INSURANCE, DEPARTMENT OF: Oil, gas, and mineral leases, royalty interest in same, mineral interests excepted or reserved in or conveyed by deed, eligibility as investments by insurance companies organized under Indiana laws.

April 7, 1939.

Hon. Francis W. Meyer, Chief Securities Clerk,
Department of Insurance,
State House,
Indianapolis, Indiana.

Dear Sir:

I have before me your letter of March 16, 1939, requesting my opinion upon the eligibility of the types of investments hereinafter described for life insurance companies organized and doing business under the laws of the State of Indiana. The type of investments described are as follows, to wit:

(a) Producing oil, gas and mineral leases in the form in general use in this state;
(b) Royalty interests under producing oil, gas and mineral leases;
(c) Mineral interests excepted or reserved in, or conveyed by, a deed or other appropriate conveyance.

If the types of investments above described are eligible for investments for life insurance companies organized and doing business under the laws of this state, they must come within the purview of section 147, Indiana Insurance Law of 1935. It is apparent that the types of investments do not come under this section unless it is that they would qualify as to eligibility under subsection (d) of section 147, supra, which is in part as follows, to wit:

“(d) In bonds or notes secured by mortgage or deeds of trust including those made under section 149 of this Act on unencumbered real estate or perpetual leases thereon in the United States or Dominion of Canada worth not less than 66 2/3 per cent more than the amount loaned thereon, the value of such real estate to be determined by a method and in a manner satisfactory to the department. * * *,” as amended by the Acts of 1937.
It will be noted that investments in bonds or notes secured by mortgages or deeds of trust upon unencumbered real estate are specifically made eligible for investment purposes by such companies. The specific question then raised is, are bonds or notes secured by mortgages or deeds of trust upon the type of securities above described real estate mortgages within the meaning of subsection (d) above quoted. Attention is called to the fact that the particular investments involved are leases, royalty interests, and mineral interests in lands situated in the state of Texas. In this connection, it is the well established rule in the State of Indiana that the law of the state wherein such lands are located will be controlling. As was said by the Supreme Court of Indiana in Nathan, Ex. v. Lee, Rec., 152 Ind. 232, at page 238 of the opinion,

"It is a well affirmed general rule, that the laws of a sister state, which either give or deny the power to contract, have no extraterritorial force or effect where the particular contract involved relates to the conveyance or encumbrance of lands situated in another state or jurisdiction. Cochran v. Benton, 126 Ind. 58, and authorities there cited. Such conveyances or encumbrances are considered as being governed by the law of the situs of the realty, and all questions relating to the validity thereof are to be determined according to that law and not according to the law of the place of the contract or of the domicile of the contracting parties."

It becomes necessary, therefore, to ascertain the law of the state of Texas governing this matter and to ascertain if such contracts have been construed in the state of Texas as real estate contracts.

Should it appear that such contracts governing producing oil, gas, and mineral leases; royalty interests under producing oil, gas, and mineral leases; and mineral leases excepted or reserved in, or conveyed by, a deed or other appropriate conveyance, are real estate contracts, or, to be more concise, are contracts affecting interests in real estate, so as to be governed by real estate laws in force and effect in that state, then, mortgages upon such interests would be construed and classed under the laws of the state of Texas as real estate mortgages and would accordingly be eligible investments for a life in-
surance company organized and doing business under the laws of the State of Indiana under subsection (d), section 147, Indiana Insurance Law, 1935.

Your letter attaches the opinion of the Attorney General of the state of Texas interpreting officially the eligibility of investments of this type for life insurance companies of the state of Texas under a law very similar to that of the State of Indiana. The Attorney General in that letter officially approves this type of investment for Texas life insurance companies under Texas law and his approval is based upon the holdings and the decisions of the higher courts of the state of Texas holding that oil in place, minerals in place, are just as much a part of the realty as the surface ground and improvements erected thereon. It must be noted in this connection, however, that under the contracts made respecting oil leases, royalties, and mineral rights excepted or reserved, that any depreciation in the amount of same in place is offset by applying the proper percentage of the minerals taken from the ground to the mortgage indebtedness so that the margin of security in each instance remains the same. This recognizes the principle that minerals such as oil and natural gas lose their identification as realty when they are raised to the surface and transmitted to pipe lines when they immediately become personalty.

Until such severance actually occurs, they are held, and properly so in my opinion, to be real estate and the mortgage in question covers oil, natural gas, and other minerals in place or in the land and not oil, gas, or other minerals severed from the real estate by operations.

It is, accordingly, my opinion, based upon the above facts and rulings of the state of Texas, that bonds and notes secured by mortgages upon such interests in real estate in the state of Texas are real estate mortgages within the meaning of subsection (d) of section 147, supra.

This is not to say that mortgages upon such interests any place within the United States or Canada would be held to be real estate mortgages and, as such, eligible for investment purposes by domestic life insurance companies but only where such mortgages are construed by the courts of the state wherein the land is situated as real estate mortgages.

Attention is called to the provisions of chapter 288, Acts of 1937, covering original and substituted investments for life
insurance companies. Clause (r) of section 1 of this Act in effect authorizes a domestic life insurance company, in an effort to protect its interests, to accept in good faith securities which would not meet the requirements as original investments.

While that particular question is not raised in this instance, it does shed some light upon the general interpretation of the laws. It may well be imagined that securities invested in by a domestic life insurance company may have become greatly impaired or depreciated by circumstances over which such a company had no control and, in such instances, such a company would be justified in trading or exchanging such securities for others that would better its condition even though the other securities might not meet the requirements of our laws as to original investments for domestic life insurance companies.

While, therefore, it is my opinion that bonds and notes secured by mortgages upon oil and gas leases, royalties thereon and mineral interests in place in the state of Texas, are bonds and notes secured by real estate mortgages within the meaning of subsection (d), section 147, Indiana Insurance Law, 1935, and, further, that a domestic life insurance company may, as a matter of protection, under subsection (r) of section 147, Indiana Insurance Law, 1935, trade or exchange for securities that would not meet the requirements of subsection (d), supra, as original investments, still, in either of said instances, such investments, because of their speculative, and, in many instances, hazardous nature, should not be authorized or approved until and unless they have been thoroughly investigated as to soundness and validity and the Department of Insurance has satisfied itself as to these essentials and their valuation.