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The Insurance Director in Illinois

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INSURANCE as a business had its rise in Northern Italy about the year 1300. At the beginning, most insurance transactions were those that are known at present as Marine Insurance. The earliest legislation in Italy dealing with this subject was designed to prevent the granting of insurance on foreign ships. Other legislative enactments prescribed conditions and the form of the contract. A measure passed in 1401 was enacted in Genoa for the purpose of taxing persons engaged in the insurance business and is the earliest known instance of taxation on Insurance.

The earliest instance of the creation of a special administrative agency for the regulation of the insurance business is found in a Florentine statute of 1523. The City Magistrate was given the power to appoint Commissioners who had extensive powers to fix a standard form of policy and the rates to be charged. There were no provisions requiring insurers to maintain reserve funds.

In England up to the year of 1870 there were no restrictions upon the ways and means an insurer should conduct his business, although the Privy Council in the sixteenth century had exercised spasmodic control over the insurance business. In 1574, a certain Richard Candler was given a monopoly by royal grant of making and registering insurance policies. Later the Privy Council abandoned an attempt to fix insurance rates after the Mayor of London, by means of delaying and evading the responsibility fixed upon him, had succeeded in with-
holding his co-operation. In 1870 an act\(^5\) was passed subjecting life insurance companies to a certain measure of supervision. Each company had to file a sworn statement at certain intervals regarding its financial condition. Provision was also made for a reserve fund. The Assurance Companies Act of 1909 brought control over fire, health, and accident insurers. The present regulation of the insurance business is under the National Insurance Act. Appointed commissioners administer social insurance. The Industrial Insurance Commissioner controls private insurance enterprises under the Industrial Association Act of 1923. It is to be noted that the English do not resort to legislation where other means of social control are effective.

In the United States the insurer has, from the beginning, been a marked man. The business of insurance could not flourish while there was no established system of exchange or currency. At one time usury laws were applied to insurers.\(^6\) Later, the fact that so many corporations were formed created a demand for their governmental regulation and supervision. The corporate form of insurers also made regulation more profitable. The obtaining of revenue has been a reason for regulating insurance companies, and some of the earliest regulatory legislation is found in taxing statutes. Later regulatory enactments included such subjects as publicity and periodical reports concerning financial status. Still later, we see the development of independent administrative agencies for the purpose of regulating and supervising the business of insurance in nearly every state of the Union and, by 1919, thirty-six states had established independent departments of insurance within their state governments.

The earliest legislation dealing with administrative

\(^5\) 33 & 34 Vict. c. 61, § 3 (1870).

supervision of insurance companies and agents of foreign insurance companies in Illinois was enacted in 1841, whereby three Commissioners were appointed to superintend subscriptions to the Jo Daviess Marine and Fire Insurance Company.⁷

In the same Act, agents of foreign insurance companies were required to pay a license fee of two hundred dollars and to file with the State Treasurer a power of attorney.⁸ Furthermore, such agents were required to furnish bond with good and sufficient sureties and were required to file a statement under oath with the Auditor containing evidence of the company’s financial condition as conditions to the issuing of a certificate to do business.

In 1869, the Auditor of Public Accounts was given certain administrative powers over the business of insurance. The enactment provided that the Auditor of Public Accounts should have the power to examine the affairs and condition of domestic life insurance companies. He also must have issued a Certificate of Authority to the company to issue policies before it could be considered to be lawfully engaged in the business of insurance.

In 1893 the creation of the Insurance Department⁹ gave the Insurance Superintendent the powers and duties with respect to insurance which had previously belonged to the Auditor of Public Accounts. The same Act also relieved the Attorney General from any duties heretofore imposed upon him in relation to certain insurance laws to be enforced by him. This section referred particularly to actions to enforce the penalty for discrimination and injunction proceedings brought in the name of the Attorney General. The same Act gave the Insurance Superintendent complete power to exercise control over insurance companies, their officers and agents in this state.

Such control as was exercised by the Insurance Super-

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⁷ Laws 1841, page 150.
⁸ Laws 1841, page 180.
intendent under the Act of 1893 enabled him merely to collect taxes, fees, fines, and penalties and to prosecute in his name violators of the insurance laws. In comparison with the powers that have been given to the Director under the Code, the Insurance Superintendent had little discretion and the giving of notice and hearing on controversial questions was totally unknown. The Supreme Court in 1915 held that this section did not deprive the Attorney-General of his common-law duties, which were inherent in his office.  

The administration of Insurance was placed under the Department of Trade and Commerce in 1917.11 The Insurance Superintendent remained as an officer of, and responsible to, the Director of Trade and Commerce. But the Department of Trade and Commerce was abolished in 1933.12 The office of the Insurance Superintendent was also abolished, but his powers and duties were transferred to a newly created Department of Insurance, together with the powers and duties previously vested in the Department of Trade and Commerce as the successor of the Insurance Superintendent, his officers and employees. In the next few years it became apparent that the Illinois insurance laws and the administration thereof were in archaic condition compared to other states.

