1903

GROUP LIFE INSURANCE—UNDER SECTION 9426-2 G. C. UNLAWFUL FOR INSURANCE COMPANY AUTHORIZED TO TRANSACT BUSINESS IN OHIO TO MAKE GROUP LIFE INSURANCE CONTRACT COVERING GROUP IN THIS STATE UNLESS GROUP QUALIFIES AS SUCH UNDER OHIO GROUP INSURANCE LAW—CONTRACT INVOLVED WAS APPLIED FOR AND DELIVERED IN ANOTHER STATE—SECTION 9426-1 ET SEQ., G. C.

SYLLABUS:

Under Section 9426-2, General Code, it is unlawful for an insurance company authorized to transact such business in Ohio to make a group life insurance contract covering a group in this state unless the group covered qualifies as such under the Ohio group insurance law (Section 9426-1, et seq., General Code), even though the contract involved was applied for and delivered in another state.

Columbus, Ohio, June 19, 1950

Hon. Walter A. Robinson, Superintendent of Insurance
Columbus, Ohio

Dear Sir:

Your request for my opinion reads as follows:

"A life insurance company organized under the laws of another state and authorized to do life insurance business in the state of Ohio has issued to a national retailers' equipment association, which maintains general offices in Missouri and which has member retailers in Ohio, a group life insurance policy under which the members of the retail association located in Ohio, their employes and dependents are eligible for life insurance. Section 9426-1 of the General Code of Ohio does not appear to describe any form of group life insurance under which the retail members, their employes and dependents would be eligible for group life insurance. Section 9426-2 in part provides as follows: 'Except as provided in this act it shall be unlawful to make a contract of life insurance covering a group in this state.' The insurance company which has written the policy under which Ohio residents will be insured on the group plan states that the group policy was applied for and delivered in the State of Missouri.

"I will appreciate receiving your opinion as to whether the insurance company under such circumstances may enter into such a contract insuring the lives of residents of this state."

The clear purpose and intent of the provision in Section 9426-2, General Code, which you quote, is to prohibit the writing of a group life insurance contract "covering a group in this state" unless the group covered qualifies as such under the Ohio group insurance law. (Section 9426-1, General Code, et seq.) In the situation you present, a foreign life insurance company authorized to transact such business in Ohio has issued and delivered outside this state a master group life insurance contract, the benefits of which are being offered to associated groups in Ohio. The Ohio groups eligible for benefits under the master contract do not fall within any of the authorized groups under the Ohio group life insurance law. It is therefore apparent on its face that the contract is illegal in its application to groups within the state of Ohio unless it is found Ohio law cannot affect contracts negotiated, issued and delivered outside this state even though they cover persons within the state.

An analogous situation was before the Supreme Court of Ohio in State, ex rel. The European Accident Insurance Co., v. Tomlinson, Superintendent of Insurance, 101 O. S. 459. In that case, the plaintiff, an alien insurance company, was licensed to transact certain classes of insurance, not including liability insurance, in Ohio. The alien insurance company made a contract outside Ohio with a foreign insurance company, which was authorized to write liability insurance here, whereby the alien company agreed to reinsure a portion of the liability risks of the foreign company incurred in this state. Such reinsurance contracts were forbidden under Ohio law unless the reinsurer qualified under our law to write liability insurance. On the basis of these facts, the then Superintendent of Insurance revoked the insurance license of the alien company. The company brought an action in mandamus to compel the Superintendent to issue the license which had been revoked. The Ohio Supreme Court upheld the action of the Superintendent of Insurance, reasoning as follows at pp. 465-6:

> "* * * Since the making of contracts for reinsurance is conceded, the fact that such contracts were made in a foreign state by an alien company with other companies actually admitted to make liability insurance in Ohio does not remove the ban of the statute, for the quoted section applies to all companies whether organized in this state or elsewhere.
>
> "We do not have the situation arising in the reported case of *Allgeyer* v. *Louisiana,* 165 U. S., 578. If it be conceded that the state might not interfere with an insurance contract made in a

> foreign state by a foreign company, *non constat* that the state may not impose conditions under which such foreign or alien company may be permitted to do insurance business in Ohio. We have not the question of contract before us. In that respect nothing is claimed. The state simply says, in effect, 'you must comply with our laws, if you seek a license to do insurance business here.' While the relator, flaunting its violation of law, answers, 'you must license my casualty and bonding business, if I do violate your law in other fields of insurance.' We have for consideration the question of license only. There is no inherent right for license existing in favor of the relator. That is granted by favor of the state and only upon conditions which the state imposes.
>
> "* * * (Citing Doyle v. Continental Ins. Co., 94 U. S., 535.) * * *"

