

RAILROADS:

Employee of railroad company who merely authorizes Company to deduct portion of his pay for insurance premiums may revoke such agency at will.

September 29, 1933.

FILED

10-4  
20

Hon. Delmar Darr,  
Marceline, Missouri.

Dear Sir:

We are acknowledging receipt of your letter in which you inquire as follows:

"With further reference to our conversation relative to deduction of insurance premiums in employees pay by railroad companies, I am setting out herewith an example of the handling of this proposition by the Illinois Central Railroad, and will certainly appreciate your opinion as to whether or not this deduction can be terminated by the employee when he desires to do so.

The Illinois Central, on October 15th, submitted the plan of Group Insurance to their employees. The following is substantially the agreement which was signed by the employee at the time of entering this group plan:

'I hereby apply for the Group Insurance to which my occupation entitles me under the Illinois Central System plan and I authorize the Illinois Central System to deduct \$\_\_\_\_\_ from my pay each month to cover my share of the premiums and to decrease or increase this amount in accordance with the Company's insurance plan and my increase in age and decrease or increase in insurance.'

A great many of the employees have become dissatisfied with this and have attempted to withdraw from participation in this insurance plan, the railroad company refusing to permit withdrawal and continuing to deduct premiums from the pay checks of employees.

I will certainly appreciate your opinion as to whether or not the railroad company can continue to properly make deduction after the employee has indicated his desire to withdraw."

You inquire whether or not an employee may discontinue his payments under the Group policy taken out by the Illinois Central System. Under the authorization set out in full in your letter we are of the opinion that all the employee did

was to make the railroad company his agent for the purpose of paying a portion of the premium which was to be paid by the employee. As we understand these Group policies, generally a portion of the premium is paid by the railroad company and the balance is paid by the employee. The portion paid by the railroad company, however, does not give them any interest in the subject matter of the insurance, or in the proceeds of the policy. They, no doubt, are prompted by a paternalistic attitude to assist in the taking of these policies for the protection of their employees. Such position upon their part is commendable. By such act, however, they acquire no interest whatever in the contract of insurance or in the proceeds of the policy. We do not understand that this contract of insurance is different so far as the employee is concerned from any other which he might acquire, so far as his being able to withdraw therefrom and quit paying premiums at his option.

The general law is that the principal may revoke the authority of his agent at will, unless such agency be coupled with an interest in the subject matter of the agency. The general rule is aptly expressed in *Burke v. Priest*, 50 N. A. 310, 312, where it is said:

"The principle is rudimentary that as between principal and agent the authority of the latter is revocable at any time if not coupled with an interest. The authority of the agent to represent the principal depends upon the will and license of the principal. It is the act of the principal which creates the authority; it is for his benefit and to subserve his purposes that it is called into being; and, unless the agent has acquired with the authority an interest in the subject-matter, it is in the principal's interest alone that the authority is to be exercised. The agent has no right to insist upon a further execution of the authority if the principal desires it to terminate. It is a general rule that as between principal and agent the authority of the latter may be revoked by the former at his will at any time and with or without reason therefor, except where the agent's authority is coupled with an interest."

In 31 Cyc. 1297, the question of authority coupled with an interest is discussed as follows:

"The most important exception to the general rule above stated that an agency is revocable at the pleasure of the principal exists in the case of a power of attorney coupled with an interest in the subject-matter thereof. In the absence of a stipulation that the power may be revoked, it is from its nature irrevocable by act of the principal without the agent's consent, whether so expressed or not. To bring a case within the exception it is necessary: (1) That the power and the interest

should be coupled or united in point of time; that they should coexist. Hence the interest must exist in the subject-matter of the power, and not merely in that which is produced by an exercise of the power. If the agent's interest exists only in the proceeds arising from an execution of the power, the power and the interest are not coupled in point of time, since the power, in order to produce interest, must be exercised, and by its exercise it is extinguished. The interest does not come into being until the power is gone. (2) That the power and the interest should be coupled with reference to their subject-matter. They must exist with reference to the same thing. For this reason also it is necessary that the agent's interest should exist in the subject-matter of the power, and not merely in that which is produced by an exercise of the power. (3) That the power and the interest should be coupled with reference to the person in whom they are vested. They must be united in the same person. And (4) That the power and the interest should be coupled with reference to their source. They must be derived by the agent from the same person."

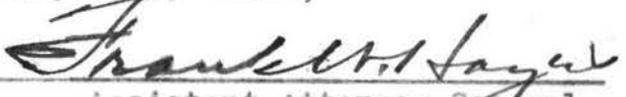
Under the foregoing rules we conclude that the authority given the railroad company by the employee is not an authority coupled with an interest in the subject-matter of the agency. The railroad company has no interest whatever in the contract of insurance, or the proceeds to be derived therefrom. It is the life of the principal which is insured and the beneficiaries may be anyone designated by the principal. Under no circumstances could the railroad company claim any right under the policy so far as the proceeds are concerned, or have any right to designate to whom the policy would be payable. In our opinion, therefore, the railroad company has no authority coupled with an interest in the policy. The fact that it voluntarily contributes toward the premium does not give it an interest in the subject-matter of the agency. The fact that it is interested in having all of its employees insured does not give it any interest whatever in the subject-matter of the agency, which is the insurance obtained. The only authority the railroad company has, under the above authorization, is to deduct the premiums from the employees' pay check. Such provision only goes to the convenience of collecting the amount the employee owes.

It is, therefore, the opinion of this Department that under the above authorization the railroad company is merely the agent of the employee for the purpose of paying his portion of the premiums; that the railroad company agency is not coupled with an interest in the subject-matter and, therefore, such authorization may be revoked at the will of the employee without the consent of the railroad company.

FWH:S

Very truly yours,

APPROVED:

  
Assistant Attorney General.