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1. INSURANCE COMPANY — FIRE — COMPANY, MEMBER OF RATING BUREAU, WHERE PREMIUMS PAID AT INCEPTION DATE OF POLICY MAY EFFECT A PLAN TO COLLECT PREMIUMS ON FIRE RISKS WHERE TOTAL OF INSTALLMENT PREMIUMS EQUALS OR IS MORE THAN SHORT RATE EARNED PREMIUM FOR TIME POLICY HAS BEEN IN EFFECT — NOTICE OF PLAN MUST BE FILED WITH SUPERINTENDENT OF INSURANCE AND RATING BUREAU PURSUANT TO SECTION 9592-9 GENERAL CODE.

2. NOTE TO PAY PREMIUM ON FIRE INSURANCE POLICY DOES NOT CONSTITUTE INVESTMENT — SECTIONS 9518, 9519, 9607-11 GENERAL CODE.

3. INSURANCE COMPANY, FOREIGN STATE OR FOREIGN COUNTRY, DOING FIRE INSURANCE BUSINESS IN OHIO, DOES NOT ENGAGE IN BANKING BUSINESS WHERE IT TAKES A NOTE FROM POLICY HOLDER TO PAY INSURANCE PREMIUM.

SYLLABUS:

1. *A fire insurance company engaged in the business of insuring property in Ohio against loss or damage by fire, which is a member of a rating bureau, the rules of which bureau provide for the payment of premiums at the inception date of the policy and do not provide for the payment of premiums in installments during the term of the policy, may put into effect in this State a plan whereby it collects premiums on policies insuring against such risks where the total of such installment premiums at all times equals or is more than the short rate earned premium for the time such policy has been in effect, provided such company files notice of such plan with the Superintendent of Insurance and the rating bureau of which it is a member pursuant to the provisions of Section* 9592-9, *General Code.*

2. *A note taken by an insurance company authorized to carry on the business of fire insurance in this State from one of its policyholders for the premium on such policy does not constitute an investment within the meaning of the term as used in Sections* 9518, 9519 *and* 9607-11, *General Code.*

3. *If an insurance company organized under the laws of another state or of a foreign country which is authorized to carry on the business of fire insurance in this State, takes a note from one of its policyholders for the premium on such policy, such company does not thereby engage in the banking business within the meaning of Section* 9559, *General Code.*

Columbus, Ohio, November 28, 1941.

Hon. John A. Lloyd, Superintendent of Insurance,
Columbus, Ohio.

Dear Sir:

Your recent request for my opinon is as follows:

> "An authorized Ohio fire insurance company is a member of a rating bureau as required by Section 9592-1, O.G.C. The rating bureau in question is the Ohio Inspection Bureau, 431 East Broad Street, Columbus, Ohio and the company in question belongs to it for practically all classes of risks.
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> The fire insurance rates and schedules of rates as fixed by

said rating bureau are made up on an annual basis. On most of the risks so rated, provision is made in the rating manual, as issued by said Bureau, for the writing of insurance for terms of longer than one year and up to five years in conformity with the following rule:

> 'All rates as published are annual rates unless otherwise stated.
>
> 'All classes of risks (including buildings and their contents) except those listed below, may (provided that the entire premium for such full term shall be due and payable at the inception date of the policy) be written for a term longer than one year at the following multiples of the annual rate after the application of such increments or such credits to the annual rate as may be provided in the rules:
>
> '2 years: 1¾ times the annual rate.
> 3 years: 2½ times the annual rate.
> 4 years: 3¼ times the annual rate.
> 5 years: 4 times the annual rate:
>
> 'Or in other words, the full annual rate for the first year plus 75% of the annual rate for each additional year or pro rata part thereof.'