The federal courts have indicated concurrence in the views expressed by the Supreme Court of Ohio with respect to application of Ohio laws to insurance contracts negotiated, issued and delivered outside this state covering persons or property situated here. Palmetto Fire Ins. Co. v. Conn, Superintendent, 9 F (2d) 202, is a case involving interpretation and application of Ohio law by a three judge federal court. In that action the foreign insurance company attempted to restrain the Superintendent of Insurance from revoking its license to do business in Ohio, and from interfering with the operation and carrying out of a certain contract between it and the Chrysler Sales Corp., a Michigan corporation. Under the contract the insurance company agreed to issue certificates of insurance to purchasers of Chrysler cars, wherever sold. The Chrysler Co., through its dealers, agreed to collect the premiums for the insurance. The Superintendent claimed that plaintiff, through the contract, was violating Section 5438, General Code, which prohibited an insurance company authorized to transact business in Ohio from writing or placing insurance on property in this state, except through a legally authorized agent here. The three judge federal court refused the request for an injunction, and held as follows:

> "While this section is in furtherance of the state's taxing policy, it is nevertheless a valid provision, with which the plaintiff must comply in order to do business in Ohio. If it were conceded that these special policies of insurance issued to the Ohio purchasers of cars, the premium on which he pays to the Ohio dealer to reimburse him for the amount he paid to the Chrysler Company when he purchased the car from Chrysler are Michigan contracts, nevertheless it is a violation of the law of

Ohio, which fixes the terms and conditions upon which the plaintiff may do business in Ohio.

> "This, of course, does not affect the question of the right of a citizen of Ohio to buy insurance where he pleases and from whom he pleases, nor does it affect the right of a foreign insurance company to sell to a citizen of Ohio a Michigan contract of insurance; but, on the other hand, it does prevent an insurance company, who has been admitted to do an insurance business in Ohio, from issuing policies upon property in Ohio upon any other terms or conditions than as named in the statute. In other words, it may not accept the benefits of the right and privilege of doing an insurance business in Ohio, and reject the conditions imposed by the statute. * * *"

The above decision and reasoning of the court was affirmed by the United States Supreme Court in 272 U. S. 295, 47 S. Ct. 88, 71 L. Ed. 243, in an opinion written by Justice Holmes.

Perhaps I should make reference to Allgeyer et al. v. State of Louisiana, 165 U. S. 578, 41 L. Ed. 832, 17 S. Ct. 427, which would appear to indicate a conclusion to the problem considered here different from that which would follow from the authorities cited previously. There the United States Supreme Court declared a Louisiana insurance statute unconstitutional in its application to a contract made and to be performed outside the state. The weight which this decision might otherwise have may best be offset by referring to the following comment in Osborn et al. v. Ozlin et al., 310 U. S. 53, 66, 84 L. Ed. 1074, 1080, 60 S. Ct. 758, upholding a Virginia insurance contract in its application to out of state contracts:

> "In reaching this conclusion we have been duly mindful of the cases urged upon us by appellants. In Allgeyer v. Louisiana, 165 U. S. 578, 41 L. Ed. 832, 17 S. Ct. 427, apart from the doubts that have been cast upon the opinion in that case, the state attempted to penalize the making of contracts by its residents outside its borders with companies which had never subjected themselves to local control. Thus the statute was thought to be directed not at the regulation of insurance within the state, but at the making of contracts without. * * *"

The modern view governing the regulation of insurance contracts, regardless of situs, covering persons or property within another state has been expressed as follows by the United States Supreme Court in Hoopeston Canning Co. et al. v. Cullen, Superintendent of Ins., 318 U. S. 313, 316, 87 L. Ed. 777, 782, 63 S. Ct. 602:

> "In determining the power of a state to apply its own regulatory laws to insurance business activities, the question in earlier cases became involved by conceptualistic discussion of theories of the place of contracting or of performance. More recently it has been recognized that a state may have substantial interests in the business of insurance of its people or property regardless of these isolated factors. This interest may be measured by highly realistic considerations such as the protection of the citizen insured or the protection of the state from the incidents of loss. Alaska Packers Asso. v. Industrial Acci. Commission, 294 U. S. 532, 542, 79 L. Ed. 1044, 1049, 55 S. Ct. 518. * * *"

In view of the preceding and in specific answer to your question, I am of the opinion that under Section 9426-2, General Code, it is unlawful for an insurance company authorized to transact such business in Ohio to make a group life insurance contract covering a group in this state unless the group covered qualifies as such under the Ohio group insurance law, Section 9426-1, et seq., General Code, even though the contract involved was applied for and delivered in another state.

Respectfully,

HERBERT S. DUFFY,
Attorney General.