The laws on insurance before the time when the Code was adopted consisted of a mass of inconsistent, ambiguous, and obsolescent statutes which had been enacted from time to time since 1869. Confusion was caused by the fact that whenever a new insurance law had been passed by the Legislature, it failed to repeal other laws inconsistent therewith, except by implication. Therefore efforts were made to pass a uniform set of laws to be known as the Illinois Insurance Code. The proposed Code

10 Fergus v. Russel, 270 Ill. 304, 110 N. E. 130 (1915).
11 Laws 1917, § 56 (2).
12 Laws 1933, p. 1061, par. 1.
was not able to pass the Legislature in 1935. However, certain portions thereof dealing with licensing of insurance brokers, solicitors, and company representatives were passed in 1936. Finally in 1937 the Insurance Code as amended was passed. This was accomplished after the Code had been redrafted by the Insurance Committee of the Illinois State Bar Association and compromises had been made. A special section repeals all laws inconsistent with the provisions of the Code.

In order to examine the scope of administrative control exercised by the Director and his subordinates, let us assume that a new insurance company is about to be organized and incorporated. Depending on the type of insurance business the new company intends to engage in, it must comply with the preliminary statutory requirements. Then the new company must deliver certain documents to the Director, including duplicate originals of the articles of incorporation, a copy of its by-laws, a form of its subscription agreement and certain bonds or securities. Thereafter the Director must approve or disapprove the documents and securities furnished. He cannot act arbitrarily because the law provides for notice on the part of the Director and gives the company a right to request a hearing should the Director find the documents and securities to be insufficient. It is further provided that the Director is to issue a permit to the new company to solicit subscriptions for two years. This permit may be revoked by the Director after notice and hearing for certain causes.

The next step is an examination of the company by the Director after the capital has been fully subscribed and paid in and a surplus deposited in accordance with the

13 Code passed House by large majority but was defeated in Senate by four votes because of objections to certain parts of Code on the part of insurance companies.

14 Ill. Rev. Stat. 1937, Ch. 73, § 627.

15 Ibid., § 628.

16 Ibid., § 630.

17 Ibid., § 632.
If the examination is satisfactory, the Director will issue a certificate to do business.\textsuperscript{18} Prior to the issuance of the certificate to do business the Director may approve a written agreement between subscribers and incorporators surrendering the articles of incorporation and dissolving the company, provided certain conditions exist or have been complied with.\textsuperscript{19} Amendments to the articles of incorporation must also be approved by the Director.\textsuperscript{20}

The Director has broad discretionary powers in the renewal, revocation, or suspension of licenses and certificates of authority to do business.\textsuperscript{21} However, one notable feature of the new Code is the fact that it provides for notice and hearing wherever possible. This was not true of previous insurance regulation. Apparently, the necessity of notice and hearing as constitutional safeguards against abuse of discretion and power on the part of administrative officials is now clearly recognized.

The Director also has control over the financial conditions of insurance companies. As previously mentioned a new company must deposit certain bonds, securities, or cash to be approved by the Director. This also includes control over the assets, investments, and financial operations of insurance companies. The Insurance Code provides what kind of securities may be acquired as investments.\textsuperscript{22} An exception is made where one company merges

\textsuperscript{18} Ibid., § 636.
\textsuperscript{19} Ibid., § 637.
\textsuperscript{20} Ibid., § 642.
\textsuperscript{21} Insurance Superintendent may refuse or revoke license where expense of management is not commensurate with income. State ex rel. Woodmen Acc. Co. v. Conn, 116 Ohio St. 127, 156 N. E. 114 (1927). Insurance Superintendent may refuse renewal of license where mutual company failed to make necessary assessment to pay a judgment. State ex rel. Clinton Mut. Ins. Ass'n v. Bowen, 132 Ohio St. 583, 9 N. E. (2d) 494 (1937). Refusal of Insurance Superintendent to renew license held proper where advertisements of companies were misleading, since he, in dealing with foreign insurance companies and with agents generally, is vested with sound discretion in the exercise of which he is answerable to no one except for abuse. State ex rel. Allstate Ins. Co. v. Bowen, 130 Ohio St. 347, 199 N. E. 355 (1936). No case on this point has as yet been decided in Illinois.
\textsuperscript{22} Ill. Rev. Stat. 1937, Ch. 73, §§ 736, 737.
with another and the latter company has securities or assets not approved by law, although considered as legal investments when they were acquired. The law allows a certain period of time for the disposition of such assets. The Director is to grant a hearing on the question of extending the time for the sale of such assets. There are also certain restrictions on the acquisition and holding of real property on the part of insurance companies. The Director may also find that a company has insufficient assets or has suffered an impairment of capital, whereupon he has the power to require a company to make good such impairment and to discontinue the issuance of policies. However, he must give them written notice of those facts. If the order is not complied with during the time specified in his notice, he may begin injunction proceedings to restrain the company from doing business.

