

payment of interest thereon, and *the library board shall levy the amount so certified*. Such board may increase the amount so certified, but the total amount so levied shall not exceed the limitation herein provided."

The phrase underscored is additional authority to such library board to levy the necessary tax for such bonds and interest thereon.

After a careful reading of the sections of the General Code above quoted, it is not believed that the certification by the board of library trustees to the board of education of the amount of money needed for the ensuing year, as provided in section 7639 G. C., is intended to include funds for the interest and payment of the library debt created by a bond issue under the provisions of sections 4007 to 4013 General Code. The provisions of sections 4013 and 4017 General Code are clearly sufficient to authorize the board of library trustees, as such, to levy a tax for the payment of the interest and retirement of such bond issue.

Attention is also directed to the provision of section 5649-1b, which was in effect at the date of the issuance of the bonds in question. Said section provides in part as follows:

"The resolution, ordinance or other measure under which bonds are issued or authorized shall, within the limitations prescribed by law, provide for a levy of taxes, in the manner prescribed by law, sufficient to pay the interest and principal of the bonds as they mature and every such resolution, ordinance or measure shall be certified by the fiscal officer of the political subdivision to the county auditor of the county in which the subdivision is located. Thereafter, the county auditor, without further action by the tax levying authority of the subdivision, shall include said annual levies in the appropriate annual budgets submitted by him to the budget commissioners as provided in section 5649-3c of the General Code, * * *"

If proper certification by the fiscal officer of the political subdivision issuing such bonds has been made to the county auditor of the county in which the subdivision is located, as provided in section 5649-1b, supra, further certification of the amount necessary to pay the interest and principal of the library debt would be unnecessary.

Therefore, I am of the opinion that in the certification of the board of education by the board of library trustees, of the amount of money needed for library purposes as authorized and required by section 7639, General Code, it is not intended that such certification include the amount necessary to pay the interest and principal of the library debt.

Respectfully,
C. C. CRABBE,
Attorney-General.

1031.

INSURANCE—SUPERINTENDENT OF INSURANCE IS "COMMISSIONER"
UNDER BLUE SKY LAW—SECTIONS 6373-14, 6373-16 AND 6373-19 G.
C. CONSTRUED.

SYLLABUS:

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.

COLUMBUS, OHIO, December 27, 1923.

HON. HARRY L. CONN, *Superintendent of Insurance, Columbus, Ohio.*

DEAR SIR:—This will acknowledge receipt of your letter of recent date requesting the opinion of this department as follows:

“Referring to section 6373-2, having to do with the securities law, sub-section F provides for the disposition by the insurer of securities solely for his own account.

Section 6373-19, having to do with the flotation of securities by an insurance company, provides that the “commissioner” in such case is to be the superintendent of insurance.

Said section 6373-19, apparently limits the jurisdiction of the superintendent of insurance to the particular matters and things set forth in section 6373-14 and section 6373-16.

The question has arisen, because of an application to the securities division by an insurance company, claiming the right under the provision of section 6373-2, sub-section F, to float securities of the kind mentioned in that sub-section, whether the “commissioner” in such a case to pass upon the matter is the commissioner of securities or the superintendent of insurance.

Will you be good enough to give me your interpretation of the law in this regard?”

Section 6373-19, G. C., providing that if the issuer be an insurance company, the “commissioner” for all the purposes named in sections 14 and 16 of this act shall be the superintendent of insurance, is 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, 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.”

