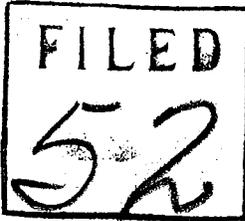


INSURANCE: Proposed Death Benefit Plan of V.F.W. involves transacting life insurance business, and licensing provisions of Missouri Insurance Code must be met.



August 1, 1956

Honorable C. Lawrence Leggett  
Superintendent, Division of Insurance  
Jefferson Building  
Jefferson City, Missouri

Dear Mr. Leggett: -

The following opinion is rendered in reply to your recent inquiry concerning a proposed Death Benefit Plan which the Veterans of Foreign Wars of the United States is considering. You have asked if the proposed plan constitutes the business of insurance under the laws of Missouri, requiring formation of an insurance company and license by the Division of Insurance. Reference hereinafter made in this opinion to the corporation in question will be to V.F.W.

Section 375.310 RSMo 1949 is a provision of Missouri's insurance code which must be considered in this case. It provides, in part, as follows:

"Any association of individuals, and any corporation transacting in this state any insurance business, without being authorized by the superintendent of the insurance division of this state so to do, or after the authority so to do has been suspended, revoked, or has expired, shall be liable to a penalty of two hundred and fifty dollars for each offense, \* \* \*."

The V.F.W. Death Benefit Plan is outlined in the proposed amendments to Section 605 of National By-Laws of V.F.W. submitted with the request for this opinion, such proposed amendments reading as follows:

"Section 605 - National Dues

"Amend Section 605, National By-Laws, by deleting the figures '\$1.25' in line 1 of paragraph 1 and inserting in lieu thereof the figures '\$2.25'.

Honorable C. Lawrence Leggett

"Amend Section 605 further by deleting the figures '\$1.25' in line 4 of paragraph 2 and inserting in lieu thereof the figures '\$2.25'.

"Amend Section 605 further by adding the following sub-section entitled 'Death Benefit Plan':

"Death Benefit Plan - There shall be instituted the V.F.W. Death Benefit Plan to be administered under the supervision of a committee consisting of the Comander-in-Chief, Quartermaster General and Adjutant General as ex-officio members and five members elected by the National Council of Administration to serve staggered terms of five years. Members of the original committee chosen by the National Council of Administration shall serve for terms of one, two, three, four and five years respectively and thereafter each member elected by the National Council of Administration shall serve for a term of five years.

"Commencing on January 1, 1957, every member shall be privileged to designate a beneficiary to whom the National Organization will pay the sum of One Hundred Dollars (\$100.00) upon receipt of proof of death of that member while in good standing. An individual whose membership is terminated by reason of ineligibility shall forfeit his dues as well as any benefits payable under this Section.

"One Dollar (\$1.00) of each member's annual dues shall be allocated to the Death Benefit Plan. Said monies shall be used solely for payment of benefits hereunder, the balance being held in reserve. Costs of administration shall not exceed five per cent (5%) of the monies paid into the Death Benefit Fund in any calendar year."

Will the foregoing plan, if carried out in Missouri, constitute the doing of insurance business? Missouri statutes do not define a "contract of insurance." The essential elements

Honorable C. Lawrence Leggett

of a contract of insurance are alluded to in the following language from State ex rel. Inter-Insurance Auxiliary Company v. Revelle, 165 S.W. 1084, 257 Mo. 529, 1.c. 535:

"The essential elements of a contract of insurance are an agreement, oral or written, whereby for a legal consideration the promisor undertakes to indemnify the promisee if he shall suffer a specified loss."