Another phase of administrative control over insurance business is the power to approve or disapprove policy forms, rates, and premiums as well as the further control over business-getting methods and expenditure of funds. The law forbids deceptive statements as to assets, prescribes contents of advertisements as to financial condition, and forbids misrepresentation, defamation, and political contributions.

A large part of the Director’s administrative powers in the field of insurance is taken up by inquisitorial and visitorial powers. There are all sorts of reports and examinations that may be required from insurance companies or that the companies may be subjected to. First, as to reports, there are annual reports or statements to be filed by every insurance company, whether domestic

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23 Ibid., § 738.
24 Ibid., § 740.
25 Ibid., §§ 646, 672, 695.
26 Ibid., § 801.
27 Ibid., §§ 755, 1036, 1042.
28 Ibid., §§ 759-762.
29 Ibid., §§ 744-748.
or foreign, doing business in this state. The law prescribes the time of filing and the contents of the statement to be filed.\textsuperscript{30} Printed blanks for that purpose are issued by the Director's office.\textsuperscript{31} The Director also is given a great deal of discretion in that he may permit the extension of time for filing the report by any company, for reasons which he shall deem good and sufficient.\textsuperscript{32}

The Director is required to cause the annual statements to be printed in pamphlet form for the information of the general public,\textsuperscript{33} and a penalty is provided for in case a false or late annual statement is filed.\textsuperscript{34}

Another important function is the examination of companies. It is, of course, impossible that all examinations can be personally conducted by the Director. It is, therefore, provided that examinations may be conducted by employees of the Insurance Department designated by the Director.\textsuperscript{35} The law says nothing as to when these examinations shall be conducted, and it is left entirely within the discretion of the Director when and how often he may see fit to order an examination of the affairs of a company.\textsuperscript{36} A company need not be given notice as to a proposed examination. The reason for the absence of such a provision is obviously because notice and a hearing might enable a company to cover up any deficiencies in its business affairs. However, after the examination is made, the examiner is required to make a complete report,\textsuperscript{37} and the Director must grant a hearing before filing and publishing the report or parts thereof.\textsuperscript{38} The practice is to send a copy of the Examiner's Report to the particular insurance company with a form letter stating that if objections to the report are filed within a

\textsuperscript{30} Ibid., § 748 (1).
\textsuperscript{31} Ibid., § 747.
\textsuperscript{32} Ibid., § 748 (1).
\textsuperscript{33} Ibid., § 748 (3).
\textsuperscript{34} Ibid., § 751.
\textsuperscript{35} Ibid., § 1014 (1).
\textsuperscript{36} Ibid., § 744 (1).
\textsuperscript{37} Ibid., § 744 (3).
\textsuperscript{38} Ibid., § 744 (4).
certain period of time, a hearing will be had on a given
day on those matters that have been objected to. The
home department of a state will accept the report of a
foreign Insurance Department on the status of a foreign
company applying for a license to do business. Illinois
has no provision for periodical or routine examinations,
and the Director may order examinations as often as
he deems expedient or as may be necessary and proper.\textsuperscript{39}

The companies must pay the reasonable expenses of
examinations. There is no provision for determining how
expense bills are to be fixed. The chief penalty for
refusal to submit to an examination is the revocation of
the company's license. A penalty for falsification of rec-
ords is also imposed.\textsuperscript{40} Included in the duty of examining
the affairs of an insurance company is the appraising of
real estate to determine the sufficiency of loans made by
insurance companies. In practice\textsuperscript{41} the Insurance Depart-
ment probably selects about every fiftieth piece of real
estate for appraisal, because it would be almost impos-
sible to appraise every piece of real estate in which
insurance companies have an investment. Certain restric-
tions apply to insurance companies with respect to ac-
quision and holding of real property.\textsuperscript{42} After acquiring
real estate, insurance companies may hold it for three
years and until the Director thereafter may order a com-
pany to dispose of it. Such order must be based on notice
and hearing and must take into consideration the interest
of the company.\textsuperscript{43}

Grounds given for making examinations of companies
may be definite or indefinite, or no grounds at all may
be given. Under the law as it stood prior to the adoption
of the Code, the Insurance Department was given dis-
cretion to conduct examinations as often as the Insurance

\textsuperscript{39} Ibid., § 1013 (c).
\textsuperscript{40} Ibid., § 746.
\textsuperscript{41} Patterson, The Insurance Commissioner in the U. S., p. 360.
\textsuperscript{42} Ill. Rev. Stat. 1937, Ch. 73, § 740 (1).
\textsuperscript{43} Ibid., § 740 (2).
Superintendent deemed expedient or whenever the Superintendent deemed it for the best interest of the public to do so. The present Insurance Code sets out fully the grounds for initiating an examination by the Director for the purpose of ascertaining assets, conditions, and affairs of any company. An examination may be initiated through a policyholder or others interested in the affairs of a company. The administrative procedure as practiced by the Insurance Department is as follows: The first step is a complaint placed with the Director either by a policyholder, stockholder, creditor, or another insurance company or corporation relative to a certain subject. Then follows a notice of the proposed official action to the party or corporation about which complaint has been made. Such notice must specify the time, place, and subject of the inquiry, which may be conducted by the Director personally or by any one designated by the Director to conduct such hearing.

