

INSURANCE DEPARTMENT: Trading in goods, wares and merchandise. Sec. 180, Insurance Law of 1935. Capital stock in other corporation owned by insurance company. Insurance company owns all capital stock of mercantile company.

May 8, 1937.

Hon. George H. Newbauer,
Commissioner of Insurance,
State House,
Indianapolis, Indiana.

Dear Sir:

Your letter of April 29 is hereby acknowledged. The question presented in your letter is relative to the application of the Tower Mutual Insurance Company of Cincinnati, Ohio, for a license to write automobile insurance in the State of Indiana. In your letter you say that the company's statement which was submitted with the application for a license shows that \$100,000 of the book value of the company's assets are represented by the entire issue of capital stock of the H. F. Busch Company, a sausage manufacturing company of Cincinnati, Ohio.

Section 180 of the Indiana Insurance Law provides that "no company shall directly or indirectly deal or trade in buying or selling goods, wares, merchandise or other commodities except such as may have been insured by it, etc."

The specific question which you ask is:

"Whether or not the fact that this company owns the entire issue and control of the H. F. Busch Company would be, in effect, trading in goods or other commodities which is prohibited in section 180?"

It has been held in the case of *State v. Pielsticker*, 118 Neb. 419, 225 N. W. 51, 52, that the word "indirectly" signifies doing by an obscure, circuitous method something which is prohibited from being done directly, and includes all methods of doing the thing prohibited except the direct one. Since this insurance company owns all the capital stock, they must of necessity, of course, exercise control over the functioning of the manufacturing corporation and thus indirectly trade or deal in goods, wares or merchandise.

Looking at the facts from a slightly different angle, we come to the same conclusion. For instance, the word "deal" means an arrangement to attain a desired end, also an act of buying and selling; a bargain.

Oregon Home Builders v. Montgomery Insurance Company, 184 Pac. 487, 493, 94 Oregon 349.

In the light of the definition of the word "indirectly" and in view of the definition of the word "deal," the ownership of the entire capital stock being in the hands of the Tower Mutual Insurance Company is one means or arrangement to attain a desired end, such end being prohibited by section 180. In other words, the Tower Mutual Insurance Company, since they own the controlling interest in the manufacturing company, is engaged for all intents and purposes in the sausage manufacturing business. Thus, they are engaged in trading, that is to say, buying and selling goods, wares and merchandise.

Looking at the facts from still a different angle, we find that the Tower Mutual Insurance Company might come within the prohibition of section 180 if they were to engage in the buying and selling, or trading or dealing in, stocks with a purpose in view of accomplishing something other than investment. If the insurance company were to make a business of buying and selling securities then, it is my opinion, that they likewise would come within the prohibition of section 180. Many cases have held that the capital stock of a corporation is goods, wares and merchandise within the statute of frauds.

Coleman v. St. Paul and Tacoma Lumber Company, 188 Pac. 532, 535, 110 Wash. 259;

Davis Laundry and Cleaning Company v. Whitmore, 110 N. E. 518, 520, 92 Ohio State 44;

Hewson v. Peterman Manufacturing Company, 136 Pac. 1158, 76 Wash. 600.

In the case of Tisdale v. Harris, 37 Mass. 9, 13, the court said:

The word "merchandise" includes in general objects of traffic and commerce, and is broad enough to include stock or shares in incorporated companies.

Then again it was the opinion in the case of *Pound v. Lawrence*, 233 S. W. 359, 361, that shares of stock are within the meaning of the term "commodities," which is a broader term than merchandise, and which, in referring to commerce, may mean almost any article of movable or personal property.

The question is not raised relative to the Tower Mutual Insurance Company trading in the stocks. I point out to you the fact that one trading in stocks would come within the prohibition of section 180 for the reason that it would be an easy matter to transfer enough of the stock to lose control of the sausage manufacturing company temporarily, then upon being licensed to do business in Indiana buy it back. It is my opinion that such would be a subterfuge and within the prohibition of the statute.

To answer the question specifically, it is my opinion that since the Tower Mutual Insurance Company of Cincinnati owns the sausage manufacturing company of which you spoke, the insurance company is trading in goods, wares and merchandise in contravention of section 180 of the Indiana Insurance Code. A relinquishment of control would change the conclusion.

POLICE, INDIANA STATE: Firearms Act—gas guns, fingerprints.

May 11, 1937.

Mr. Don F. Stiver,
Supt., Indiana State Police,
State House,
Indianapolis, Indiana.

My dear Mr. Stiver:

This will acknowledge receipt of your letter of May 10, 1937, in which you asked about the Firearms Act of 1935 (Acts of 1935, Chapter 63) as amended by chapter 158, Acts of 1937, page 843.

Your first question is, "Does a pistol of the type that shoots a gas shell cartridge come within the definition of the Act?"

Webster has defined a "firearm" to mean "any weapon from which a shot is discharged as by explosives." The Act of