

Insurance By Non-Licensed Company—Prosecution of Insured For Violation of Insurance Law.

A person who insures his property with a non-licensed company may not be prosecuted therefor.

May 21, 1920.

Hon. George P. Porter,
Commissioner of Insurance,
Building.

Dear Sir:

In a letter of some time ago you ask me for an interpretation of Sections 4021, 4022 and 4023 of the Revised Code. You say that it has come to your attention that a foreign non-licensed insurance company has issued a policy of insurance on property within the State, which said property was destroyed by fire.

You ask to know whether the person taking out the insurance might be prosecuted under any one of the above cited sections for aiding in the placing of insurance without first obtaining a license, and, secondly, for placing this insurance with a non-licensed company. I have investigated this subject and am of the opinion that the owner of the property insured could not be reached in a prosecution under the law as it to-day exists. A case directly in point is that of Commonwealth vs. Biddle, 139 Pa. St. 605, 21 Atl. 134, 11 L. R. A. 561. The facts in that case were that the owner of a mill in Philadelphia applied to a non-licensed and non-admitted insurance company for insurance. The transaction was handled through the mails and his application accepted and a policy issued. A loss occurred and the company duly adjusted their loss in accordance with their policy. The State of Pennsylvania had two statutory provisions, the sum and substance of which embodied the provisions of Sections 4021, 4022 and 4013. I am inclined to believe that the wording of the Pennsylvania statute is even more complete.

The defendant was prosecuted under this state of facts and convicted in the trial court. He appealed to the Supreme Court of Pennsylvania, where it was held that a legislature had the competency to punish a man for obtaining insurance upon his own property in a foreign non-admitted insurance company. This, however, is a harsh measure and an extraordinary interference with a man's property and right of contract. The court further said that if the legislature intended by an act to punish such a person, the intention must clearly appear and not be reached by mere inference. The Pennsylvania Supreme Court held that what the provisions of the statute meant to reach was persons acting as agents between the insurance company and the owner of the property. You will note from a reading of Section 4021 of the Revised Codes that the following language appears:

“and if any person or persons, agents, officers or trustees, of any corporation, association or society *doing business* shall cause to be issued or procured, received or forwarded, *application for insurance*, or delivered policies for any company or companies, etc.”

The words "applications" and "policies" have a significance in pointing to the fact that the act meant to reach only the persons doing business as insurance agents. The feature of these words is that they are written in the plural signifying thereby that it means a course of conduct. This would not be true with the owner of a building who forwarded only one application or procured or received only one policy. The same proposition was discussed in the Pennsylvania case, and I believe is a sound judicial interpretation of this kind of statutory provision.

If you find that any particular person acting as an intermediary between non-licensed insurance company and the owner of buildings was interested or in any manner connected with the placing of such insurance then a different situation would arise.

Respectfully,

S. C. FORD,

Attorney General.