INSURANCE, DEPARTMENT OF: Plan of issuing insurance with annual endowment coupons attached, if supported by sufficient premium, not contrary to Acts 1935, section 163; that stock of company is sold at same time insurance is written does not violate statute prohibiting delivery of stock as inducement, if subscriber must pay for stock; requirement that stock purchaser assign to company endowment coupons attached to policy in same amount as cost of stock violates said section.

April 11, 1939.

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

Dear Sir:

I have before me your letter in which you state that under date of March 6, 1935, the Standard Life Insurance Company, an Indiana insurance corporation, was licensed to sell insurance in the State of Indiana. You further state that the stock of this company was issued with a par value of $20.00 per share and that a method was provided whereby this stock, known as organization stock, was to be, and has been, sold to purchasers of insurance policies. You further state that payment for this stock was to be made in six equal annual installments and that the policies issued had attached to them a policy dividend certificate which could be used to pay the several deferred payments upon said stock. It is further stated that this company now proposes to increase its capital by $500,000, the increase to constitute 100,000 shares of the par value of $5.00 per share, to be sold in the same manner and under the same conditions as the original stock was issued and sold.

Preliminary to the consideration of the questions submitted by you, I have had the company furnish me with copies of the several documents used in connection with the sale of such original stock issue and with reference to the issue of the above described policy of insurance, in order that I may have before me a detailed example of how the original stock issue was sold and so that I thereby may know how the new issue is to be sold.

The document copies furnished include a specimen of such a policy filled out as of the 6th day of April, 1939, issued to John Doe, the face amount of the policy being $10,000. There
has also been furnished me a form of application for subscription to stock, together with an instrument designated as "Collateral Note" and a "Subscription Receipt"; also an assignment form to cover the assignment of the coupons attached to the policy, and hereinafter more particularly described. In addition to these documents, there has also been furnished me a statement of the general counsel of the company in explanation of the company's method of doing business.

The policy, in addition to other rather familiar provisions, contains six coupons. The first of these coupons provides that on the payment in full of the second annual premium, the company on the surrender of the coupon will pay the sum of $100.00 in cash to the order of the insured, or on receipt of due proof of the prior death of the insured while said policy is in full force and has not been converted under one of its non-forfeiture options will pay said sum in cash to whomever may have been previously designated by the insured in writing to receive the said amount provided, and in case there is no special designation to pay to the person named beneficiary in said policy. The second coupon is of like character, except that it is payable on the payment in full of the third annual premium. The third, fourth, fifth and sixth coupons are of like character, except that each of them is payable on the payment in full of the fourth, fifth, sixth and seventh annual premiums respectively.

The form of stock subscription contains no unusual provisions except the language which, I think, is somewhat unusual wherein it is stated "I hereby certify that the stock herein subscribed for was not offered to me as an inducement to purchase insurance from the Standard Life Insurance Company of Indiana." I do not think this is of any particular importance, however, because if the stock was offered as an inducement the statement in the subscription would not make any difference and if it was not offered as an inducement, of course the statement would not help the situation.

The collateral note contains a promise to pay to the order of Standard Life Insurance Company of Indiana a sum to be inserted and to be payable at the rate of 16 2/3% in one year; 16 2/3% in two years; 16 2/3% in three years; 16 2/3% in four years; 16 2/3% in five years and 16 2/3% in six years from date, together with interest at the rate of 5% per annum from date until paid. The note also contains the collateral
agreement wherein it is provided that the shares of stock purchased are to be held as collateral security for the payment of the note.

The subscription receipt is in the ordinary form showing the receipt of the amount paid for the stock and is so arranged as that there may be inserted a cash sum or the amount of the note which is used in the payment.

The assignment of the coupons recites the fact that application has been made to the company for an insurance policy which is to contain six coupons providing for the payment by the company of the sum of a fixed number of dollars; recites the fact of the execution of the note and assigns to the company all interest which the assignor has in the coupons and authorizes the company to cash the same and apply the amount or amounts received therefor to the payment of the note, it being agreed that the coupons and the assignment and the interest thereon shall all become a part of the promissory note and shall be held and considered as collateral security for the payment of the note.

