INSURANCE DEPARTMENT OF: Authority of Insurance Company to take promissory notes for sales of stock.

January 12, 1940.

Hon. George H. Newbauer,
Insurance Commissioner,
Department of Insurance,
Indianapolis, Indiana.

Dear Sir:

I have before me your letter containing a copy of a letter to you from the Standard Life Insurance Company of Indiana, dated January 9, 1940, submitting the following questions:

"1. Does the company violate the Indiana Insurance law of 1935 and particularly Section 82 thereof by taking promissory notes for its sales of stock?

"2. Does the taking and retaining of said notes for a limited time constitute the making of an illegal investment?

"3. Does the company conform to the insurance laws of the State of Indiana?"

You submit the same questions to me for answer.

Section 242 of Volume 18, Corpus Juris Secundum, contains the following statement:

"Unless prevented by charter or statutory restrictions, a corporation may take in payment for stock the promissory note of the subscriber or purchaser, or of a third person, or a bond, or a check which is paid; and it may take a note or bond secured by a mortgage on real or personal property."

On the same subject, Thompson on Corporations, (3rd Ed.), Vol. 5, at page 820, has the following to say:

"Where the corporation has the power to give credit, or to extend time of payment, and there is no prohibition in the charter of governing statute, it may ordinarily take the notes or bonds of the subscriber or a third person in payment. Such a note is supported
by a sufficient consideration where the stock is actually issued.”

The same authority on page 821 of Volume 5 uses the following language:

“Where the rights of corporate creditors are concerned, a worthless note will not be regarded as a payment, and the directors will be held liable where they accept valueless notes in payment for stock.”

Cited to the above text is the case of Coddington v. Canaday, 157 Ind. 243. This suit was brought by the appellee in his own name as the receiver of the Citizens Bank of Union City, Indiana, against the appellants and others who were directors of that corporation. Its object was to recover damages alleged to have been sustained by the bank by reason of the negligence of the directors and the gross mismanagement of the affairs of the corporation by them. In the course of the opinion, the court, on page 262, used the following language:

“Corporations, other than banking, may, perhaps, take property of certain kinds at a reasonable valuation, and under circumstances entirely free from fraud, in payment of such subscriptions, but banks stand upon a different footing, and the reasons which justify such dealings in the one case do not apply in the other. But, even if notes, bills, judgments, and the like, could be taken by the directors in payment of stock subscriptions, they could not lawfully be so taken unless there was a reasonable ground for believing that they were good and collectible, and of the value at which they were to be received. If they were worthless, as charged in the complaint, it was the duty of the directors of the new bank to refuse to recognize them as payment for such stock subscriptions, and a failure to exercise ordinary care in accepting them in lieu of money was a breach of their duty as the agents of the corporation.”

The above language leaves undecided the question of the legality of the payment for stock in a corporation by notes of the subscriber in the absence of constitutional, statutory or charter prohibition, except to the extent that directors will
be held liable for loss if they carelessly and negligently receive worthless or uncollectible notes for such purpose. Moreover, in such a case the illegality is not so much a matter of lack of power as it is a matter of faithlessness of the corporate agency in knowingly receiving uncollectible and worthless notes.

In the case of Slipher v. Earhart, 83 Ind. 173, the question involved was the validity of a note given for shares of stock in a Railroad Company rather than the question of the right of the directors of the Railroad Company to receive the note in payment of the stock. Apparently that right was not questioned, but the case cannot be held to decide that a corporation in Indiana may receive in payment for its stock the promissory note of the subscriber. In fact, I do not find any case in Indiana which I think can be regarded as decisive of the questions which you submit. There is, however, no constitutional or charter provision of which I am advised which limits the right of an insurance company to receive the promissory note of the subscriber in payment for stock other than the 1935 Insurance Act to which your attention will presently be called. It is true that the Act of 1929 for the incorporation of corporations for profit contains the express provision that:

"Promissory notes, uncertified checks or future services shall not be accepted in payment or part payment of shares issued in pursuance of any of the provisions of this act."


But insurance companies could not be organized under this Act and the above provision would not apply to the present situation. See Acts of 1929, page 727, where it is provided that:

"Corporations may be organized for pecuniary profit under this act for any lawful business purpose or purposes, except rural loan and savings associations, credit unions or corporations for the conduct of a banking, railroad, insurance, surety, trust, safe deposit, mortgage guarantee or building and loan business."