The Director is given the power to subpoena witnesses, books, papers, and other data relative to the inquiry and to examine witnesses concerning the subject of the inquiry. Persons neglecting or refusing to obey a subpoena issued by the Director are liable to prosecution and certain penalties through appropriate court proceedings which the Director may undertake. After the hearing has been had, the Director should make an order or decision relative to the subject of the inquiry. Such decision should specify the grounds upon which it has been made. As the law is well settled that all administrative resources, by way of appeal of the order of an administrative body or official, must be exhausted before the courts will interfere with such administrative order, a rehearing

44 Ill. Rev. Stat. 1925, Ch. 73, § 39.
46 Ibid., § 1014 (2).
47 Ibid., § 1014 (1).
48 Ibid., § 1015 (1).
49 Ibid., § 1015 (3).
should be requested by an insurance company that is
dissatisfied with the order or ruling of the Director.

The Code provides for judicial review of orders and
decisions of the Director.\(^5^0\) The only exception is pro-
vided in the case of an order by the Director to make
good an impairment of capital or surplus or a deficiency
in the amount of admitted assets. The reason for that
is that the public might be harmed by allowing an insur-
ance company that is suspected of insolvency to continue
in business during the time that judicial proceedings for
review of the order of the Director might require. Upon
a petition for review, the Director within a specified time
must file a transcript of the record of the hearing had
before him.\(^5^1\)

As to the powers of the Director to make general rules
and regulations with respect to enforcement and execu-
tion of all insurance laws of the state,\(^5^2\) there is no doubt
that the legislature may delegate powers to make reason-
able rules and regulations with respect to a certain sub-
ject to an administrative body or official as long as it
sets a sufficient standard or guide for the administrative
official. The evolution that has occurred in the theory
of the delegation of legislative powers to administrative
bodies is illustrated by two Wisconsin cases, one decided
in 1896\(^5^3\) and the other in 1928.\(^5^4\) The first case held that
there had been an unconstitutional delegation of legisla-

\(^5^0\) Ibid., § 1019 (1).
\(^5^1\) Ibid., § 1019 (2).
\(^5^2\) Ibid., § 1013.
\(^5^3\) Dowling v. Lancashire Ins. Co., 92 Wis. 63, 65 N. W. 738 (1896), was
a suit upon a Wisconsin standard fire insurance policy, the form of which
had been approved by the Wisconsin Insurance Commissioner. The policy
contained a clause against parol waivers. The contention was that the law
delegating to the Ins. Commissioner the power to prepare, adopt, and approve
a printed form in blank to conform "as near as the same can be made appli-
cable" to the New York standard policy, was an unconstitutional delegation
of legislative power. This contention was upheld.

\(^5^4\) State ex rel. Wisconsin Inspection Bureau v. Whitman, 196 Wis. 472,
220 N. W. 929 (1928). This was a proceeding to review and annul an order
of the Insurance Commissioner disapproving certain rules and regulations of
the plaintiff, an insurance rating bureau, created under Wis. Statutes. The
statute gave the Commissioner the power to review any rate to determine
whether the same is unreasonable or discriminating.
tive power to the Insurance Department in that it had been given too much discretion to determine the details of a standard policy form, although the standard form of New York had been set out as an example by the legislature. The latter case, however, held that certain powers to prescribe were not an unconstitutional delegation of legislative powers to the Insurance Department and that there is a difference between delegation of a power to prescribe and delegation of the proper administration of statutes relating to standard provisions in insurance policies.

The proof that the enforcement of insurance laws can be best accomplished by the appointment of a single administrative officer is borne out by the statement of Professor Patterson that already in 1919 thirty-six states had a single full-time officer in charge of their insurance departments. Through the adoption of the Illinois Insurance Code the present Director of Insurance has been given more powers than any other insurance administrator has had heretofore. So great are his discretionary powers especially, the Director has been referred to as a Dictator.

For example, Section 407 of the Code, dealing with judicial review of orders and rulings of the Director, provides that any such order or ruling on the part of the Director is subject to review by the courts of competent jurisdiction, with the exception of an order by the Director upon a company to make good an impairment of capital or surplus or a deficiency in the amount of admitted assets. This exception to the general rules that all orders and rulings of the Director are subject to judicial review places a large amount of discretion into the hands of the Director and enables him practically to act as prosecutor, judge, and jury combined. This combination of legislative, judicial, and executive powers in the hands of a single administrative officer is deemed
to be very dangerous by those who contend that the granting of these combined powers to one individual or agency of government violates the fundamental principles of our constitution which is based upon separation of powers.

