INSURANCE COMMISSIONER: Whether Title Company of Indiana is conducting insurance business; if it should be licensed by and come under the jurisdiction of insurance department.

June 10, 1933.

Hon. Harry McClain,
State Insurance Commissioner,
Indianapolis, Indiana.

Dear Sir:

I have before me the original letter of your department, dated June 15, 1932, which had been withdrawn and recently re-submitted to this department for reply.

The body of the letter containing the inquiry is as follows:

"A question has been raised by the insurance department of New York as to whether or not the . . . . . . . . Title Company of Indiana is doing an insurance business. In checking with the secretary of state's office, we find that the purpose or purposes for which the . . . . . . . Title Company of Indiana is reorganized are as follows:

"'The business to be done by the corporation shall be to make abstracts of title, to insure titles to real estate in the State of Indiana and in all the states of the United States, to make loans and collections in connection therewith and to carry on such business as may be properly related or incidental thereto, and all allied and interdependent lines of business.'

"In examining the contract issued by the . . . . . . . Title Company of Indiana to its purchasers, we find printed at the top of the contract in bold type the following words

POLICY OF TITLE INSURANCE

"The insuring clause of the contract reads as follows:

"'This policy of title insurance witnesseth, that the . . . . . . . Title Company, in consideration of the payment of its premiums and charges for examination of title, the receipt of which is hereby acknowledged, doth hereby guarantee and insure . . . . . . . .'"
“In view of these record facts, please let us know whether in your opinion the .......... Title Company of Indiana is, in fact, conducting an insurance business and whether it should properly be licensed by and come under the jurisdiction of this department.”

In deciding whether or not the legislation in this state, the .......... Title Company of Indiana is doing such an insurance business as to bring it within the jurisdiction of your department, I desire to briefly summarize both the statutes which have dealt with this subject in the past, and which now deal with it.

In 1901, the Indiana legislature enacted what was known as the “Voluntary Associations Act” (Burns Indiana Annotated Statutes of 1926, section 4857 to 4903, inclusive), and which permitted any number of persons, not less than three, to voluntarily associate themselves together for a great many purposes but none of which dealt directly or indirectly with any type of insurance.

In 1919 (Acts of 1919, page 429), the “Voluntary Associations Act” was amended (Burns Anno. Ind. Stat. 1926, section 4874) to authorize such a voluntary association “to organize for the purpose of carrying on the business of insuring titles to real estate and to make abstracts, loans and collections in connection therewith * * *.” It would appear from the amendment that it was the legislative intent in so doing to include such business as title insurance with the act, and it thus becomes obvious that the legislature did not decide that “title insurance” should be brought within the purview of the general insurance laws then in force, but rather saw fit to leave it in a classification separate and distinct from general insurance.

The only other legislation in this state which attempted to deal with title insurance was an effort of the legislature in 1909 to amend the Insurance Act of 1903 so as to include title insurance. The attempted amendment appears in subparagraph 10 of section 1 of chapter 107 of the Acts of 1909 (Acts of 1909, page 279), but in this attempted amendment, the legislature did not amend the title of the act of 1903 to include the particular type of insurance which was sought to be brought within the purview of the act by section 10 and
the attempt was therefore in contravention of section 19 of Article 4 of the Constitution of this state and of no force and effect.

At the time, therefore, of the passage of "The Indiana General Corporation Act" in 1929, there was no other valid provision in our code dealing directly with title insurance other than those in the "Voluntary Associations Act" heretofore referred to. And we find under the provisions of "The Indiana General Corporation Act" of 1929 that the "Voluntary Associations Act" was directly repealed, thus leaving no statute in force which directly dealt with the subject of corporations which might be organized for the purpose of writing title insurance.

It is true, that the provisions of "the Indiana General Corporation Act" of 1929 specifically excluded the organization of a corporation under the provisions thereof for the purpose of writing "insurance." The question then arises whether or not this general prohibition against "insurance" in the 1929 act prohibited the ............... Title Company organizing and issuing so-called "title insurance" under the provisions thereof.

It is, therefore, my opinion, that the type of insurance written by the ............... Title Company can be issued by it, if organized under "the Indiana General Corporation Act," and that the legislature did not intend under the act of 1929 to include "title insurance" within the prohibition of the act dealing with insurance, but only such insurance companies as are separately treated under various insurance acts in our present code.

I may add, however, that I believe it is desirable that legislation dealing specifically with the writing of so-called "title insurance" be enacted in order that such type of insurance be brought under the supervision and control of your department.