May such authorized fire insurance company, in addition to issuing fire insurance policies for one year at the annual rates and policies for a term of years at reduced multiples of the annual rates, as provided for by the rules and rates of the rating bureau of which the company is a member, issue fire insurance policies in this state with provision therein for payment of the premium in installments, taking a note for the unpaid installments after deduction of the down payment and charging simple interest at the rate of 6% on the unpaid balance of the premium, or would this be contrary to the so-called rating bureau act with particular reference to Sections 9592-8, 9592-9, 9592-12, O.G.C., or the principles as announced in General Insurance Co. v. Bowen, 130 O.S. 82, or any other law, when there are no provisions in the rules and rates of said rating bureau for such installment collection and interest charge?

In connection with the plan, the following is the proposed form of endorsement to be attached to policies providing for installment collection:

> *'Installment Premium-Payment Endorsement*
> 'In consideration of the privilege of paying a portion of the premium for this policy in installments under a signed premium note, the named insured agrees that default in the payment of any installment specified in said note shall be deemed the named insured's request for immediate cancelation of this policy.

'All other terms and conditions of the policy not in conflict herewith remain unchanged.

'Attached to and forming a part of Policy No. ____ of the _____ Insurance Company of ____, Ohio.
'Issued at its _____ Agency.

'Date _____ _____ Agent.'

In connection with the proposed plan, the following is the form of note:

'Premium Note

'Date _____ Place _____
No. _____ $ _____

'For value received, I, we, or either of us, promise to pay to the order of the _____ Insurance Company of ____, Ohio $___ with interest from date at the rate of ___% per annum in lawful money of the United States at its office in ____, Ohio, as follows:

'Policy Number: _____

Policy Term: _____

Total Policy Premium	Total Amount due
Cash Down Payment	Number of Installments
Deferred Balance	Amount of Each
Interest (at 6%)	Installment Due Dates

'As collateral security for the payment of this note, the makers hereof hereby assign to the said company so much of the proceeds of any loss which may become payable under the policy, or, so much of any dividend declared on it, as may be necessary to pay in full any amount remaining due on this note at the time of such loss or declaration of dividend.

'It is understood and agreed that default in the payment of any installment provided for by this note shall be construed as a request by the makers hereof to immediately cancel the insurance policy described herein. Time is of the essence of this agreement.

'The makers hereof are privileged to pay any balance due in full on any installment date. If paid in full, the interest charge will be adjusted for the period of time during which installment payments were being made.

'Witness: _____

_____ _____,

(Agent for the Company)

Would an authorized Ohio fire insurance company be prohibited from following the proposed plan on the grounds that such premium notes would be investments and not authorized by Sections 9607-11, 9518 and 9519, O.G.C.?

If an authorized Ohio fire insurance company may follow such a plan, would authorized fire insurance companies of other states and nations be prohibited from engaging in such a plan by reason of the provisions of Section 9559, O.G.C., prohibiting such a company from engaging in banking business in connection with insurance?"

Sections 9592-1, et seq., General Code, commonly known as the rating bureau act, require each fire insurance company authorized to insure against loss or damage by fire or lightning in this state to maintain or be a member of a rating bureau. Each such rating bureau is required to "inspect every risk specifically rated by it upon schedule and make a written survey of such risk." Sections 9592-8, 9592-9, and 9592-12, General Code, which are part of the rating bureau act and to which you refer, 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 9592-9:

"Any deviation of any company or insurer from the schedule of rates established and maintained by the bureau which it maintains, or of which it is a member, shall be uniform in its application to all of the risks in the class for which the variation is made, and no such uniform deviation shall be made unless notice thereof shall be filed with the bureau of which the insurer is a member, and the superintendent of insurance of his state, at least fifteen days before such uniform variation is in effect, and schedules providing for such variation shall be filed with the rating bureau and the superintendent of insurance showing the amended basis rate and amended charges and credits and ap-

plication of the amended schedules to individual risks in the class affected."

Section 9592-12:

"No fire insurance company or any other insurer, and no rating bureau, or any representative of any fire insurance company or other insurer or rating bureau, shall enter into or act upon any agreement with regard to the making, fixing or collecting of any rate for fire insurance upon property within this state except in compliance with this act."