Section 6373-14 G. C. outlining the procedure to obtain certificate for corporate compliance, is as follows:

“For the purpose of organizing or promoting any company, or assisting in the flotation of the securities of any company after organization, no issuer or underwriter of such securities and no person or company for or on behalf of such issuer or underwriter shall, within this state, dispose or attempt to dispose of any such security until such commissioner shall issue his certificate as provided in section 6373-16 of the General Code which shall not be done until,

together with a filing fee of five dollars, there be filed with the commissioner the application of such issuer or underwriter for the certificate provided for in section 6373-16, General Code, and, in addition to the other information hereinafter required by paragraphs (a), (b), (c) and (d) of section 6373-9 of the General Code, the following:

- (a) A certified copy of the articles of incorporation or association of the issuer, its regulations and by-laws;
- (b) Certified copies of all minutes of stockholders and directors relative to the issue of such securities;
- (c) A sworn statement made by the president and secretary of the issuer, showing in detail the items of cash, property, services, patents, good will and any other consideration for which such securities have been or are to be issued in payment;
- (d) Like certified copies of all contracts or agreements *between the issuer and any underwriters of such securities*, and, if disposed of by the issuer, all contracts and agreements relative to the sale and disposition thereof, and any such contracts or agreements made subsequent thereto shall be filed immediately upon the execution thereof;
- (e) *All contracts made between such underwriter and any salesman, agent or broker.*

This section shall not apply where the issuance of the securities has been approved by the public service commission or like body of any state of the United States or any province of the Dominion of Canada, or where the sale is made by or on behalf of an underwriter who, in good faith and not for the purpose of avoiding the provisions of this act, purchases the securities so afterward sold by him and pays therefor, in cash or its equivalent, before attempting to sell the same, not less than ninety percentum of the price at which such securities are thereafter sold by him; nor where the securities are those of a common carrier or of a company organized under the laws of this state and engaged principally in the business of manufacturing, transportation, coal-mining or quarrying, and the whole or a part of the property upon which such securities are predicated is located within this state provided such company is an actual going concern, having been engaged in its principal business for a period of one year or more, and having no obligations which are past due and unpaid; nor of a real estate or building company all of whose property, upon which such securities are predicated is located in this state; nor in the case of an issuer excepted under paragraph (f) of section 6373-2, General Code, nor in cases where the filing of information is dispensed with under the provisions of paragraphs (b), (c), (d), or (e) of section 6373-10, General Code.

The information required by paragraphs (d) and (e) of this section shall be for the information of the commissioner only, and shall not be disclosed by him except when lawfully required in a judicial proceeding."

Again the section authorizing the examination, certification, providing for the issuance fee and the revocation of the certificate of authority is 6373-16 G. C., which provides as follows:

"Said commissioner shall have power to make such examination of the issuer of the securities, or of the property named in the two next preceding sections, at any time, both before and after the issuance of the certificate hereinafter provided for, as he may deem advisable. When in the discretion of the commissioner all or any part of the expense of such examination should be paid by the applicant for such certificate, such applicant shall deposit with the commissioner such sum of money as the commissioner may order, out of

which said sum the commissioner shall pay that portion of the expense of such examination as the commissioner determines said applicant should pay. The commissioner shall render to the applicant an itemized statement of the expenditure and a proper record thereof shall be kept. And if it shall appear that the law has been complied with and that the business of the applicant is not fraudulently conducted, and that the proposed disposal of such securities or other property is not on grossly unfair terms, and that the issuer or vendor is solvent, upon the payment of a fee of ten dollars, the commissioner shall issue his certificate to that effect, authorizing such disposal. But if it shall not affirmatively so appear he shall notify the applicant, in writing, and of his refusal to issue such certificate. Such certificate shall be issued or refused within a reasonable time after the filing of the application therefor, which shall be within not more than thirty days from and after the applicant or certificate holder whose certificate has been revoked has fully complied with all requirements of this act precedent thereto; provided, that the commissioner may at any time revoke any such certificate issued by him when he has reason to believe that the business of the holder thereof is being fraudulently conducted, or that such securities or other property are being disposed of upon grossly unfair terms, or, in the case of securities that the issuer thereof is insolvent. Such applicant shall have the same right of review of such finding as is given to a dealer by section 6373-8. The fee provided for in this section shall not be required of an applicant who is licensed as a dealer.