From letters and interviews it was represented to me that since the time the company was licensed to do business it has been engaged both in selling stock and in selling policies of life insurance, it being maintained, however, that there is no connection between the sale of the stock and the sale of the policies of life insurance other than would be indicated by the following procedure. It was stated that the company was now issuing all the regular forms of life insurance policies, but is featuring a policy which contains six coupons, as referred to above, each for $10.00 for each $1,000.00 of life insurance, one of each coupons being due and collectible upon each annual premium beginning with the second annual premium and ending with the seventh annual premium. It is stated that these coupons are in the nature of endowment insurance, and in the first year of the policy the holder actually has $1,060.00 of life insurance on a $1,000.00 policy and that this would be reduced by $10.00 each year until the same is decreased to $1,000.00, provided the coupons are collected.

It is stated further that in the event of the death of the holder of this policy, the beneficiary is entitled to receive the full amount of the face of the policy, to wit: $1,000.00 on a $1,000.00 policy, plus any unredeemed coupons as to which no other person has been designated as the recipient; that
when these coupons become due, upon the surrender of the coupons, the insured or other designated recipient is entitled to receive from the company $10.00 in cash or he may reduce his premium by $10.00 by the surrender of the coupon, or he has the right and privilege of leaving the coupon in the policy and interest will be granted thereon at not less than $1\%$ per year until the same is surrendered and redeemed by the company. The above statements are evidently based upon the theory that no stock has been subscribed for, or if it has, that it has been paid for so that the terms of the assignment above referred to would not operate. For the purpose of describing the course of business, in a letter from the general counsel of the company, it is stated that any person wishing to purchase the stock of the company may do so provided he is acceptable to the company and the purchaser may pay the subscription price in cash or on any other basis which may be agreed upon between the subscriber and the company. Counsel also says in his letter that the board of directors has authorized the stock to be sold and the purchaser’s note given therefor, payable in six annual equal installments with interest at the rate of $5\%$ per annum, and that persons desiring to purchase this stock may do so without any necessity, whatsoever, of purchasing life insurance and that persons purchasing life insurance may do so without purchasing stock, in which case the only security for the payment of the note is the stock which the company retains as collateral.

You request an opinion as to whether this company in amending its articles of incorporation to permit the issuance of this capital stock would fall under the provisions of the 1935 Insurance Act as to the method and filing necessary, and whether if such additional stock is issued, the company is prohibited from selling the stock in connection with life insurance policies of the same company, referring, I assume, to the selling of its stock in the manner hereinabove described.

The first question grows out of the fact that this company was organized under the 1899 Act, and the second question arises by virtue of the provisions of Section 163 of the 1935 Insurance Act. I will consider these questions in the order in which you have stated them.

The Indiana Insurance Law approved March 8, 1935, is a very elaborate piece of legislation intended to cover so far as
possible all persons and companies engaged in the insurance business in the State. Section 2 of the Act provides, in part, as follows:

“This Act shall be applicable to all persons, firms, partnerships, corporations, associations, orders, societies and systems and to associations operating as Lloyds, Inter-Insurers or Individual Underwriters now authorized to make insurance under the provisions of any law enacted prior to the passage of this Act or heretofore or hereafter organized or incorporated under the provisions of any law of this state, or which are doing or attempting to do, or which are representing that they are doing an insurance business in this State or which are in process of organization for the purpose of doing or attempting to do such business.”


This language is sufficiently broad to cover the Standard Life Insurance Company of Indiana.

Section 277 of this Act, however, provides as follows:

“No right, power, privilege or immunity conferred, vested or secured by or under any law or laws hereby repealed shall be impaired or abrogated by reason of such repeal, nor shall such repeal affect any suits pending, rights of actions conferred, or duties, restrictions, liabilities or penalties imposed or required by or under any such law or laws upon any insurer or insurance company created under or subject to such law or laws, but every such insurance company shall, as to all actions hereafter performed, be subject to the provisions of this Act.”


