

OPINION NO. 69-022**Syllabus:**

A title guarantee and trust company organized under the general corporation laws of Ohio prior to August 6, 1941, as a corporation for profit for the purposes stated in Section 1735.01, Revised Code, which is authorized to insure titles to real estate pursuant to the last paragraph of Section 3929.01, Revised Code, is not required by law nor authorized by law to file the annual reports referred to in Sections 5725.18 and 5725.21, Revised Code, with the Superintendent of Insurance and is therefore not subject to the annual tax on the privilege of being an insurance company.

To: G. W. Porterfield, Ohio Tax Commissioner, Columbus, Ohio
By: Paul W. Brown, Attorney General, March 4, 1969

Your request for my opinion asks whether title guarantee and trust companies which are by law authorized to issue title insurance would be subject to the Ohio franchise tax (Chapter 5733, Revised Code) and either the personal property tax (Chapter 5711, Revised Code) or the tax upon dealers in intangibles (Sections 5725.13 through 5725.17, Revised Code) or whether said companies would be subject to the annual franchise tax on the privilege of being an insurance company (Sections 5725.18 through 5725.25, Revised Code). You indicate that this question is prompted by the enactment of Amended Senate Bill No. 224 (132 Ohio Laws S 224) pertaining to the regulation of the business of title insurance and title insurance companies by the Superintendent of Insurance of Ohio.

By subsequent communications, you have furnished me with the names of the seven companies whose tax status is in issue, and I have before me copies of the articles of incorporation together with all amendments thereto for each of them, the originals of which are on file with the Secretary of State. All of these title guarantee and trust companies are corporations for profit organized prior to August 6, 1941, under the general corporation laws of Ohio.

Section 1735.01, Revised Code, formerly Section 9850, General Code, reads as follows:

"A title guarantee and trust company may prepare and furnish abstracts and certificates of title to real estate, and bonds, mortgages, and other securities; guarantee such titles, the validity and the due execution of such securities, and the performance of contracts incident thereto; make loans for itself or as agent or trustee for others, and guarantee the collection of interest and principal of such loans; take charge of, and sell, mortgage, rent, or otherwise dispose of, real estate for others, and perform all the duties of an agent relative to property deeded or otherwise entrusted to it."

An examination of the articles and amendments thereto for

these seven companies reveals that the purpose clause of each of the companies is substantially in the language of Section 1735.01, Revised Code, and its predecessor, Section 9850, General Code.

In 1953, the then Superintendent of Insurance inquired of the then Attorney General whether title guarantee and trust companies, as distinguished from title insurance companies, were under the supervision of the Superintendent of Insurance and in Opinion No. 3008, Opinions of the Attorney General for 1953, page 397, it was determined that they were not. The first branch of the syllabus in Opinion 3008 reads as follows:

"1. Title guarantee and trust companies, formed under the provisions of Section 9850 et seq., General Code, Section 1735.01, R.C., prior to August 6, 1941, which insure titles to property in this state against loss by reason of defects, encumbrances or other matters, and insure the correctness of searches for instruments, liens, charges or other matters affecting the title to property within this state, are not under the supervision of the superintendent of insurance in the same manner as title insurance companies formed under Section 9510, paragraph 5, General Code, Section 3939.01 (sic), R.C., in so far as the insuring and/or guaranteeing of titles and the insuring and/or guaranteeing the correctness of searches are concerned."

The then Attorney General made a comprehensive analysis of how title guarantee and trust companies evolved into the title insuring field, beginning on page 399 and continuing through page 404, and being in accord therewith, I will direct your attention thereto.

In regard to the taxation of title guarantee and trust companies, it was observed, on page 404:

"Certain other considerations merit mention with respect to the question regarding supervision of title guarantee and trust companies which write title insurance. Title guarantee and trust companies have always paid only the general corporation franchise tax provided for in Section 5495, General Code, Section 5733.01, R.C. Domestic insurance companies pay an annual franchise tax upon the privilege of 'being an insurance company' pursuant to Sections 5414-8 and 5414-9, General Code, Sections 5725.01 and 5725.18 R.C. Although the statutory definition of 'insurance company' accompanying these latter sections might conceivably be held broad enough to include a title guarantee and trust company writing contracts of title insurance, it should be recognized that no provision has been made in the code requiring annual statements to be filed by title guarantee and trust companies with the superintendent of insurance. Since title guarantee and trust companies are not required to file annual statements with the insurance division

there is nothing from which the division might compute the annual franchise tax levied upon domestic insurance companies. This is in contrast with title insurance companies, organized or admitted under Section 9510, General Code, which are required to file reports with the division, pursuant to Section 0561-1 (sic), General Code, Section 3929.12, R.C."

