

sewage treatment works bonds in the aggregate amount of \$485,000 of an authorized amount of \$2,720,000, dated February 1, 1936, as of December 15, 1933, bearing interest at the rate of  $2\frac{3}{4}\%$  per annum.

From this examination, in the light of the law under authority of which these bonds have been authorized, I am of the opinion that bonds issued under these proceedings constitute a valid and legal obligation of said city.

Respectfully,

HERBERT S. DUFFY,

*Attorney General.*

775.

FOREIGN INSURANCE COMPANY—WITHDRAWAL OF DEPOSIT—EXTINGUISHMENT OF OBLIGATION AND LIABILITY—SUPERINTENDENT OF INSURANCE.

*SYLLABUS:*

*Where a foreign insurance company making a deposit of \$50,000 in this state as required by Section 9510, General Code, desires to withdraw this deposit, the Superintendent of Insurance under the provisions of Section 9510-10 General Code, is required to be satisfied that all obligations and liabilities existing at the time he accepts a certificate of the Superintendent of Insurance or other officer of the state where the foreign insurance company is incorporated that a deposit of \$100,000 as required by Section 9510-7, General Code, is made, are paid and extinguished.*

COLUMBUS, OHIO, June 23, 1937.

HON. ROBERT L. BOWEN, *Superintendent of Insurance, Columbus, Ohio.*

DEAR SIR: I received your letter of recent date, which reads as follows:

“Pursuant to the provisions of Section 9510, G. C., numerous foreign companies licensed by this Division have severally on deposit in Ohio for the benefit and security of all their policyholders \$50,000 in bonds, which, in most instances, were deposited prior to July 5, 1923. Respectfully referring you to Section 9510-7, which law became effective on the above mentioned date, and provides that companies having such deposit, upon certain

conditions, may exercise the alternative of withdrawing such Ohio deposit pursuant to the terms outlined in said Section 9510-7, G. C.

Referring you further to Section 9510-10, G. C., you will note that such deposits may be withdrawn when the Superintendent of insurance is satisfied and shall certify that all obligations and liabilities which the deposit was made to secure have been paid or extinguished.

In administering the provisions of these statutes, I am confronted with a serious question involving the interpretation of Section 9510, G. C., wherein the specific language of said section states, in part, that such withdrawal may be made when the Superintendent is satisfied and shall certify that all the obligations and liabilities which the deposit was made to secure have been paid or extinguished.'

We respectfully request your opinion as to what obligations and liabilities of the company the Superintendent should consider in determining whether or not they are paid or extinguished. Are they obligations and liabilities existing at the time of the effective date of Section 9510-7, G. C., or the obligations and liabilities in existence at the time the company makes application for such withdrawal, or should the Superintendent consider the obligations and liabilities outstanding on some date other than either of the above? If so, what date governs?"

The portions of Section 9510, General Code, material to this opinion reads as follows:

"A company may be organized or admitted under this chapter to—

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2. \* \* \* make insurance to indemnify employers against loss or damage for personal injury or death resulting from accidents to employes or persons other than employes and to indemnify persons and corporations other than employers against loss or damage for personal injury or death resulting from accidents to other persons or corporations. But a company of another state, territory, district or country admitted to transact the business of indemnifying employers and others, in addition to any other deposit required by other laws of this state, shall deposit with the superintendent of insurance for the benefit and security of all its policy holders, fifty thousand dollars in bonds of the United States or of the State of Ohio, or of a

county, township, city or other municipality in this state, which shall not be received by the superintendent at a rate above their par value. The securities so deposited may be exchanged from time to time for other securities. So long as such company continues solvent and complies with the laws of this state it shall be permitted by the superintendent to collect the interest on such deposits.

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It is apparent from a reading of the above section the deposit of \$50,000 in bonds is made with the Superintendent of Insurance "for the benefit and security of all its policyholders." The question as to whether or not the deposit required by the above section was for the protection of all policyholders of the company irrespective of the state wherein such policies may have been issued or for the protection of Ohio policyholders was determined in the case of *State, ex rel. Turner vs. Union Casualty Insurance Co.*, 8 O. App. 285, where it was held as disclosed by the first and third branch of the syllabus:

"1. A fund deposited with the Superintendent of insurance of the State of Ohio, as required by Section 9510, General Code, should be administered by the superintendent and distributed directly to the policyholders entitled to share therein.

3. Such deposit is required to be held for the primary benefit of Ohio policyholders."

The legislature in 1923 enacted Section 9510-7 and 9510-10, General Code, which read as follows:

Section 9510-7.

"An insurance company which is required by the provisions of paragraph two of Sec. 9510, General Code, to deposit fifty thousand dollars of bonds with the superintendent of insurance may, in lieu of such deposit, make a deposit of one hundred thousand dollars, in securities in which the company may be permitted to invest its assets by the laws of the state in which it is incorporated, with the superintendent of insurance or other officer of another state designated or permitted by the laws of such state to receive such deposit, for the benefit and security of all its policyholders. When the superintendent of insurance of this state is satisfied by the certificate of such superintendent of insurance or other officer of such other state that such deposit has been made as provided herein, he shall accept such

certificate in lieu of the deposit required of such company by paragraph two of Section 9510, General Code, and such company shall not then be required to maintain the deposit in this state provided for in said paragraph two of Section 9510."

