Fed., 9, 14, as follows:

> "If congress should employ a corporation of shipbuilders to construct a man-of-war, they would have the right to purchase the necessary timber and iron in any state of the Union."

and then Mr. Justice Field said:

> "And we may add without the permission and against the prohibition of the state."

In the same case it was further said by Mr. Justice Field:

> "The only limitation upon this power of the state to exclude a foreign corporation from doing business within its limits, or hiring offices for that purpose, or to exact conditions, for allowing the corporation to do business or hire offices there, arises where the corporation is in the employ of the federal government, or where its business is strictly commerce, interstate or foreign."

The doctrine announced in these cases has been very much limited, if not entirely repudiated, by later decisions of the Supreme Court of the United States. Thus, in James v. Dravo Contracting Company, 302 U.S., 134, 82 L.Ed., 155, the State of West Virginia levied a tax on the contractor based upon the gross receipts derived by such contractor by reason of a contract with the Federal Government for the construction of a dam on a river in West Virginia. This, the court held, was within the power of the state. The most recent case which is of assistance in determining this question is Alabama v. King and Boozer, decided November 10, 1941, and reported in 86 L.Ed. (Advance Opinions), 1. It appeared in that case that King and Boozer sold lumber to contractors who were building an army camp for the United States on a "cost-plus-a-fixed-fee" contract and the question for determination was whether the Alabama sales tax with which the seller was chargeable but which he was required to collect from the buyer violated any of the provisions of the Constitution of the United States in view of the particular circumstances involved. In the opinion of the court delivered by Mr. Chief Justice Stone, it was said:

> "The Government, rightly, we think, disclaims any contention that the Constitution, unaided by congressional legislation, prohibits a tax exacted from the contractors merely because it is passed on economically, by the terms of the contract or otherwise, as a part of the construction cost to the Government. So far as such a nondiscriminatory state tax upon the contractor enters into the cost of the materials to the Government, that is but a normal incident of the organization within the same territory of two independent taxing sovereignties. The asserted right of the one to be free of taxation by the other does not spell immunity from paying the added costs, attributable to the taxation of those who furnish supplies to the Government and who have been granted no tax immunity. So far as a different view has prevailed, see Panhandle Oil Co. v. Mississippi, and Graves v. Texas Co. supra, we think it no longer tenable."

While these cases are not entirely dispositive of the question now before me for consideration and although the principles announced in the earlier cases to which reference has heretofore been made are not

expressly overruled, it is difficult, if not impossible, to reconcile those principles with the decisions in James v. Dravo Contracting Company, supra, and Alabama v. King and Boozer, supra. Even though the Home Owners' Loan Corporation is a federal instrumentality and is exempt from state regulation and taxation, except as permitted by Congress, I believe, in view of the more recent decisions by the Supreme Court, that it cannot be said that its immunity carries over to persons, associations or corporations with whom it contracts for insurance covering its interests in properties on which it has mortgages.

It is clear that such insurers are subject to nondiscriminatory state taxation and upon principle it is difficult to perceive why they would not be also subject to nondiscriminatory regulation by a state in the exercise of its police powers. As a matter of fact, Section 5439, General Code, is enacted in aid of the state's taxing power with respect to the taxation of insurance companies and it would therefore seem clear that the provisions of this section do not violate any provision of the Federal Constitution.

For these reasons, after careful consideration of the question, I have reached the conclusion that the insurance companies in question are subject to the various sections of the Ohio statutes to which reference has been made, even with respect to transactions had between such insurance companies and the Home Owners' Loan Corporation insuring Ohio property.

Respectfully,

THOMAS J. HERBERT,
Attorney General.