In conjunction with the above-quoted language, it should be noted that Section 5725.21, Revised Code, pertaining to the annual franchise tax on the privilege of being an insurance company (Sections 5725.18 through 5725.25, Revised Code), reads in pertinent part:

"Sections 5725.18 to 5725.21, inclusive, and 5725.25 of the Revised Code do not apply to any other domestic insurance company which is not required by law, or by election made pursuant to law, to file annual reports with the superintendent* * *"

The annual report for insurance companies formed under Section 3929.01, Revised Code, which includes title insurance companies (division (E) of Section 3929.01, Revised Code), is required by Section 3929.30 et seq., Revised Code, formerly Section 9590 et seq., General Code. The then Attorney General was in error in referring to the sworn statement required of title insurance companies (Section 3929.12, Revised Code, formerly Section 9561-1, General Code) for the purpose of computing reserve deposits as being the annual report. In respect to insurance companies formed under Section 3929.01, Revised Code, the annual report from which the alternative bases for the domestic insurance franchise tax are computed pursuant to Section 5725.18, Revised Code, is the report required by Section 3929.30, Revised Code. It is this report which supplies all of the information from which the tax bases are calculated. The sworn statement previously required of title insurance companies (Section 3929.12, Revised Code, repealed effective December 12, 1967 by Amended Senate Bill No. 224, 132 Ohio Laws S 224) could not have been used for the purpose of determining the franchise tax bases because, though it showed title insurance premiums received during the year, it did not show the admitted and nonadmitted assets, liabilities and reserves of the title insurance company.

By the enactment of Amended Senate Bill No. 224, supra, Section 1109.31, Revised Code, was amended, effective January 2, 1968, to read as follows:

"Title guaranty and trust companies shall make such reports to the superintendent of banks as are required to be made by trust companies to the superintendent of banks, and shall be subject to the examinations, fees, and forfeitures to which trust companies are subject, such examinations to be made by, and such fees and forfeitures assessed by and paid to, the superintendent of banks; provided that any title guaranty and trust company or title guaranty company whose business function is the issuance of title insurance as defined in section 3953.01 of the Revised Code, shall, in-

sofar as the issuance of such title insurance is concerned, be under the supervision of the superintendent of insurance as provided in sections 3901.07 and 3953.01 to 3953.28, inclusive, of the Revised Code."

and Sections 3953.01 through 3953.28 of the Revised Code were enacted, effective December 12, 1967, for the purpose of supervising and regulating the business of title insurance and title insurance companies. As can be seen from a reading of the definition of "Title insurance," "The business of title insurance" and "Title insurance company" appearing in divisions (A), (B) and (C), respectively, of Section 3953.01, Revised Code, no distinction is made between a title insuring company and a title guaranteeing company for the purpose of regulation and supervision. However, a thorough examination of the amendments and all of the enactments contained within the bill fails to disclose the requirement therein that a title guarantee and trust company, formed under Chapter 1735, Revised Code, file an annual report with the Superintendent of Insurance comparable to that required by Section 3929.30, Revised Code, of title insurance companies formed under division (E) of Section 3929.01, Revised Code. Nor do I find any statutory provision therein authorizing a title guarantee and trust company to elect to file an annual report comparable to the report required by Section 3929.30, Revised Code, with the Superintendent of Insurance.

Accordingly, giving effect to the exclusionary language contained in Section 5725.21, Revised Code, and the absence of any statutory requirement or authority that a title guarantee and trust company file or elect to file an annual report of its admitted and nonadmitted assets, liabilities and reserves with the Superintendent of Insurance, I must conclude that title guarantee and trust companies formed under Chapter 1735, Revised Code, though under the supervision of the Superintendent of Insurance, are not subject to the annual franchise tax on the privilege of being an insurance company provided by Sections 5725.18 through 5725.25, Revised Code.

Therefore, it is my opinion and you are hereby advised that a title guarantee and trust company organized under the general corporation laws of Ohio prior to August 6, 1941, as a corporation for profit for the purposes stated in Section 1735.01, Revised Code, which is authorized to insure titles to real estate pursuant to the last paragraph of Section 3929.01, Revised Code, is not required by law nor authorized by law to file the annual reports referred to in Sections 5725.18 and 5725.21, Revised Code, with the Superintendent of Insurance and is therefore not subject to the annual tax on the privilege of being an insurance company.