We might ask ourselves what is the practical effect of this exception in Section 407 of the Insurance Code? An analysis of that exception will demonstrate that should there be a finding of fact by the Director that any of the above enumerated conditions exist within a company, then the Director has the power to order the company to refrain from doing any business. It is contended by those who favor this large discretionary grant of power to the Director that this exception to the general rule is for the protection of the public and that to allow a company, whose financial standing has been found to be questionable by the Director, to continue in business, during the time it takes to have a judicial review of this matter, would cause serious loss and damage to the public's investment.

It is also contended in favor of such powers by the Director that such ruling will only be made after due notice and hearing has been had respecting this issue and that the company will be given a specified time to adjust its financial condition and comply with the ruling of the Director and that if the company should fail to do so, proceedings for liquidation and rehabilitation will follow in the natural course of events at which time the court would have an opportunity to pass upon the question whether an impairment of capital or assets actually exists, thus making the Director's ruling not a final one on this issue.

On the other hand there is grave doubt whether this particular exception granting such large discretionary powers to the Director is constitutionally valid in that it does not adequately protect the property rights of a
company and may lead to the taking of property without due process of law. The power to restrain a company from doing business, even if only temporarily, may affect a company’s business reputation to such an extent that it may never recover completely from the effects of such a ruling on the part of the Director. Another consequence of such a ruling might be the loss of their investments by stockholders of a company which is affected by such a ruling. It is further pointed out that such large discretionary power not only enables the Director to act for the benefit of the public, but also might enable him to discriminate unjustifiably, or to favor special or friendly interests. Because of the technical and complicated nature of the business of insurance, the Director has unusual opportunities to permit or approve to one company values of assets that are inflated while approving actual values only to another company. Because the public has no means of knowing whether the Director has permitted one company to violate the investment act or the reserve requirement or has vigorously enforced the law against another company which may not be on friendly terms with the Director, it has been suggested that an advisory council of several members might be appointed by the Governor. This council would have no administrative powers but would merely advise with the Director upon any matter that he might care to submit to its members for consultation. Another of their functions would be the making of recommendations and suggestions to the Director. For that purpose the members of the advisory council should be allowed freedom of access to the Director’s office and files. Such a council exists in the State of New York.

In the opinion of the writer, some solution of the above problem could be worked out by providing that the Director commence injunction proceedings in order to stop a company from doing business, after he had found,
upon due notice and hearing having been given, that such company’s assets or reserve funds were impaired. At the hearing upon the petition for an injunction the court would have ample opportunity to test the correctness of the Director’s ruling upon this issue.

Of course, judicial review is not the only means of controlling the actions of the Insurance Director. First, there is the very important control that the general public exercises over the action of the Director by means of its attitude toward him. The present Director of Insurance has maintained excellent relations with the public. Private persons have called on and received from the Director and the Department of Insurance help and information relative to their claims against companies, agents, or brokers. Then, too, the Governor, who appoints, may also recall the Director for cause. The latter procedure has not been used in Illinois up to the present time. Control is also possible by legislative action, for the legislature may prescribe, limit, or add to the powers of the Director within constitutional limitations. Professional control is exercised over the Insurance Director. His actions can easily be criticized and his mistakes be pointed out by members of the insurance profession. Judicial control, of course, is the most important in that the courts may affirm, set aside, or restrain the order or decision of the Director. 55

There are five types of remedies for specific relief against the Director by way of mandamus, injunction, certiorari, prohibition, or statutory appeal or review, and of these the latter type has been most frequently used in Illinois. Actions against the Insurance Director or Commissioner for damages are very rare because his actions are those performed as an administrator, and, in issuing licenses or certificates to do business, he is acting in a quasi-judicial capacity. 56

55 Ill. Rev. Stat. 1937, Ch. 73, § 1019 (3).
56 Burton v. Aetna Life Ins. Co., 229 Ill. App. 517 (1923), held that the
Since the Director of Insurance is a public official, the Department of Insurance is a Department of the State Government; the books, records and papers of the Department, with certain exceptions, are available for public inspection. The Director, as the head of the Insurance Department, is required to make an annual report to the Governor showing the condition of his department and that of the various companies, as well as including suggestions and recommendations for the legislature.

The Director works in close co-operation with the Attorney General. The Director must obtain the opinion of the Attorney General relative to legal questions and proceedings. As pointed out previously, an appropriation for legal expenses for the Insurance Superintendent has been held illegal by the courts on the ground that the Insurance Superintendent is to call on the Attorney General for legal advice. Under the law as it was in 1917, the approval of the Attorney General was required before the Insurance Superintendent was able to issue a certificate or even before a charter could be granted. The Attorney General also had the power to wind up non-fraternal assessment life companies.