The first section above quoted prohibits unfair discrimination and the second prohibits any company from deviating from the schedule of rates established and maintained by the bureau of which it is a member unless notice thereof is given pursuant to the section. The third section is somewhat cumulative to the other two and prohibits an insurance company from entering into or acting upon any agreement with regard to the making, fixing or collecting of rates for fire insurance within this state except in compliance with the rating bureau act. I shall first consider whether the plan proposed amounts to a discrimination within the prohibition contained in Section 9592-8, General Code, supra.

In General Insurance Company v. Bowen, 130 O.S. 92, it appeared that the insurer had in operation a plan whereby a fire insurance policy was issued for a term of five years with a provision therein which enabled the insured to pay the premium annually and terminate the policy at the end of any year. The premium paid per year on such policy was less than that required of an insured who took out a policy of insurance running for one year only. The company also issued policies for a five-year term, the entire premium of which was payable in advance and which was the same in amount as the total installment of premiums collected on five-year policies above referred to. The court held that the deviation involved in such policy was not uniform as required by Section 9592-9, General Code, and that the charging of such rate constituted a discrimination within the meaning of Section 9592-8, General Code.

The court was of the opinion that such plan discriminated against the policyholder who took out a one-year contract of insurance, because such person was required to pay a higher rate than the person who took out the five-year contract payable in installments with the option to terminate the policy at the end of a year. The court observed that under such five-year policy the policyholder was in effect insured for only a

year at a time but paid a rate materially lower than the policyholder whose contract was to run for only a year. On the other hand, such a contract discriminated against the person who took out a five-year contract and paid the premium in advance because the amount charged was the same under both plans, but the one policyholder was required to pay the total premium in advance and at the beginning of the term, whereas the other policyholder paid it in five equal annual installments.

In your supplemental letter you submitted for my consideration additional information with respect to the proposed plan. In said letter the following statements are made by you:

> "On a three year policy where the total premium would be $1,000.00, at the end of one year the assured would have paid $538.24, which figure includes interest. In comparison, thereto, if the assured had purchased the policy for one year only he would have paid a premium of $400.00 in advance.
>
> On a five year policy where the total premium would be $1,000.00, at the end of the first year the assured would have paid $331.44, which figure includes interest. In comparison, thereto, if the assured had purchased the policy for one year only he would have paid a premium of $250.00 in advance."

Upon inquiry of your Division, I am advised that the company in question proposes to collect the premiums in monthly installments and that at all times the company will require the insured to have paid sufficient money in addition to the interest charge so that the company would have in possession the amount required to pay the short rate earned premium in the event cancellation should be necessary.

It appears therefore that the proposed plan is not subject to the vices which were considered and condemned in General Insurance Company v. Bowen, supra. The policyholder who elects to take a policy for three or five years, the premiums on which are payable in installments, will have paid more at the end of the first year than a policyholder who procures an annual policy on similar property in the same amount. On the other hand, because of the interest charge, such policyholder who procures a policy for a term of three or five years and elects to pay the premium thereon in installments pays more than a person who procures a policy for a similar term and pays the premium in advance. The plan therefore does not violate the rule laid down in General Insurance Company v. Bowen, supra.

Neither do I believe that the imposition of the interest charge violates the provisions of Sections 9592-8, General Code. This is merely an additional charge imposed by the insurer by reason of the insured's electing to pay his premium in installments rather than in a lump sum in advance. Public service corporations furnishing gas, electricity, water and the like quite frequently either allow discounts for the prompt payment of their bills rendered for services or exact an additional charge in case payment is not made before a certain date. These discounts or charges are by the great weight of authority considered not to be discriminatory. See State, ex rel. MacMahon, v. Independent Telephone Company, 59 Wash., 156, 109 Pac., 366, 31 L.R.A.(N.S.), 329; see also the note to this case in 31 L.R.A.(N.S.), at 329. Consequently, I am of the opinion that the proposed plan does not amount to a discrimination within the meaning of Section 9592-8, General Code, supra.