This brings me to a consideration of the relevant provisions of the Insurance Act of 1935. Sections 74 and 82 seem to me to be pertinent. Section 74 provides, in part, as follows:
“A domestic capital stock company organized under this law shall have capital stock paid up in money as follows:

“(a) To make either one of the kinds of insurance described in sub-sections (a) and (b) of class I of section 59 a paid-in capital stock of not less than one hundred thousand dollars ($100,000), of which twenty-five thousand dollars ($25,000) must be deposited with the department in cash or the direct or indirect obligations of the United States; or if with power to make all of the kinds of insurance described in class I aforesaid a paid-in capital stock of not less than two hundred thousand dollars ($200,000), of which fifty thousand dollars ($50,000) must be deposited with the department in cash or the direct or indirect obligations of the United States.” * * *

Thereafter, the section continues to set up the minimum amount of capital stock which must be paid up in money in order to authorize the company to write certain types of insurance.


Section 82 provides as follows:

“(a) Classes of shares. Every stock company organized under this act shall have the right, when authorized by its articles of incorporation, to issue one or more classes or kinds of shares of capital stock, with full, limited or no voting powers as provided in the articles of incorporation, and with such designations, and such relative rights, preferences, qualifications, limitations or restrictions as shall be stated and expressed in the articles of incorporation. No stock company organized under this act shall issue shares of capital stock without par value.

“(b) No stock company organized under this act shall issue or sell any of its shares of stock for less than the par value thereof.

“(c) The shareholders of any stock company organized under this act shall be liable for the debts of such stock company only to the extent of any unpaid portion of their subscriptions for shares of such com-
pany or any unpaid portion of the consideration for the issuance to them of shares of such stock company.

"(d) The shareholders of such stock company shall not have preemptive rights to subscribe to any additional issues of shares of the capital stock of such company, except to the extent, if any, that such rights shall be fixed and prescribed in the articles of incorporation, or in a by-law adopted by the board of directors of such stock company."


It seems to me that there is nothing in Section 82, supra, which operates to prohibit an insurance company organized or reorganized pursuant to this Act from accepting good and collectible notes in payment of stock issued by it. Section 74, however, very specifically provides that up to the minimums therein stated the capital stock must be paid up in money. Whether that provision should be regarded as extending to stock issues beyond such minimum limitation is not entirely clear, but it seems to me that the purpose of the limitation set out in Section 74, supra, has to do with the type of license which may be granted and does not operate to affect the contract entered into between the corporation and the subscriber for stock other than that such stock cannot be used as a basis for obtaining any particular type of license, unless it is paid up in money. If I am correct in this conclusion, it would seem that the general rule should apply, which, as stated supra, is that:

"Unless prevented by charter or statutory restrictions, a corporation may take in payment for stock the promissory note of the subscriber or purchaser,"

* * *

Section 242, Vol. 18, Corpus Juris Secundum.

Subject to the limitations set out in Section 74, therefore, it is my opinion that your first question should be answered in the negative. This, however, is upon the assumption that proper action has been taken by the corporation authorizing the receipt of notes in payment for stock, and with the further reservation that there is reasonable ground for believing that such notes are good and collectible and of the value for which they are received.

The answer to your second question, I think, should be in the negative. However, your attention is called to the fact that they would not be eligible for deposit to meet the requirements of Section 153 of the Act. The eligible investments for such deposits are set out in Section 147 of the Act, which section does not include notes such as are referred to in your second question.

Your third question depends upon so many factors of which I have no knowledge that I am unable to answer it other than to say that I am informed that the company has been licensed to do business in the State. If it is deemed necessary for your purposes and you will submit the question with respect to certain definitely defined proceedings, I shall endeavor to be more specific.

PRINTING, BUREAU OF PUBLIC: Foreign firm or corporation, letting public printing contract to, if plant is within state.

January 12, 1940.

Mr. Parke Beadle,
Director, Bureau of Public Printing,
Indianapolis, Indiana.

Dear Sir:

Your letter of January 3rd, asks for an interpretation of Section 6 of Chapter 109, Acts of the General Assembly, 1939, in connection with several questions, the first of which reads:

"Is a firm or corporation of a foreign state with manufacturing plants or warehouse facilities within the State of Indiana entitled to bid upon and be awarded contracts for articles enumerated in the Bureau of Public Printing proposal? If so, would each and every article bid upon be required to be manufactured within the State of Indiana or could a part or all of the articles be shipped into Indiana by the foreign corporation or firm and in turn be delivered from the Indiana warehouse or manufacturing plant?"