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such publication rests upon a duty to protect the public against the injurious results that may follow. Therefore, when it prohibits publications that have no harmful public tendency it exceeds its constitutional authority. It is our judgment that its *wholesale* prohibitions of publication concerning bets and wages *unrelated in time* to any race, game or contest is an unreasonable exercise of police power and is, therefore, beyond the constitutional authority of the legislature.”

As noted, Sec. 2 (6) does not differentiate as to information published prior or subsequent to happening of said event. Therefore, I believe there is some doubt as to the validity of the above two mentioned sections.

In view of the foregoing observations, I am of the opinion that House Enrolled Act No. 8 is unconstitutional.

OFFICIAL OPINION NO. 16

April 1, 1953.

Mr. Harry E. Wells,
Commissioner of Insurance,
Department of Insurance,
State House,
Indianapolis, Indiana.

Dear Sir:

Your letter of February 18, 1953 requesting an official opinion has been received which is as follows:

“A question has arisen as to the interpretation of the provisions of Chapter 195, Acts 1897, having to do with the accumulation and maintenance of the reserve or emergency fund by a company organized on the assessment plan as provided by that Act. (Burns’ Indiana Statutes Annotated, Sections 39-421 to 39-446.) Section 7 of the Act (Section 39-427, Burns’ Indiana Statutes Annotated) reads in part as follows:

“39-427 (8990). Reserve or emergency fund.
—Every life insurance corporation, association

or society shall accumulate and maintain a reserve or emergency fund equal to such sum as might be realized from one (1) assessment on, or periodical payment by, policy or certificate-holders thereof, and, in no event, less than the amount of its maximum policy or certificate. Such fund, if not already accumulated, shall be accumulated by every such existing corporation, association or society within six (6) months from the time this act takes effect, and by every corporation, association or society hereafter formed under this act within six (6) months from the dates of its incorporation or organization, and shall be held as a trust fund for the purposes for which such fund was created or accumulated. In case such fund or any portion thereof shall have been used by the corporation, association or society for the purpose or purposes for which the same was created or accumulated and the amount thereof thereby reduced to less than the amount of one (1) death assessment or periodical payment, the amount of such reduction below the amount of one (1) death assessment or periodical payment shall be made up and restored to said fund within six (6) months thereafter.'

"Section 4 of the Act (39-424, Burns' Indiana Statutes Annotated) reads in part as follows:

"39-424 (8987). Fee rates and premiums.—The trustees, directors or managers, or the persons designated in the by-laws of the corporation, association, or society, subject to the provisions of this act, shall fix the fee rates and amounts of premiums, assessments or periodical calls, and the time and manner of the payment thereof, and the risks to be assumed by such corporation, association or society, and the duration thereof, and may change the same, from time to time, as the experience of the corporation, association or society may require.'

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“An assessment company organized and existing pursuant to Chapter 195, Acts 1897, has the following provisions in its by-laws:

“Section 3. The Board of Directors shall exercise general supervision over the affairs of the association and, on its behalf shall have power; * * * to adopt all policy forms; to fix and change fees, premiums and assessments; * * *.’ (Article IV.)

“Section 1. The Board of Directors may order an assessment upon each member of this association whenever in its opinion an assessment is necessary for the securing of funds with which to pay indemnities, death losses or expenses or to create reserve funds or to perfect an impaired fund.’ (Article VI.)

“Section 1. It is hereby resolved that the periodical call shall be one-twelfth of the annual premium. Also that advanced premiums shall be set up on the association’s books as a liability. By advanced premiums it is meant, that if a monthly, quarterly, semi-annual or annual premium is due on January 1st, the payment is received and credited on the records prior to January 1st, the full amount of these items should be set up as a liability.’ (Article VII.)

“Such company issued policies calling for periodical payments at different periods of time,—some to be paid monthly, some quarterly, some semi-annually, but most of them were to be paid annually.

“In view of the foregoing, I request of you an official opinion answering the following questions, to-wit:

“1. In complying with the requirements of the law that ‘every such life insurance corporation, association or society shall accumulate and maintain a reserve or emergency fund equal to such sum as might be realized from one (1) assessment on, or periodical payment by, policy

or certificate-holders thereof, and, in no event, less than the amount of its maximum policy or certificate,' should the amount of the assessment levied for a periodical payment be determined by the payment as called for by the policy or certificate issued to the policyholder whether monthly, quarterly, semi-annually or annually?