The law provides for mergers and consolidation of insurance companies. After the necessary requirements have been complied with, the new company must obtain a certificate of merger or consolidation and a certificate of approval from the Director. The Director must give notice stating reasons for his disapproval of a merger or consolidation to the companies concerned. Upon their

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Insurance Superintendent in the exercise of his official powers acts in a quasi-judicial capacity and equity will not interfere by injunction to control his action. In State v. Thomas, 88 Tenn. 491, 12 S. W. 1034 (1890), which was an action on the official bond of the Ins. Commissioner, the court held that his action in issuing a license was discretionary and therefore judicial. No liability attached unless action was corrupt.

57 Ill. Rev. Stat. 1937, Ch. 73, § 1016.
58 Ibid., § 1018.
59 Ill. Rev. Stat. 1917, Ch. 73, § 178.
60 Ibid., § 247.
61 Ill. Rev. Stat. 1937, Ch. 73, § 768.
62 Ibid., § 774.
The Director is also given the right to appear through the Attorney General in legal proceedings instituted by dissenting shareholders of a domestic company. Dissenting policyholders also may file a petition with the Director for a hearing with reference to the proposed merger or consolidation. The Director may revoke his approval of any agreement if any official shall fail to attend such hearing or produce the required data.

Reinsurance which is authorized by law must be in the form of agreements approved by the Director. It is left to the determination of the Director whether the terms of any such agreement injuriously affect the rights of policyholders of the companies to the agreement. In case of his disapproval, the company may request a hearing.

The Insurance Code contains a special article on reorganization of foreign companies. With respect to that subject the Director of Insurance has the power of approval or disapproval of the proposed plan of reorganization. The law further provides that after the reorganization has been effected, the reorganized company shall be subject to regulation and control by the insurance department of this state and other states wherein the company may be doing business.

Due mostly to the effects of the depression is Article XIII of the Insurance Code dealing with rehabilitation, liquidation, conservation, and dissolution of insurance companies. There are numerous grounds for rehabilitation and liquidation as set up by the Insurance Code.
It is provided that if the Director decides that an insurance company should be rehabilitated or liquidated for any of the reasons enumerated in the Code, he is to report the same to the Attorney General, whose duty it is then to file a petition on relation of the Director to have the company show cause why an order for rehabilitation or liquidation should not be entered by the court. The court is given complete jurisdiction to enter any order or enjoin either the company or the Director as the facts warrant.

Should the court find that cause exists for rehabilitation or liquidation, then the Director is to take possession of all the assets of the company, but not before the company is given a full hearing on this point. The law provides that, upon the entry of such an order, the Director by operation of law is vested with title to all assets, tangible or intangible, of the company and the recording of such order is notice to anyone interested.

The provision that the Director rather than a receiver shall act as rehabilitator and liquidator constitutes an important change in the law. This has eliminated the political aspects of receivership by way of appointment by the courts. Every one knows how political receivers in foreclosure cases have been frowned upon by the interested parties. For that reason it is believed that the Director, through special deputies, would be able to effect substantial economy in such cases. Inasmuch as there are numerous insurance companies which are engaged in the insurance business in various states, the uniform law on that subject has been included in the Article on Rehabilitation and Liquidation.

To facilitate interstate liquidations, the law contem-
plates that the Director is to conduct the affairs of delinquent companies in all reciprocal states. Two grounds, which had not been previously recognized as grounds for liquidation, have been inserted. One is the failure of a company to pay a valid final judgment within thirty days, the other the refusal of an officer of a company to submit to examination under oath, after due notice has been given.

The first duty of the Director as a rehabilitator is to conduct the business of the company and to attempt to remove the causes and conditions which led to the institution of the legal proceedings. The Director is vested with a wide range of discretion in this regard.

After the Director has taken over control of any such company, the next step would be some plan for the mutualization or rehabilitation of its affairs. Notice and hearing to policyholders, creditors, and other interested parties of such proposed plan should be given. At such hearing the supervising court may either approve, disapprove or modify such plan for reorganization. It is apparent, however, that the suggestions by the Director may have great weight with the court. If the Director comes to the conclusion that efforts to rehabilitate the company would be useless, he may petition the court for an order liquidating the company. This section impliedly calls for notice and hearing to interested parties. If, on the other hand, the Director feels that there is no further cause for him to continue the company's business, he may apply to the court for a discharge of his responsibility and the return of the management of its affairs to such company. Here the law provides for a full hearing. In case an order for liquidation is entered

79 Ill. Rev. Stat. 1937, Ch. 73, § 804 (2).
80 Ibid., § 804 (3).
81 Ibid., § 804 (4).
the powers of the Director are numerous, also subject to review by the court. He may dispose of the real and personal property of the company and sell or compromise debts or claims owing to the company. He may also enter into a contract of reinsurance on behalf of the policyholders, subject to approval by the court after a full hearing.

