

or infectious disease may be placed in a building in his city or county to be provided by the proper local authorities.

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**FOREIGN INSURANCE COMPANIES TRANSACTING BUSINESS IN INDIANA—What constitutes transacting business in the State of Indiana—Amalgamated Life Insurance Company of New York is not transacting business in the State of Indiana.**

May 29, 1944.

*Opinion No. 53*

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

Dear Sir:

I have your inquiry concerning the Amalgamated Life Insurance Company of New York. Specifically, your question is whether in consideration of the articles of incorporation, agreement and declaration of trust, applications and proposed forms for insurance it is necessary for this company to qualify for the purpose of doing business in Indiana.

With respect to foreign insurance companies, Section 226 of Chapter 162 of the Acts of 1935 (39-4701, Burns' 1933) provides as follows:

“Any foreign or alien insurance company organized for the purpose of transacting any insurance business, not now qualified to transact business in this state, before transacting business in this state shall procure a certificate of authority from the department in the manner hereinafter provided and shall otherwise comply with the provisions and be subject to the regulations set forth in this article of this act.”

Thus, if the company proposes to transact insurance business in Indiana, it must qualify under the terms of that act. The question still remains, however, whether the company is actually transacting or doing business within the State of Indiana. The determination of that question involves an

application of fairly well established legal principles to the specific facts. Before discussing the import of this situation, I wish to point out that there may be facts involved, which are not shown by the documents submitted, such as the employment of physicians, employment of agents or use of the union as agent in Indiana—facts which would materially alter the conclusion expressed herein. Consequently, if at any time it should appear that there are additional facts similar to those mentioned above, this opinion is not intended to be conclusive of them.

From the exhibit submitted, the plan of operation of the Amalgamated Life Insurance Company, a New York corporation, is substantially as follows: By collective bargaining agreement between the Amalgamated Clothing Workers of America and the Clothing Manufacturers Association of the United States of America, the latter employers have agreed to contribute a percentage of each employee's salary for the purpose of maintaining life, health and accident insurance upon the employees.

Contemporaneously, the Amalgamated Clothing Workers Union, together with the advisory committee of the clothing manufacturers under date of April 24, 1942, and amended July 1, 1943, executed an agreement and declaration of trust whereby the contributions of employees are to be paid to the trustees and held by the trustees for the purpose of payment of premiums. It appears to have been the intention to create this trust under the laws of the State of New York. Certain incidental powers are given to the trustees to invest, accumulate reserves, subscribe to the stock of the Amalgamated Life Insurance Company, etc., but the primary purpose was that of holding the contributions and to pay premiums. The advisory committee of the employers has certain veto rights in action taken by the trustees.

The final step in the plan has been to organize the Amalgamated Life Insurance Company in New York to issue group life, health and accident insurance.

Upon employment for six months, those employees subject to the terms of the collective bargaining and trust agreement automatically become entitled to life, accident and health insurance. I am informed that no application is necessary to procure the insurance and no agents are employed for that purpose. The employer notifies the trustees in New York of

the eligibility of the employee and application for the insurance is made by the trustees to the insurance company also in New York. A certificate is issued to each individual employee subject to the terms of the group accident and health insurance policy, and one is also issued subject to the terms of the group life policy, which are merely evidence of the insurance provided. These certificates are delivered to the trustees for distribution to the employees either by mail or by the union representative. I quote from the letter of Dreschler & Leff, counsel for the Amalgamated Life Insurance Company, Inc., as follows:

“All conversion policies, if and when issued, will be issued in the State of New York, and premiums will be payable at the Office of the Life Insurance Company in the State of New York.

“All applications for insurance, all policies of insurance issued by the Company, and all certificates issued by the Company provided that the same are issued and delivered in the State of New York, and are to be governed by the laws of that State.

“The Life Insurance Company will have no offices outside of the State of New York. Specifically, it will have no office in the State of Indiana.

“It will not engage in any form of advertising in the State of Indiana.

“It will not solicit any insurance in the State of Indiana, and it will not hire any agents for that purpose or any other purpose.

“It will not collect any premiums in the State of Indiana. It will have no bank accounts in that State, and will have no employees therein.”

On the question of “engaging in business” by a foreign corporation it was said in *Swing v. Hill*, 165 Ind. 411 at 412:

“\* \* \* Although it is competent for the State by legislation to prevent foreign corporations from entering into insurance contracts in this State concerning property therein without complying with the statutes, and while it is also competent for the State to prohibit the agents of such companies from soliciting insurance

in this State, yet the legislature is not empowered to enact a statute whereby it prohibits citizens from entering into contracts outside of this State insuring property within its boundaries. \* \* \*.”

That case is in accord with the leading case by the United States Supreme Court, *Allgeyer v. State of Louisiana*, 165 U. S. 578.

More recent expressions of various Courts have shown a consistent adherence to the principle that unless a company is actually pursuing a regular course of conduct which entails the doing of acts within a state, such as solicitation, taking applications, collection of premiums or employment of agents within the state, it is not deemed to be engaging in business within the state. A recent case in point is *Connecticut General Life Insurance Co. v. Speer*, 48 S. W. (2d) 553, involving a group policy by a Connecticut company issued to a Pennsylvania corporation and applicable to an employee in Arkansas. The insurance company was held not to be doing business in Arkansas. There the Court said:

“\* \* \* It is sufficient to say that similar contracts of insurance under the group plan have been construed not to constitute the insured as agent of the insurer to solicit applications for insurance from its employees.  
\* \* \*”

In *Sasnett v. Iowa State Traveling Mens Association*, 90 Fed. (2d) 514, the Court said:

“The cases appear to hold that merely casual acts do not constitute ‘doing business’; that there must be some continuity in the employment of an alleged agent, or at least that the employment existed at the time of the alleged service; that the mere insuring of residents of a foreign state, the contract of insurance being made and being carried out in the home state of the association, does not constitute ‘doing business’ in the state of the insured.”

See also:

*Minn. Commercial Men’s Ass’n v. Benn*, 261 U. S. 140;

Morris & Co. v. Skandinavia Ins. Co., 279 U. S.  
405;  
Franklin Life Insurance Co. v. Ward, 187 So.  
462;  
Hoopston Canning Co. v. Pink, 29 N. Y. Supp.  
(2d) 300.

I am therefore of the opinion that upon the basis of the showing made by the exhibits submitted and representations made by the attorneys for the Amalgamated Life Insurance Company, Inc., it is not transacting business in Indiana, within the purview of the Indiana Insurance Act.

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**CITIES AND TOWNS—Employees—Increase of salary.**

June 8, 1944.

*Opinion No. 54*

Hon. Otto K. Jensen, State Examiner,  
Department of Inspection and Supervision  
of Public Offices,  
State House,  
Indianapolis, Indiana.

Dear Sir:

This will acknowledge receipt of your letter of May 31st, in which you ask the following questions:

“Can the Board of Public Works and Sanitation and the city council, if necessary, by resolution or ordinance, establish increases in the various salary and wage scales provided in the 1944 budget, payable from the unappropriated balance in the General Fund of the Sanitation District?”

We call your attention to the last part of Section 2 of Chapter 307 of the Acts of 1935 (p. 1496), which amended Section 10 of the Acts of 1933, which is as follows:

“\* \* \* *Provided, however,* That in cities of the first class the employees of the board of sanitary commissioners shall be appointed as now provided by law and that the number and salaries of such employees shall