Each issuer to whom there has been issued a certificate of corporate compliance shall file with the commissioner of securities a detailed and complete financial statement in such form as the commissioner of securities may prescribe, dated as of June 30 of each year and such statement shall be filed with the commissioner not later than August 1 of each year. Each issuer shall further furnish to the commissioner of securities a complete and detailed report as he may from time to time demand."

Your particular inquiry seems to be directed to the manner of procedure by an insurance company, claiming the right under the provisions of section 6373-2 G. C., subsection "f", to have its securities exempted from certification by the "commissioner" under the blue sky law. The provision of section 6373-2 G. C., subsection "f" which is one of the exceptions, is as follows:

"The issuer, organized under the laws of this state, where the disposal, in good faith and not for the purpose of avoiding the provisions of this act, is made for the sole account of the issuer, without any commission and at a total expense of not more than two percentum of the proceeds realized therefrom plus five hundred dollars and where no part of the issue to be disposed of is issued, *directly* or indirectly, in payment for patents, services, good will, or for property not located in this state; provided that the president and secretary, or the incorporators if done before organization, of the issuer shall, prior to such disposal file with the 'commissioner' a written statement setting forth the existence of all such facts that such issuer is formed for the purpose of doing business within this state.

As used in this act, the term 'company' shall include any corporation, co-partnership or association, incorporated or unincorporated, and whenever and wherever organized; 'dispose of' shall be construed to mean 'sell, barter, pledge or assign for a valuable consideration or obtain subscriptions for'; 'issuer', the original issuer of the security; and, where the context demands it, words in the present tense include the future tense; in the masculine gender include the feminine and neuter gender; in the singular number

include the plural, and in the plural, the singular number; the word 'whoever' includes all persons, natural and artificial principals, agents and employes; 'and' may be read 'or', and 'or' 'and'."

It will be observed that by the provision of section 6373-19 G. C., the 'commissioner' for all the purposes named in sections 14 and 16 of this act shall be the superintendent of insurance of this state. The latter part of the section above mentioned gives him "in addition to the powers given to, and the duties prescribed to be performed by, such 'commissioner,'" under such sections "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."

The powers of the superintendent of insurance in the examination of insurance companies, referred to above and the authority of examiners for that purpose as provided in sections 625, 626, 627 and 327-1 G. C., are very broad and comprehensive.

While the provisions of section 6373-19 G. C. specifies 'for all the purposes named in sections 14 and 16 of this act' the superintendent of insurance shall be the "commissioner," if the issuer of such securities be an insurance company, and while the exempting of securities not intended to come under the purview of the blue sky law, or the definition of what are not "securities" as used in the act as contained in the provisions of section 6373-2 G. C., yet we are constrained to the belief that it was the intention of the legislature to confer upon the superintendent of insurance the powers, rights and the duties of examining into and passing upon the matter of whether such securities should be exempted or certificated or not under the blue sky law, if found to be "securities" within the meaning of the blue sky law, and if certificated, upon what terms.

The power given in section 6373-16 G. C. to the "commissioner" is a continuing one, at least during the period of the flotation of its securities. The latter part of said section providing that the "commissioner may at any time revoke any such certificate issued by him when he has reason to believe that the business of the holder thereof is being fraudulently conducted, or that such securities or other property are being disposed of upon grossly unfair terms, or in the case of securities, that the issuer thereof is insolvent."

And again, the latter part of the above mentioned section provides for a detailed and complete financial statement to be filed as of June 30th each year, and such other complete and detailed report as the commissioner may from time to time demand.

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

The jurisdiction of these matters is peculiarly within the province of the superintendent of insurance.

It is therefore my opinion that the superintendent of insurance is the "commissioner" intended under the blue sky law, not only to issue his certificate as provided in section 6373-16 of the General Code, 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 the examination thereof discloses that the issuer brings his securities within the exempted class, that he also has the implied authority at least to issue a certificate of exemption in compliance therewith.

Respectfully,

C. C. CRABBE,
Attorney-General.