

2483

SECTIONS 3903.36 AND 3905.26, R. C. ARE IN *PARI MATERIA*; AND FEE IMPOSED BY LATTER SECTION SHOULD BE CALCULATED ACCORDING TO DOLLAR VALUE OF ALL CONTRACTS RELATING TO LIFE INSURANCE FOR WHICH RESERVE VALUES ARE CALCULATED PURSUANT TO 3903.36, R. C.—§3905.26, R.C.

SYLLABUS:

Sections 3903.36 and 3905.26, Revised Code, are in *pari materia* and should be construed together; and the fee imposed by the latter section should be calculated according to the dollar value of all contracts relating to life insurance for which reserve values are calculated pursuant to Section 3903.36, Revised Code, regardless of whether said contracts are policies of life insurance or contracts of reinsurance.

Columbus, Ohio, August 26, 1961

Hon. Edward A. Stowell, Superintendent of Insurance  
Department of Insurance, Columbus, Ohio

Dear Sir:

I have your request for my opinion which reads as follows:

“Section 3903.36, Revised Code, imposes a duty upon the Department of Insurance to annually cause the ‘reserves’ of life insurance policies to be valued.

“Section 3905.26 (B) (1), Revised Code, requires life insurance companies doing business in Ohio to pay the Superintendent of Insurance each year

‘For annual valuation of its policies, one cent on every one thousand dollars of insurance.’

“Based upon the aforementioned statutory requirements, it has been the practice of this department, ascertain for at least a period of forty years, to value the reserves for all life insurance in force including all reinsurance assumed even though the reinsuring company owes no direct obligation to the policyholder, and the fee for valuing such reserve liabilities is computed on the life insurance in force including all reinsurance assumed.

“A domestic life insurance company has now questioned the propriety of such charges. Therefore, I would appreciate your opinion as to whether or not I may, pursuant to the provisions of

Section 3905.26 (B) (1), Revised Code, charge a fee based upon insurance in force of a life insurance company, including reinsurance.”

The provisions of Section 3905.26 (B) (1) read as follows:

“\* \* \*

\* \* \*

\* \* \*

“(B) Each life insurance company doing business in this state shall pay:

“(1) For annual valuation of its policies, one cent on every one thousand dollars of insurance.

“\* \* \*

\* \* \*

\* \* \*”

Said provision became a part of the law of Ohio with an act passed by the 60th General Assembly on March 12, 1872. 69 Ohio Laws, 32. The provisions of Section 17 of said act established the above quoted fee and referred therein to Section 14 of said act, which section placed a duty upon the Superintendent of Insurance to annually make a valuation of all outstanding policies. There were many amendments and changes made through the years to these statutory provisions of law; however, the essential duties set forth therein are still imposed upon the Superintendent of Insurance. The duties which were imposed by Section 14 of the aforementioned act are now found in Section 3903.36, Revised Code. Said section reads in pertinent part as follows:

“As used in this section ‘reserves’ means reserve liabilities.

“(A) The superintendent of insurance shall annually value, or cause to be valued, the reserves for all outstanding life insurance policies and annuity and pure endowment contracts of every life insurance company doing business in this state, \* \* \*”

Although it will be noted that the duties imposed upon the superintendent by Section 3903.36, *supra*, are to annually value *reserves* of a life insurance company while the terminology under which the fee is to be charged speaks of an annual valuation of *policies*, there can be no question, based upon the history of the pertinent provisions of Sections 3903.36 and 3905.26, *supra*, that the fee to be charged by the latter section shall be charged as a result of the duties imposed by the former.

The question to be answered is whether or not in computing the fee, the Superintendent of Insurance should consider reinsurance agreements as “policies.” A reinsurance agreement has been defined as a contract whereby one for a consideration agrees to indemnify another wholly or partially against loss or liability by reason of a risk that the latter has

assumed under a separate and distinct contract as insurer of a third party. *Stikel v. Express Insurance Co. of America*, 136 Ohio St., 49. A policy of life insurance on the other hand is not a contract of indemnity. 30 Ohio Jurisprudence, 2d, 45, Insurance, Section 5. Thus, by strict construction of words only, one could argue that a contract of reinsurance, not being of the same nature as a policy of life insurance, is not included within the meaning of the term "policies" as used in Section 3905.26 (B) (1), *supra*. However, we must, in construing said term, consider the provisions of that section as being in *pari materia* with the provisions of Section 3903.36, Revised Code.

The duty impressed by Section 3903.36, Revised Code, is a duty to value reserves and there can be no doubt that the Superintendent of Insurance in order to fully comply with this duty must value the reserves which a company has established both for policies of life insurance and for contracts of reinsurance, if any, which affect said policies. To do one without the other would be the performance of a useless or vain act. From the performance of this function runs the right to collect the fee involved herein. I therefore must conclude that the intention of the legislature was that the fee to be charged would be based on the amount of all life insurance business in force for which the reserves must be valued.

Furthermore, you have pointed out in your request that the administrative interpretation of these two laws has been such as to indicate that the term "policies" as used in Section 3905.26, *supra*, includes all contracts dealing with life insurance upon which the Superintendent is required to value reserves of a company regardless of whether said contracts are, strictly speaking, policies of life insurance or contracts of reinsurance. In cases of doubt, longstanding administrative interpretation of a statute are given consideration as an aid in determining the meaning thereof. In this respect your attention is called to the case of *State, ex rel. Automobile Machine Co. v. Brown*, 121 Ohio St., 73, wherein the Supreme Court of Ohio said beginning at page 75 :

"It has been held in this state that 'administrative interpretation of a given law, while not conclusive, is, if long continued, to be reckoned with most seriously and is not to be disregarded and set aside unless judicial construction makes it imperative so to do.' *Industrial Commission v. Brown*, 92 Ohio St. 309, 311, 110 N.E. 744, 745 (L.R.A. 1916 B, 1277). See also 36 Cyc. 1140 and 25 Ruling Case Law, 1043, and cases cited."

Accordingly, it is my opinion and you are advised that Sections 3903.36 and 3905.26, Revised Code, are in *pari materia* and should be construed together; and the fee imposed by the latter section should be calculated according to the dollar value of all contracts relating to life insurance for which reserve values are calculated pursuant to Section 3903.36, Revised Code, regardless of whether said contracts are policies of life insurance or contracts of reinsurance.

Respectfully,

MARK McELROY

Attorney General