The above provision is somewhat ambiguous. This company had the right under the Act under which it was incorporated to increase its capital stock. The Act under which it was incorporated, however, was repealed by the 1935 Act. It would appear, therefore, that the opening sentence of section 277, supra, would apply and save to the company now in consideration the right to increase its capital stock under the 1899 Act. However, in the closing part of section 277, it is stated that
"* * * every such insurance company shall, as to all actions hereafter performed, be subject to the provisions of this Act," that is, the 1935 Act.

I am inclined to believe that the Standard Life Insurance Company could increase its capital stock under the 1899 Act and its several amendments, but I think the safer course is to follow the method provided in the 1935 Act to which I can see no objection.

This brings me to the second question, which apparently is of greater importance, namely: As to whether the company can proceed to sell its additionally issued stock, if such an issue is authorized pursuant to an amendment of its articles, in the same manner and under the same conditions as the original stock issue was sold. This question requires a consideration of section 163 of the Indiana Insurance Act of 1935, which provides as follows:

"No life insurance company doing business in this State shall issue in this State, nor permit its agents, officers, or employees to issue or deliver in this State, agency company stock or other capital stock, or benefit certificates or shares in any common-law corporation, or securities, or any special or advisory board or other contracts of any kind promising returns and profits as an inducement to insurance or for the purchase of an annuity; and no life insurance company shall be authorized to do business in this State which issues or permits its agents, officers, or employees to issue in this State or in any other state or territory agency company stock or other capital stock, or benefit certificates or shares in any common-law corporation, or securities, or any special advisory board or other contracts of any kind promising returns and profits as an inducement to insurance or for the purchase of an annuity; and no corporation or stock company acting as agent of a life insurance company nor any of its agents, officers, or employees shall be permitted to sell, agree to offer to sell, or give or offer to give, directly or indirectly, in any manner whatsoever, any share of stock, securities, bonds, or agreement of any form or nature promising returns and profits as an inducement to insurance or for the purchase of an annuity; OR IN CONNECTION THEREWITH. The department may, upon due proof
after notice and hearing that any such company or agent thereof has violated any of the provisions of this section, revoke the authority of the company or agent so offending.” (Our italics and capitals.)

It will be noted that the prohibitions contained in the above section are contained in three co-ordinate clauses separated by semi-colons. The first prohibition relates to insurance companies doing business in this State and prohibits the issuance by them of certain types of stock “as an inducement to insurance or for the purchase of an annuity” and also makes it unlawful for any company to permit its agents, officers or employees to do the same “as an inducement to insurance or for the purchase of an annuity.” The second co-ordinate clause provides that no life insurance company shall be authorized to do business in this State which issues or permits its agents, officers or employees to issue such type of stock “as an inducement to issue insurance or for the purchase of an annuity.” The third co-ordinate clause provides that no corporation or stock company acting as the agent of a life insurance company nor any of its agents, officers, or employees shall be permitted to sell, agree to offer to sell, or give or offer to give, directly or indirectly, in any manner whatsoever, any share of stock “as an inducement to insurance or for the purchase of an annuity.” In other words, the first two co-ordinate clauses operate directly upon the insurance company prohibiting it from the issuance, either by itself or through its agents, by direct authority or by permission, to issue such stock and providing that a company which does so shall not be authorized to do business in this State. The third of the co-ordinate clauses relates to corporate agents of an insurance company, but in each case the thing which is made unlawful is the issuance of such stock “as an inducement to insurance or for the purchase of an annuity.”

I have given careful consideration to the plan used by this company, both as the same is represented by it and also as the same is represented by the documents furnished me, and from that consideration I am of the opinion that the plan does not involve the issuance or offering of the stock of the corporation “as an inducement to insurance or for the purchase of an annuity.” I can see how individual agents, as a matter of "sales talk," might involve the company in a violation of this section, but the plan itself, in my opinion, does not inherently
do so. I think it is clear upon the representations made by the company and also upon the basis of the documents furnished that the insured in each case pays fully for his stock and pays fully for his insurance, and under those conditions it seems to me that the vice in such transactions intended to be reached by this section does not follow. If it should be found that the plan as set up does not contain a provision for the payment of a premium adequate from an actuarial standpoint to pay for the six coupons when they become due, it would seem to me that the section might thereby be violated, doing indirectly what the company could not do directly. But in the absence of such a showing; I do not think that the plan in and of itself violates that part of the section which prohibits the offering of the stock "as an inducement to insurance or for the purpose of an annuity."