Sec. 9510-10.

"Any deposit so made may be withdrawn by the company when the superintendent, upon examination of the books of the company and affidavits of its principal officers and other evidence, is satisfied and shall certify that all the obligations and liabilities which the deposit was made to secure have been paid or extinguished."

The purpose of the above sections is, as evidenced by the title of the act, 110 O. L. 3., "To provide that an insurance company required by Section 9510, General Code, to deposit \$50,000 of bonds in this state may, in lieu thereof, deposit \$100,000 in its own state.\* \* \*."

The intention of Section 9510, supra, is, as determined by the Court of Appeals, to primarily protect Ohio policyholders. It would appear on its face that a construction similar to the one given by the Court of Appeals in the case of *Turner vs. Union Casualty Insurance Company*, supra, should be given to the language "for the benefit and security of all its policyholders" as used in Section 9510-7, supra, for it might be argued that the object to which the clause "for the benefit and security of all of its policyholders" is applied or the connection in which it is used does not require that clause to be differently construed in the two sections.

However, an examination of the opinion in the case of *Turner vs. Union Casualty Insurance Company*, supra, indicates that the court considered Sections 641, 642, 643 and 656, General Code, together with Section 9510, General Code, and by reason of the provisions of Sections 641, 642, 643 and 656, General Code, which applied to the Ohio deposit required by Section 9510 construed "for the benefit and security of all its policyholders" to mean policyholders in this state. These sections, however, do not apply to deposits provided for in Section 9510-7, supra, which are made in other states. Since the reasons which caused the court to construe the language in Section 9510, supra, to mean Ohio policyholders do not exist with reference to the use of that language in Section 9510-7, supra, it would seem that the language "for the benefit and security of all of its policyholders" as used in Section 9510-7 means what it says, namely, for the benefit of policyholders wherever located. A further reason which impels the conclusion that the deposit provided

for in Section 9510-7 is for the benefit of *all* policyholders is that since the enactment of this section in 1923 the practice of the Department of Insurance was to require a foreign corporation to make a general deposit for the benefit of all policyholders in the state of its incorporation rather than a special deposit for the benefit of Ohio policyholders. It is well settled in this state that an administrative interpretation of a law, while not conclusive, is not to be disregarded and set aside unless judicial construction make it necessary so to do. *Industrial Commission vs. Brown*, 92 O. S. 309.

It is my opinion, in view of the above, that the deposit provided for in Section 9510-7 by a foreign corporation doing business in this state is a general deposit for the benefit and security of all the policyholders of the corporation wherever located.

The first step, therefore, to be taken by a foreign insurance company which desires to withdraw the \$50,000 on deposit in this state is to make a deposit of \$100,000 with the Superintendent of Insurance or other officer in securities in which the company may be permitted to invest its assets by the laws of the state in which it is incorporated for the benefit and security of all policyholders. Having thus made the deposit, the company is then required to submit a certificate of the Superintendent of Insurance or other officer of the state wherein the deposit has been made showing that such deposit has been made as provided in Section 9510-7, *supra*. When the Superintendent of Insurance is satisfied by the certificate that the deposit has been made for the benefit and security of all policyholders, he is then permitted to accept such certificate in lieu of the \$50,000 deposit in this state.

The Superintendent of Insurance, however, has certain duties to perform before he permits the withdrawal of the Ohio deposit by the company. He is required to be satisfied upon examination of the books of the company and affidavits of its principal officers and other evidence that all the obligations and liabilities which the deposit was made to secure have been paid or extinguished.

The Supreme Court of Ohio in the case of *Van Schaick vs. Bowen*, 131 O. S., 310, held as disclosed by the syllabus:

1. Section 9510-7, and 9510-10, General Code, relative to deposit of securities by foreign insurance companies, being parts of the same act, must be construed together in determining the duty of the Superintendent of Insurance of Ohio to release a deposit of security made with him by a foreign insurance company prior to the enactment of such sections.

2. A deposit of securities made by a foreign insurance company with the Superintendent of Insurance of Ohio con-

stitutes a trust fund for the benefit of its Ohio policyholders and bond obligees; and under Sections 9510-7 and 510-10, General Code, the Superintendent of Insurance owes no duty to return such deposit until he is satisfied upon examination of the books of the company and affidavits of its principal officers and other evidence, that all of the obligations and liabilities which the deposit was made to secure have first been paid or extinguished."