The Director may also, during the period of rehabilitation, borrow money and pledge assets of the company on such terms as may be approved by the court. The same powers as to rehabilitation and liquidation may be used by the Director against foreign companies for the purpose of preserving local assets for the benefit of local creditors and policyholders. The power of the Director to conduct examinations is not affected by proceedings for rehabilitation or liquidation, although such proceedings may be the result of an examination.

The Director as rehabilitator or liquidator has the same powers to take action to avoid a transfer of assets or the creation of a lien upon the same as a creditor or stockholder of the company has when there has been a fraudulent transaction by the company.

Articles XXVI and XXVII of the Code deal with Motor Vehicle and Fire Insurance Rates. Originally it had been planned to present these topics as a separate bill to the legislature due to the controversial nature of the question. However, when it was apparent that the Code would be adopted, the Insurance Department requested

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82 Ibid., § 805 (2)
83 Ibid., § 805 (4).
84 Ibid., § 807.
85 Ibid., § 809. Superintendent of Insurance as liquidator of insurance company is vested with all causes of action theretofore vested in the company, including actions against former directors, but courts may veto his acts as liquidator. National Bondholders Corporation v. Joyce, 276 N. Y. 92, 11 N. E. (2d) 552 (1937).
86 Ill. Rev. Stat. 1937, Ch. 73, § 812.
87 Ibid., § 816 (4). Superintendent of Insurance as rehabilitator of insolvent guarantee company may and must disaffirm fraudulent sale of mortgages to guarantee company, tendering return of such mortgages upon discovery of fraud. Pink v. Title Guarantee & Trust Co., 274 N. Y. 167, 8 N. E. (2d) 321 (1937).
that the above articles be added to the Code.

By Section 417 of the Code the Director is given no power to pass upon motor vehicle rates. This section merely provides that schedules of all rates and charges shall be filed with the Director. Nowhere under this article is there any authority on the part of the Director to give any opinion or grant hearings in rating matters.

But it is apparent that companies and rating bureaus must take it upon themselves to file rates or schedules that are not "unjust, unreasonable, discriminatory or preferential." Otherwise, they are subject to criminal penalties and their license or the licenses of their agents and brokers are liable to be revoked or suspended. Although the standards provided in the statute would be a sufficient guide to enable the Director to determine the fairness of these rates or schedules, it is doubtful whether companies can be constitutionally required to decide at their own peril whether rates or schedules comply with standards, which to them are so indefinite. The Illinois Supreme Court held in Parks v. Libbey-Owens-Ford Glass Company\(^8\) that "statutes which either forbid or require the doing of an act in terms so vague that men of common intelligence must necessarily guess at their meaning and differ as to their application do not constitute due process of law." Applying this principle to this particular question at hand it would follow that a higher degree of certainty should be required before companies should be subjected to penalties for failing to comply with standards that may be interpreted with a broad or a narrow meaning. The powers conferred upon the Director are not those of direction and initiation pursuant to general rules by which companies may determine their rates and schedules, but his powers are merely those of correction following a violation of the statute.

It has been suggested that this constitutional obstacle could have been overcome by giving the Director power,

\(^8\) 360 Ill. 130, 195 N. E. 616 (1935).
after due notice and hearing, to order changes in rates and schedules that have been filed with him by the companies and forbidding them to issue policies at rates that are not in accordance with established standards. The observations made in regard to motor vehicle rates also hold true with respect to the determination of fire insurance rates. In both of the above mentioned articles there is a special section as to notice and hearings by the Director.

Legal opinions are divided as to the desirability of the expansion of the powers of administrative agencies. There are those who say that administrative law itself is foreign to our institutions because its exercise is usually a combination of executive, legislative, and judicial functions. And, therefore, they contend that this violates the doctrine of separation of powers, which is a constitutional principle based on a long historic struggle and express provisions.89

On the other hand the advocates of more powers to administrative agencies contend that, due to modern inventions and problems, it is impossible for the three recognized branches of our government to take care of all details in connection with the exercise of their particular functions.90

The controversy evolves mostly around the delegation of legislative powers to administrative agencies. Over a hundred years ago the United States Supreme Court, in 1825, held that Congress might, depending on the subject, delegate legislative powers to others.91 At that time the distinction was not well marked between subjects which must be entirely regulated by the legislature itself and other subjects in which a general provision may be made, and power given to those who are to act under such gen-

89 Frankfurter and Davisson, Cases and Other Materials on Administrative Law (Commerce Clearing House, Chicago, 1932), pp. 637-639.
91 Wayman v. Southard, 10 Wheat. 3 at 42, 6 L. Ed. 253 (1825).
eral provisions to fill in all details. In 1916, Senator Root before the American Bar Association expressed the opinion that the doctrine prohibiting the delegation of legislative powers has virtually retired from the field and given up the fight against these administrative agencies.

