

OPINION 28

Citizens T. & S. Bank v. Fletcher American Co.
(1934), 207 Indiana 328, 334; No. 92—1945
Indiana O. A. G. Official Opinion.

When the above authorities are applied to Section 5 of Chapter 68 of the Acts of 1945, supra, it is at once apparent that said section being clear and free from any ambiguity, the same is not subject to construction. Any changes in policies for the establishment, making of changes for establishment, or for making of change for services furnished in, Branch Laboratories, and any expansion or alteration of the facilities of said Branch Laboratory, *shall originate in the Indiana state live stock sanitary board, subject to the written approval of the board of trustees of Purdue University.*

TLW :man

OFFICIAL OPINION NO. 28

May 3, 1949.

Hon. Frank J. Viehmann,
Commissioner of Insurance, State of Indiana,
State House,
Indianapolis, Indiana.

Dear Mr. Viehmann:

I have your recent request for an official opinion of the following, to-wit:

“What is the proper application of the taxing statute with reference to reciprocal insurance companies of the State of Missouri operating in the State of Indiana.”

The taxing statute involved is, no doubt, Section 12, Chapter 102, Acts 1919, Section 39-2812, Burns 1933 Indiana Statute 1940 Replacement.

“By reciprocal or inter-insurance is meant that system of insurance whereby several individuals, partnerships, or corporations underwrite each other’s risks against loss through an attorney in fact, common to all, under an agreement that each underwriter acts separately and severally and not jointly with each other.

The individuals interested appoint an attorney in fact for their particular purpose and business and he takes the place of an insurance company in every particular. The power of attorney is the charter, so to speak, and limits the rights and powers of the attorney in fact, prescribes his duties and provides for his compensation. The power of attorney directs what particular provisions the policies must contain, or must not contain. The attorney in fact is forbidden to make the liability of any insurer joint with other inter-insurers and is forbidden to make the liability of inter-insuring underwriters, as such, greater than a specified amount." *Wysong v. Automobile Underwriters, Inc.* 204 Ind. 493.

"Every insurance company not organized under the laws of this state and doing business within this state shall, on or before the first day of March of each year, report to the department, under the oath of the president and secretary, the gross amount of all premiums received by it on policies of insurance covering risks within this state, or in the case of marine or transportation risks, on policies made, written or renewed within this state during the twelve months' period ending on the thirty-first day of December of the preceding calendar year. From the amount of gross premiums, shown as above provided, shall be deducted (1) losses actually paid within this state, (2) considerations received for reinsurance of risks within this state from companies authorized to transact an insurance business in this state, (3) the amount of dividends paid or accredited to resident insureds, or used to reduce current premiums of resident insureds, (4) the amount actually returned to residents on account of applications not accepted or on account of policies not delivered (5) the amount of unearned premiums returned on account of the cancellation of policies covering risks within the state. At the time of making the report required above every such insurance company shall pay into the treasury of this state for the privilege of doing business in this state, an amount equal to three percent of the excess, if any, of the gross premiums over the deductions allowed herein." Section 235 (a) Chapter 162,

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Acts 1935. Section 39-4802 Burns 1933 Ind. Statute 1940 Replacement.

The following is quoted from the Indiana Reciprocal Insurance Act:

“In lieu of all other taxes, licenses or fees, state or local, such attorney shall pay annually, on account of the transaction of such business in this state, the same taxes, licenses and fees as are required to be paid by mutual insurance companies with principal office similarly located and transacting the same kind of business. In the application of the retaliatory law, the taxes and fees exacted by another state from an exchange with principal office in Indiana shall apply.” Acts 1919, Ch. 102, Section 12, page 503, 39-2812 Burns Indiana 1933 Statutes 1940 Replacement.

Since the above quoted section requires reciprocal companies to pay the same fees as are required to be paid by mutual insurance companies inquiry is made to determine the amount of levy against foreign mutual insurance companies. Reference is made to Section 235(a), Chapter 162, Acts 1935 *supra* “Every insurance company not organized under the laws of this state and doing business within the state * * * * shall pay into the treasury of this state, an amount equal to three per cent of the excess, if any, of the gross premiums over the deductions allowed herein.” This section states “Every insurance company” which certainly includes mutual insurance companies.

A search of the statutes of the State does not disclose any reciprocal law or the creation of any reciprocal commission, having to do with affecting a binding retaliatory agreement between the State of Indiana and the State of Missouri, in so far as reciprocal companies are specifically mentioned. Therefore in the absence of such definite statute we must look to the insurance laws of Indiana as the same are applied to your question.

In exploring the statute we find the following retaliatory provisions:

“Sec. 259. When, by the laws of any other state any taxes, fines, penalties, licenses, fees, deposits of

money or securities, or other obligations or prohibitions are imposed upon insurance companies of this or other states, or their agents, greater than are required by the laws of this state, then the same obligations and prohibitions, of whatever kind, shall, in like manner for like purposes, be imposed upon all insurance companies of such states and their agents. All insurance companies of other nations, under this section, shall be held as of the state where they have elected to make their deposit and establish their principal agency in the United States." Section 259 Chapter 162 Acts 1935.

Since no suggestion is made the State of Missouri is imposing a greater obligation on companies of this state we believe the retaliatory provision (*supra*) is not applicable to your query.

It is therefore our opinion, in the absence of any previous agreement between the insurance commissioner of Missouri and Indiana relating to comity between their departments, that Missouri reciprocal companies doing business in Indiana are obligated to pay into the treasury of this state for the privilege of doing business in this state, an amount equal to three per cent of the excess, if any, as provided for Section 235 (a) Chapter 162, Acts 1935 *supra*.

JAW:aa

OFFICIAL OPINION NO. 29

May 3, 1949.

Mr. B. B. McDonald,
Assistant Director,
Bureau of Motor Vehicles,
State of Indiana,
Indianapolis, Indiana.

Dear Sir:

Your letter of April 14, 1949 has been received, together with a correspondence file, showing in substance that parents of children of elementary school age have purchased a school bus and by such means transported their children to an adjoining township school for educational purposes, these