The question as to whether or not Sections 9510-7 to 9510-10, inclusive, apply to insurance companies doing business in Ohio prior to the effective date of these sections was determined by the Supreme Court in the case of *Continental Casualty Co. vs. Safford*, 117 O. S. 412. In this case, the Superintendent of Insurance contended that the above sections were not effective to relieve companies doing business in this state at the time the law became effective of the obligation to maintain a deposit in Ohio. The court in this case at page 418 said:

"The newly enacted statutes (Sections 9510-7 to 9510-10, inclusive) apply to companies which hereafter may make such deposits and to companies now maintaining such deposits made in the State of Ohio prior to the enactment of March 22, 1923."

The court in this case did not decide the question as to what obligations and liabilities of the company the Superintendent should consider in determining whether or not they are paid or extinguished.

In the case of *Van Shaick vs. Borwen*, supra, the court did determine, however, that while the Ohio deposit was required to be maintained, all unextinguished obligations against the company were protected by the Ohio deposit even though such obligations arose subsequent to the effective date of Section 9510-7. The court at page 317 said:

"The Superintendent of Insurance, however, justifiably contends that since the company was unable to satisfy him that the liabilities for which the deposit was to serve as security were extinguished, it became obligatory for the deposit to remain in effect and that so long as under these circumstances the deposit was required to be maintained, all Ohio policyholders whose claims arose subsequent to the above mentioned enactment and while the deposit was maintained, dealt and contracted with the insurance company in reliance upon the deposit as security, and that their unextinguished claims against the company are therefore likewise claims against this deposit;

that under the circumstances the deposit cannot be released until all of these claims, after they shall have first been established according to law, are paid or extinguished.

We are of the opinion that under Section 9510-10, General Code, respondent owes no duty to return the deposit until he is 'satisfied' that all of the obligations and liabilities which the deposit was made to secure have first been paid or extinguished." (Italics the writer's.)

All Ohio policyholders whose policies were issued while the Ohio deposit was required to be maintained contracted with the insurance company in reliance upon the deposit as security and by reason thereof all claims or obligations arising while the Ohio deposit was required to be maintained are claims against this deposit and such deposit cannot be released until such claims are paid or extinguished. It is necessary, therefore, to determine when the Ohio deposit is no longer required to be maintained, for it is quite apparent that the policyholders whose policies were issued when the Ohio deposit was no longer required would have no claim on such deposit.

Section 9510-7, *supra*, further provides that when the Superintendent accepts the certificate in lieu of the Ohio deposit "such company accepts the certificate are the ones to be considered by him before he shall not *then* be required to maintain the deposit in this state \* \*." The deposit in Ohio, therefore, is required to be maintained for the benefit of Ohio policyholders until such time as the Superintendent of Insurance is satisfied by a certificate of the Superintendent of Insurance or other officer of the foreign state that a deposit has been made in another state and accepts the certificate in lieu of the Ohio deposit.

It is to be noted that Section 9510-7 fixes the acceptance by the Superintendent of Insurance of Ohio of the certificate issued by the Superintendent of Insurance or other officer of a foreign state as the time when the foreign insurance company is no longer required to maintain the Ohio deposit. It would seem, therefore, that the claims and obligations existing at the time the Superintendent of Insurance releases the Ohio deposit and when he is satisfied that such claims and obligations are paid or extinguished he may then permit the foreign corporation to withdraw the Ohio deposit.

Specifically answering your question, I am of the opinion that where a foreign insurance company making a deposit of \$50,000 in this state as required by Section 9510, General Code, desires to withdraw this deposit, the Superintendent of Insurance under the provisions of Section 9510-10, General Code, is required to be satisfied that all obligations and liabilities existing at the time he accepts a certificate of the

Superintendent of Insurance or other officer of the state where the foreign insurance company is incorporated that a deposit of \$100,000 as required by Section 9510-7, General Code, is made, are paid and extinguished.

Respectfully,

HERBERT S. DUFFY,  
*Attorney General.*

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776.

PRINTING ON ENVELOPES FOR LICENSE PLATES MAY  
NOT BE DONE AT OHIO PENITENTIARY OR OHIO STATE  
REFORMATORY.

*SYLLABUS:*

*The printing on the envelopes used to contain motor vehicle license plates may not, in view of the provisions of Section 2205, General Code, be done and performed within the Ohio penitentiary at Columbus or the Ohio State reformatory at Mansfield, Ohio.*

COLUMBUS, OHIO, June 23, 1937.

HON. MARGARET M. ALLMAN, *Director, Department of Public Welfare, Columbus, Ohio.*

DEAR MADAM: Your letter of recent date is as follows:

"Would you kindly render an opinion on the following matter?

On the 28th day of March, 1935, there was filed in the office of the Secretary of State, Columbus, Ohio, Amended S. B. 41, which in substance stated that the Ohio Penitentiary could only be permitted to do such printing as would be used at the Penitentiary, the Ohio State Reformatory at Mansfield, or the State Department of Public Welfare. At the present time the Division of Manufacturing and Sales, which is a division of the Welfare Department, carrying on certain industries within the Penitentiary in the manufacture of automobile tags, requires an envelope with certain printed matter thereon to further the sale of the tags.

In other words, the automobile tags could not be sold without having them encased in some kind of a paper receptacle.