While administrative agencies are under the control of the legislative and executive branches of government and are said to have a duty to conform their decisions to the objectives of the legislature and the executive, nevertheless, their decisions or rulings, like those of courts, should be based on notice and hearing. With respect to the type of hearing required to be given by administrative agencies, the United States Supreme Court in Morgan v. United States said:

The vast expansion ... of administrative regulation in response to the pressure of social needs is made possible under our system by adherence to the basic principles that the legislature shall appropriately determine the standards of administrative action and that in administrative proceedings of a quasi-judicial character the liberty and property of the citizen shall be protected by the rudimentary requirements of fair play. These demand "a fair and open hearing,"—essential alike to the legal validity of administrative regulation and to the maintenance of public confidence in the value and soundness of this important governmental process. Such a hearing has been described as an "inexorable safeguard". . . . The requirements of fairness are not exhausted in the taking or consideration of evidence, but extend to the concluding part of the procedure as well as to the beginning and intermediate steps.

The maintenance of proper standards on the part of administrative agencies in the performance of their quasi-judicial functions is of the highest importance and in no way cripples or embarrasses the exercise of their appropriate authority. On the contrary, it is in their manifest interest. For . . . if these multiplying agencies deemed to be necessary in our complex society are to serve the purposes for which they are created and endowed with vast powers, they must accredit themselves by acting in accordance with the cherished judicial tradition embodying the basic concepts of fair play.

92 51 Am. Bar Ass'n Reps. 355, 368-71 (1926).
93 58 S. Ct. 773, 82 L. Ed. 757 (1938).
Administrative agencies make rules which have the force and effect of law and are in form legislative, and they find facts in proceedings which are fundamentally judicial in purpose and scope. The judicial power of review has been the ground upon which the fact-finding powers of administrative agencies have been sustained as not constituting a violation of due process or an invalid delegation of judicial power. The courts will interfere in all cases involving administrative action where the constitutional rights of parties are involved, whether the question raised relates to a rule or to a finding or determination. They will also exercise such powers of review as are conferred upon them by the act creating the agency or under general laws.

Legislatures have attempted to preserve the practical advantages of administrative fact-findings by passing laws providing that findings of fact, made by these administrative agencies, shall be conclusive upon the reviewing courts. These statutes have made it necessary for the courts to draw a sharp distinction between findings of fact and conclusions of law. The Insurance Code has safeguarded the constitutional rights of any litigant by providing a trial de novo of any issue before the reviewing court.

In conclusion it may be said that the 1937 Insurance Code is a great improvement over insurance legislation in existence prior to that time. The Code presents a consistent, comprehensive unit eliminating duplications and obsolete provisions. The Code has not set up a system of excessive or unreasonable state regulation. The question whether the Director has been given too much power can be answered in the negative, although an advisory board as set up in the State of New York might be a further safeguard against arbitrary or dishonest action on

the part of the Director. There is no doubt that in the hands of an honest and capable Director the increase of powers has made possible the more effective administration of insurance laws. The only danger lies in the possibility that in the future an incompetent, politically minded or corrupt incumbent might use these powers to carry out unfortunate policies or otherwise injure the successful administration of insurance laws through improper practices.

The Code has gone a long way towards assuring the general public that insurance companies must operate on a sound financial and actuarial basis. From the standpoint of safeguarding the solvency of companies and giving policyholders fair treatment, the Code represents a distinct advance over prior insurance legislation.

One important feature of the Code is that it requires the Director to give a hearing in numerous instances where formerly such a privilege was within his discretion. The failure to require such hearings has been a major defect of insurance legislation generally. Although the Code contains a few undesirable features, it provides on most points an adequate statutory basis for proper regulation.

One undesirable feature is that it is not contemplated that fire and motor vehicle insurance rates should be uniform nor that the Director shall fix such rates. The Director is not given the power to prevent the filing of rates that, in his opinion, do not meet the standard of the statute. An objection to the Code made by the companies is that it allows attorneys' fees in suits against them. It is contended that a penalty is thus imposed upon them even when they have a legitimate ground for contesting a suit. With regard to the merger and rehabilitation provisions of the Code, it is contended that insurance regulation is defective when it sanctions a mode of procedure which "saves from shipwreck the property of the
canny by means of the jettisons of the unenlightened and the timid.'

The Code alone will not suffice unless there is an efficient, honest and fearless administration of the law. The adoption of the Insurance Code has again demonstrated that the administrative tribunal deserves a place in our legal system. The Code, for the first time in the history of Illinois insurance legislation, has placed in the hands of the Director the necessary means to enable him to make himself felt as a powerful force in the insurance business and to accomplish much toward the welfare and security of the public generally.