It is my understanding that the insurance company in question, which proposes to put into effect the plan outlined in your letter, has not and does not intend to file with its rating bureau and with you as Superintendent of Insurance notice of the proposed plan. It therefore becomes necessary for me to determine whether this plan amounts to a "deviation" from the schedule of rates established and maintained by the bureau of which it is a member. In other words, is a plan which permits the payment of the premium on a fire insurance policy in monthly installments, the unpaid portion thereof bearing interest, a deviation from a schedule of rates which provides for the payment of the premium at the inception date of the policy, or, to state the question in another way, is the time of payment prescribed in the schedule an essential, integral and component part of the rate set forth in such schedule? As has been noted heretofore, courts generally do not regard the imposition of an additional charge by a public service corporation because of failure to pay a bill promptly as discriminatory, nor, on the other hand, is the practice of allowing a discount for prompt payment condemned. There does not appear to be any reported judicial decisions in Ohio touching this question, but the Public Utilities Commission has approved this principle in Re Van Wert Home Telephone Company (1931), O.P.U.C.R., 46, and Re Citizens Telephone Company (1931), O.P.U.C.R., 11. Since it is a well established principle of law with respect to public service corporations that they may not unjustly discriminate in their charges, that is to say, they may not charge more or less than they collected from others for a like and contemporaneous

service under similar circumstances and conditions, the imposition of such extra charge or the allowance of such discount must be regarded as the fixing of an alternative rate available to such persons as may desire to take advantage of the terms thereof. In other words, the courts of other states and our Public Utilities Commission have regarded the time of payment as a part of the rate schedule to be charged for the service rendered.

An insurance company is not a public service corporation but the business of insurance is affected with the public interest and, in so far as your question is concerned with respect to rates, the same legal principle should govern. The rules of the rating bureau do not provide for the payment of premiums other than at the inception date of the policy and, consequently, I am of the opinion that the proposed plan of monthly installment payment of fire insurance premiums should be regarded as a deviation from the schedule of rates prescribed by the rating bureau. Such deviation can be legally effected only if notice thereof is given pursuant to the provisions of Section 9592-9, General Code.

You further ask whether the receipt of notes by an Ohio fire insurance company would be prohibited by law for the reason that such premium notes would be investments not authorized by Sections 9607-11, 9518 and 9519, General Code. While it is true that premium notes are not enumerated in these sections as investments which fire insurance companies are authorized to make, I do not believe that it was the intent of the General Assembly by enacting these sections to prohibit a fire insurance company from taking premium notes. Your attention is invited to the provisions of Sections 9575, 9577, 9578,9579,9580 and 9581, General Code. In each of these sections, except Section 9578, General Code, the General Assembly has used the expression "premium notes" and the six sections in their entirety recognize that premium notes may be taken in payment of fire insurance policies and regulate the method of carrying on such transactions. In this connection, it is interesting to note that Section 9581, General Code, provides that any such premium note must contain on its face the following words "it is hereby understood and agreed that this note is not transferable." The form of note proposed to be used by the company in question does not contain this language.

Since the General Assembly has by the enactment of these sections recognized the legality of the practice of taking notes in payment of the premium on fire insurance policies and has regulated such practice, it must

not have intended that such notes should be regarded as investments within the meaning of the sections to which you refer.

These same sections to which I have referred and which recognize the legality of premium notes are also applicable to insurance companies organized under the laws of another state or of a foreign country which do business in this state and for the same reason that I do not regard such notes as investments I would not regard the taking thereof by such foreign or alien company as engaging in the banking business.

To construe the receipt of these notes as an unauthorized investment on the part of domestic companies and as engaging in the banking business on the part of other companies would render useless and unnecessary the provisions of law to which I have referred. By their enactment the legislature very definitely indicated that it did not regard the taking of premium notes by any class of fire insurance company as being prohibited by our laws.

Respectfully,

THOMAS J. HERBERT,

Attorney General.