"2. When, in fact, the Board of Directors or the company's officers have adopted or issued policies calling for periodical payment at various periods of time, to-wit: monthly, quarterly, semi-annually or annually, can the Board of Directors by its by-laws limit the periodical payment or assessment to one-twelfth of the annual premium for accumulating or maintaining the statutory reserve required by the law?

"Prompt answer to the foregoing questions will be greatly appreciated."

In order to answer your question it is first necessary to determine the nature of and purposes for which the reserve is required. Section 7 of Chapter 195 of the Acts of the General Assembly of 1897 as found in Burns' 1952 Replacement, Section 39-427, provides in part:

"Every * * * association or society shall accumulate and maintain a reserve or emergency fund equal to such sum as might be realized from one (1) assessment on, or periodical payment by, policy or certificate-holders thereof, and, in no event, less than the amount of its maximum policy or certificate. * * * In case such fund or any portion thereof shall have been used by the corporation, association or society for the purpose or purposes for which the same was created or accumulated (It shall be replaced) * * *."

This section in itself gives no indication in specific words as to what the words "purpose or purposes" pertains to Section 19 of the 1897 Act, *supra*. Burns' 39-439 speaks of an accumulated fund required of a similar corporation of this state "for the benefit of policy or certificate-holders." The determi-

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native question is the relationship between the policy or certificate-holders and the required reserve fund. Such funds generally are established for the purpose of assuring the payment of losses covered by policies of the insurer and the return of unearned premiums. 29 Am. Jur., Insurance, Section 31, p. 67.

Payment of premiums discharges the obligation of the insured and calls into effect the obligation of the insurer, *Maryland Casualty Company v. United States* (1920), 251 U. S. 342, 64 Law. Ed. 297, 40 S. Ct. 155, regardless of the manner of treatment of the premium by the insurance company.

The 1897 Act, Section 4, as found in Burns' 1952 Repl., Volume 8, Section 39-424 grants the trustees, directors or managers of an insurance company the authority to fix fee rates, assessment and amounts of premiums subject to the provisions of the 1897 Act. Section 7 of the 1897 Act as found in Burns' 39-427, *supra*, is an expressed limitation on this authority. The words "periodical payment" are unequivocal of themselves. It is axiomatic in corporation or insurance law that the directors in the enactment of their by-laws cannot circumvent or digress from a statutory provision.

The phrase "in no event less than the amount of its maximum policy or certificate" as found in Burns' 39-427, *supra*, has reference to a limitation which is either embodied in the corporate charter or by-laws and deals with the maximum amount of any one certificate or policy. This, I understand, is agreed to by the insurance company in question and by the insurance commissioner.

A memorandum was issued in 1951 by the insurance commissioner which held that the words "periodical payments" were to be construed as they plainly import. That is, a periodical payment is the amount which is paid by the policy-holder according to the terms of his policy either annually, semi-annually, quarterly or monthly. This memorandum has not been questioned until this time.

It is my opinion, therefore, that Section 1 of the by-laws referred to in your letter, resolving that the periodical call shall be one-twelfth of the annual premium is valid only as to those policies upon which the premiums are collected in monthly installments, but is of no effect on those premiums

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collected quarterly, semi-annually or annually. Therefore, in view of the foregoing, my answer to your questions are as follows:

(1) The amount of reserve required in relation to a periodical payment should be determined by the payment as called for by the policy or certificate issued to the policy-holder whether monthly, quarterly, semi-annually or annually as set out by statute.

(2) The Board of Directors or the company's officers cannot by the by-laws limit the periodical payment or assessment to one-twelfth of the annual premium for accumulating or maintaining the statutory reserve required by law on premiums collected in any other manner than monthly.

OFFICIAL OPINION NO. 17

April 6, 1953.

Wilbur Young,
Superintendent of Public Instruction,
Room 227, State House,
Indianapolis, Indiana.

Dear Sir:

Your letter of March 30, 1953 has been received and reads as follows:

"An application has come to this office and to the State Board for Vocational Education requesting a vocational transfer for a student from the York Township School, Benton County, not offering vocational agriculture, to the Kentland City Schools, Newton County, offering vocational agriculture. The trustee of the York Township School was willing to transfer this student to the Parish Grove Township School, Benton County, which also maintains an approved department of vocational agriculture.

"Therefore, I would appreciate an official opinion as follows: