It will be noticed that the power given is "for the purpose of this article." This article is Article II of Part 2 of the Indiana insurance law and the purpose of the article in relation to foreign insurance companies is the conservation of the assets within the state of such foreign insurance company.

You say in the second paragraph of your letter: "To our knowledge the Franklin Mutual has no assets in Indiana." Since the Franklin Mutual Insurance Company is a foreign corporation but has no assets in Indiana, it is my opinion that the commissioner has no authority to appoint a special deputy to assist in the liquidation of such foreign company.

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INSURANCE DEPARTMENT: No authority for premium tax on reinsurance premiums. Reinsurance premiums no right to tax.

April 12, 1938.

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

Dear Sir:

In your letter of April 4 to which was attached a United States Supreme Court opinion in the case of Connecticut General Life Insurance Company v. Treasurer—State of California, you say you have been informed that the case holds that the State of California may not collect a tax on a reinsurance premium received by the Connecticut General Life Insurance Company from another insurance company authorized or unauthorized to do an insurance business in California.

You then say that section 235 of the Indiana Insurance Law provides for a tax on premiums collected in Indiana by companies domiciled in other states, which companies do business in Indiana.

Your letter then asks this question:

"Would the decision referred to above have any bearing on the application of our law, and if so would it permit a company to deduct reinsurance premiums
regardless of whether or not the company from which they were received, was authorized to do business in Indiana?"

Section 235 of chapter 162 of the Acts of 1935 which is known as the Indiana insurance law, provides in part that:

"Every insurance company not organized under the laws of this state and doing business within this state shall, on or before the first day of March of each year, report to the department, under the oath of the president and secretary, the gross amount of all premiums received by it on policies of insurance covering risks within this state. * * * From the amount of gross premiums, shown as above provided, shall be deducted * * * (2) considerations received for reinsurance of risks within this state from companies authorized to transact an insurance business in this state. * * * At the time of making the report required above every such insurance company shall pay into the treasury of this state for the privilege of doing business in this state, an amount equal to three (3) per cent of the excess, if any, of the gross premiums over the deductions allowed herein."

In the case to which you refer in your letter, namely, Connecticut General Life Insurance Company v. Charles G. Johnson, etc., decided January 31, 1938, by the United States Supreme Court, the appellant, corporation, was admitted to do an insurance business in California. In addition to its business conducted within the state it entered into contracts from time to time with other insurance corporations likewise licensed to do business in California reinsuring them against losing on policies of life insurance effected by them in California and issued to residents there.

The reinsurance contracts were entered into in Connecticut, the premiums were paid in Connecticut, and the losses, if any, were payable in Connecticut. The Supreme Court said:

"The question for decision is whether a tax laid by California on the receipt by appellant in Connecticut of the insurance premiums during the years 1930 and 1931 infringes the due process clause of the 14th Amendment."
The opinion also says that:

"No contention is made that appellant has consented to the tax imposed as a condition of the granted privilege to do business within the state. Nor could it be, for it appears that appellant had conducted its business in California under state license for many years before the taxable years in question and before the taxing Act was construed by the highest court of the state * * * to apply to premiums received in Connecticut from reinsurance contracts effected there. A corporation which is allowed to come into a state and there carry on its business may claim as an individual may claim, the protection of the 14th Amendment against a subsequent application to it of state law."

In view of Section 82 of Chapter 59 of the Acts of 1919 as amended by section 201 of the Acts of 1927, this statement above quoted would seem to take the Indiana situation out of the operation of the rule laid down in the Connecticut General case. This would seem to be true for the reason that the 1919 Act as amended in 1927 provided for a 3 per cent tax on the premiums of every foreign insurance company doing business in Indiana, but allowed only a deduction of losses actually paid. Nothing was said in that statute relative to reinsurance premiums as a deduction and would therefore, of course, have been figured in as a part of the gross premiums received and therefore taxable. Therefore, it would also appear that a foreign insurance company licensed to do business in Indiana by accepting the 1935 Act, consented to the tax imposed as a condition of the granted privilege to do business in Indiana.

In my opinion, however, it cannot be correctly said that any foreign insurance company could be bound under the guise of agreeing to such a tax as a condition of a granted privilege for doing business in view of the last paragraph of the Connecticut General case. In the last paragraph it was said:

"The grant by the state of the privilege of doing business there and its consequent authority to tax the privilege does not withdraw from the protection of the due process clause the privilege, which California does
not grant, of doing business elsewhere. *Western Union Telegraph Co. v. Kansas*, 216 U. S. 1; *International Paper Co. v. Massachusetts*, 246 U. S. 135; *Louisville & Jeffersonville Ferry Co. v. Kentucky*, 188 U. S. 385; 398. Even though a tax on the privilege of doing business within the state in insuring residents and risks within it may be measured by the premiums collected, including those mailed to the home office without the state, *Equitable Life Assurance Society v. Pennsylvania*, 238 U. S. 143, and though the writing of policies without the state insuring residents and risks within it is taxable because within the granted privilege, *Compania De Tobacos v. Collector*, supra, 98, there is no basis for saying that reinsurance which does not run to the original insured, and which from its inception to its termination involves no action taken within California, even the settlement and adjustment of claims, is embraced in any privilege granted by that state. *Provident Savings Life Assurance Society v. Kentucky*, supra, 112; *Compania de Tobacos v. Collector*, supra, 96; compare *Equitable Life Assurance Society v. Pennsylvania*, supra, 147; *Compania De Tobacos v. Collector*, supra, 98. All that appellant did in affecting the reinsurance was done without the state and for its transaction no privilege or license by California was needful. The tax cannot be sustained either as laid on property, business done, or transactions carried on within the state, or as a tax on a privilege granted by the state."

In view of the rule laid down in this Connecticut General case, it is my opinion that the State of Indiana cannot collect a premium tax on reinsurance premiums, whether the company is authorized to do business in Indiana or not, so long as such companies, parties to the reinsurance agreement, are foreign insurance companies and the reinsurance contract is consummated beyond the borders of the state.