

**PUBLIC INSTRUCTION, DEPT. OF: County superintendent
—qualifications.**

May 29, 1933.

Hon. Grover Van Duyn,
Assistant Superintendent,
Department of Public Instruction,
Indianapolis, Indiana.

Dear Sir:

I have before me your letter submitting the following question:

“Should a candidate for the office of county superintendent, be a resident of the State of Indiana before he is eligible to be elected to said office?”

The answer to the above question is in the affirmative. Your next question is: How long a period prior to such election must he be a resident of the State of Indiana? I know of no statute which fixes any particular length of time of residence in such a case. Section 4 of article 6 of the Constitution of Indiana, however, provides that:

“No person shall be elected, or appointed, as a county officer, who shall not be an elector of the county; nor anyone who shall not have been an inhabitant thereof, during one year next preceding his appointment, if the county shall have been so long organized.”

There is no similar provision with reference to state officers, but in my opinion, a person would not be eligible for election as a county superintendent unless he had resided in the state for at least one year next preceding his appointment.

INSURANCE COMMISSIONER: Whether department may prohibit issuing by Indiana assessment organizations of assessment policies containing “old age” benefits.

June 1, 1933.

Hon. Harry E. McClain,
Commissioner of Insurance,
Indianapolis, Indiana.
Attention: Harold G. Walton.

Dear Sir:

I have before me your communication presenting the following inquiry:

"It has been the practice of some Indiana assessment organizations to provide in their policies certain disability benefits which are frequently referred to as 'old age' benefits. Such 'old age' benefits commonly in substance provide that if the member is permanently and totally disabled at the age of 70 or after, he may elect to receive the face of the policy in installments.

"The effect of a provision similar to the one described above is that the policy practically is an endowment at the age of 70 since we believe that every policyholder could prove himself totally disabled at that age. Assessment organizations are not required to set up 'legal reserves' in the sense that such expression is commonly used; the premium rates for such an 'endowment' benefit are in numerous instances clearly inadequate.

"We wish to have your opinion as to whether we may prohibit the issuing by an Indiana assessment organization of an assessment policy containing an 'old age' benefit similar to that described above."

Section 7 of the Indiana Assessment Insurance Company Act of 1897 (Burns Annotated Indiana Statutes, section 8990) provides:

"Every such life insurance corporation, association or society shall accumulate and maintain a reserve or emergency fund equal to such sum as might be realized from one assessment on, or periodical payment by, policy or certificate holders thereof, and, in no event, less than the amount of its maximum policy or certificate. Such fund, if not already accumulated, shall be accumulated by every such existing corporation, association or society within six months from the time this act takes effect, and by every corporation, association or society hereafter formed under this act within six months from the dates of its incorporation or organization, and shall be held as a trust fund for the purposes for which such fund was created or accumulated. In case such fund or any portion thereof shall have been used by the corporation, association or society for the purpose or purposes for which the same was created or accumulated and the amount thereof thereby reduced to

less than the amount of one death assessment or periodical payment, the amount of such reduction below the amount of one death assessment or periodical payment shall be made up and restored to said fund within six months thereafter. Such fund may be held in cash or invested in the same class of securities required by law for the investment of funds by insurance corporations; and nothing herein contained shall prevent the creation and accumulation of other funds in excess of the amount herein required to provide for the purposes of such corporation, association or society. If such fund is in excess of the amount of one death assessment or periodical payment upon all certificate or policyholders and not less than the sum of fifty thousand dollars, the excess or any portion thereof may be used in the reduction of assessments or periodical payments by policy or certificate holders by ratable cash dividends or credits, or in such other equitable division or apportionment thereof as its by-laws or rules may provide, and such use shall not be deemed or construed to mean a profit received by members within the meaning of the statutes of this state, or the pro rata excess on any policy or certificate terminated by death or surrender may be refunded to the holder or beneficiary, as may be provided for in said policy or contract: Provided, That nothing contained in this act shall be construed to permit any contract promising any fixed cash payment to any living certificate or policyholder *excepting in the contingency of physical disability.*" (Our italics.)

Directing your attention to the portion of the statute we have italicized, we are of the opinion that where such benefit clauses clearly provide that the payment is to be made upon the occurrence of the contingency of physical disability, that your department may not prohibit the issuance of such policies.