The foregoing definition of a "contract of insurance" is indeed broad and may convey the idea that "indemnity" is the principal feature in all insurance. However, in treating of the subject of life insurance, we find the following from Cooley's Briefs On Insurance, Second Edition, Vol. 1, page 27:

"In view of the general opinion that life insurance contracts are not contracts of indemnity, and that contracts of accident insurance are not always contracts of indemnity, a definition of life insurance, to be acceptable, should, perhaps, avoid making indemnity an essential feature. This requirement is well met by the definition of a contract of life insurance given by Justice Gray in Commonwealth v. Wetherbee, 105 Mass. 149. A contract of insurance is an agreement by which one party for a consideration, which is usually paid in money, either in one sum or at different times during the continuance of the risk, promises to make a certain payment of money, on the destruction or injury of something in which the other party has an interest. In fire and marine insurance, the thing insured is property; in life or accident insurance, it is the life or the health of a person. All that is requisite to constitute such a contract is the payment of the consideration by the one and the promise of the other to pay the amount of the insurance upon the happening of injury to the subject by the contingency contemplated in the contract. This statement has been approved by the courts and writers as the clearest definition of

Honorable C. Lawrence Leggett

life insurance. The Court of Appeals of New York in an early case (St. John v. American Mut. Life Ins. Co., 13 N.Y. 31, 64 Am. Dec. 529) thus defines life insurance: 'An insurance upon the life of an individual is a contract by which the insurer, for a certain sum of money or premium proportioned to the age, health, profession, and other circumstances of the person whose life is insured, engages that, if such person shall die within the period limited in the policy, the insurer will pay the sum specified in the policy, according to the terms thereof, to the person in whose favor such policy is granted.'

Couch On Insurance, Vol. 1, Sec. 34, treats of life insurance in the following language:

"Life insurance has been defined by statute in some of the states, but in the absence of statute it is a contract dependent upon human life, whereby one for a stipulated consideration, customarily called a premium, agrees to pay another a certain sum of money upon the happening of a given contingency, usually death, or upon the termination of a specified period."

The Death Benefit Plan proposed would seem to be well within the worthy objects set forth in Article 1 of the Constitution of V.F.W. Language from the brief of the Attorney General of Missouri in the case of State ex rel. Attorney General v. Merchants' Exchange Mutual Benevolent Society, 72 Mo. 146, l.c. 153, seems appropriate to the question and a portion of such language is adopted as follows:

"All insurance was originally based on the idea of benevolence. 3 Kent. Sec. 366; 2 Marsh, Ins. p. 766. If, then, defendants are exercising charity and benevolence by means of contracts for the payment of money upon the death of a member, they are doing an insurance business. It matters not how those contracts are evidenced, what name is given to them, whether evidenced by a certificate of membership, or the provisions of the articles of association, by by-laws, or by rules adopted by the society, courts will

Honorable C. Lawrence Leggett

look at what the business and the mode of doing it actually is, and, irrespective of forms or names, or evasive and cunningly promulgated motives, the argus eyes of justice will penetrate all these and look at the substance of the thing itself."

Under the Death Benefit Plan being construed it is clear that one dollar of the annual membership fee in the V.F.W. is to be set aside to cover death benefit payments; that payment of the death benefit is contingent on death of a member of V.F.W. while in good standing in the organization; that members paying their annual dues will be fully cognizant of the purpose of the corporation to pay the death benefit out of funds accumulated from a specified portion of the membership fee, and that the protection afforded, though small, may be lost if a member fails in any year to pay his full dues. Under the definitions of insurance and life insurance heretofore cited, it must reasonably be concluded that the Death Benefit Plan being construed, if put into operation in Missouri, will result in the V.F.W. transacting life insurance business with the consequent requirement that the corporation comply with the licensing provisions of Missouri's Insurance Code.

#### CONCLUSION

It is the opinion of this office that the Death Benefit Plan proposed by the Veterans of Foreign Wars of the United States, and fully described in the foregoing opinion, will involve the transacting of life insurance business in Missouri and require compliance with the licensing provisions of Missouri's Insurance Code.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Mr. Julian L. O'Malley.

Yours very truly,

John M. Dalton  
Attorney General

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