A more serious question, however, arises from the use of the language written in capitals in the above quotation. It is not entirely clear to me whether this language should be considered as a part of each of the preceding co-ordinate clauses. It may apply only to the last, in which event it would be of no particular significance in this discussion. However, I am inclined to think that the correct interpretation of the section would result in applying it to each one of the co-ordinate clauses above referred to, so that the first one, for example, would read as follows:

"No life insurance company doing business in this State shall issue in this State, nor permit its agents, officers, or employees to issue or deliver in this State, agency company stock or other capital stock, or benefit certificates or shares in any common-law corporation, or securities, or any special or advisory board or other contracts of any kind promising returns and profits as an inducement to insurance or for the purchase of an annuity or in connection therewith."

As stated earlier in this opinion, it seems to me that there is nothing inherent in the plan used by the company under consideration which operates to make of the sale of stock an "inducement" to the insured to purchase the insurance, but as I have construed this section, it prohibits not only the issuance and sale of the stock as an "inducement" to insurance but also prohibits the issuance and sale of such stock "in connection
therewith,” that is, in connection with the sale of insurance.

It remains for me to consider just how far this last quoted language goes, because it is evident that according to the plan, the sale of the stock when an insurance policy is also issued is considered at the same time as when the application for insurance is taken. At least it appears to me that that in all probability is true, and if the concurrent presentation in point of time of the two propositions operates to fulfill the condition that the one (sale of the stock) is “in connection” with the other (issuance of the insurance), the answer to your question is obvious. But does it follow that mere closeness in point of time of the two transactions must result in a holding that the one is “in connection” with the other? I am inclined to think that it does not.

In construing statutes it is provided by law as follows:

“Words and phrases shall be taken in their plain, or ordinary and usual, sense. But technical words and phrases having a peculiar and appropriate meaning in law shall be understood according to their technical import.”

Burns Indiana Statutes Annotated (1933), Section 1-201.

The words under consideration are not technical words and so to find their plain, or ordinary and usual sense, is the object of their interpretation. The word “connection” has a variety of meanings as given in dictionaries, but the one most appropriate in consideration of the context in which it appears in this statute is the “relation of things when one of them is involved in another.” (Webster’s New International Dictionary, Second Edition.)

Conformably with the above definition, I think that the language “in connection therewith” as used in the above statute means and implies such a relationship between the two transactions as that one of them is involved in the other so as to constitute actually one transaction. To so construe the words is to give recognition to the meaning as above set out as “relation of things when one of them is involved in another,” which, I think, is the true meaning. It is represented by the company that anyone can buy this stock whether he takes insurance or not and that anyone may contract for insurance
without contracting for the stock. That is, that neither of the transactions is in any sense dependent upon the other. If that is true, I think there is nothing in the plan which necessarily involves a violation of the section under consideration. The only indication which, I think, definitely points in the other direction is the use of the contemporaneous assignment of the coupons. This should be discontinued and the opinion herein expressed is based, in part, upon the assumption that it will be discontinued.

It is my opinion, therefore, upon the basis of the documents furnished and the representations of the company referred to herein, that there is nothing inherent in the plan which violates section 163, supra, and that the question of whether that section is or is not violated must depend entirely upon how the plan is operated.

FINANCIAL INSTITUTIONS, DEPARTMENT OF: Right of individual fiduciary to invest in certificates of time deposits; leave of court.

April 13, 1939.

Hon. Ross H. Wallace, Director,
Department of Financial Institutions,
State House,
Indianapolis, Indiana.

Dear Mr. Wallace:

We have your letter of April 11, 1939, in which you state:

“We will appreciate the benefit of your official opinion as to whether or not an individual acting in a fiduciary capacity by appointment of court, may invest money received by the individual in such fiduciary capacity in time certificates of deposit, issued by a bank or trust company.”

We are of the opinion that it is legal to make such an investment, but we are of the further opinion that before such an investment is made, due to the small amount of interest received on the deposit, the fiduciary should obtain from the court permission to make such investment.