OPINION NO. 148
ANSWERED BY LETTER
(O'Malley)

May 19, 1964

FILED
148

Honorable Ralph H. Duggins
Superintendent, Division of Insurance
Jefferson Building
Jefferson City, Missouri

Dear Mr. Duggins:

This letter of advice is in lieu of a formal opinion requested by your letter of March 26, 1964. A review has been made of the "Graduation Special" life insurance policy to be offered by a regular life insurance company incorporated in Missouri. In reviewing the insurance policy in the light of applicable statutes we have considered the documents you forwarded, consisting of (1) the specimen policy, (2) benefactor contract, (3) newsletter, and (4) application.

We first briefly outline the plan being reviewed. A Missouri regular life company first enters into an agreement with a "benefactor" to pay the first year's premium on individual policies of life insurance on the lives of all members of the senior class of a high school making application therefor, with the benefactor being neither the owner or beneficiary of the policy. Only a parent, guardian or spouse is to be named beneficiary. The graduation policy to be issued to each insured is in the amount of $5000.00 of whole life insurance coverage, premiums payable to age 60, and non-participating. The second and ensuing year's premiums are to be paid by the insured or the parent if they wish to continue the policy in force, but there is no obligation to do so. The "benefactor" is not named or described, but his motive in providing the first year's coverage is expressed in the following language: "The Benefactor is desirous of encouraging students in his community to complete their education, discourage drop-outs and to focus their attention upon the social and civic benefits of private enterprise, * * *."

We first test the policy against the following rule restated in Lakin v. Postal Life And Casualty Insurance Company, Mo. Sup., 316 SW2d 542, l.c. 549:

> "It has uniformly been held that 'A person cannot take out a valid and enforceable policy of insurance for his own benefit on the life of a person in which he has no insurable interest; such a policy or contract of insurance is void and unenforceable on the grounds of public policy, it being merely a wagering contract; * * *.' * * * It has repeatedly been stated that for one to have an insurable interest in the life of another, 'there must be a reasonable ground founded upon the relations of the parties to each other, either pecuniary or of blood or affinity, to expect some benefit from or advantage from the continuance of the life of the insured'. * * *"

In the case of McCann v. Metropolitan Life Insurance Company, 177 Mass. 280, 58 N.E. 1026, we find that one McCann procured from the insurance company a life insurance policy upon the life of Timothy Sullivan, and had Timothy's daughter, Mary Sullivan, named beneficiary. After paying premiums on the policy for a time, McCann delivered the policy to Mary Sullivan. We can say of the "benefactor" in the policy here being reviewed, as was said of McCann at 58 N.E. 1026, l.c. 1027:

> "There is nothing in the case to show that the plaintiff derived any benefit, either direct or indirect, from the transaction, so that it could be ruled as a matter of law that the transaction was a wager, or was other than a gift for the benefit of Mary Sullivan."

In Fomby v. World Insurance Company of Omaha, 115 Fed. Supp. 913, Columbia County, Arkansas, took out a policy of group insurance on its employees against "loss of life, limb,

sight, or time from accidental injuries". In such case the Court observed that it was the intention of Columbia County to "make a gift to or confer a right upon its employee, Robert Fomby or his estate". It was contended that Columbia County did not have an insurable interest in the subject matter of the contract at its inception. In dismissing such contention, the United States District Court spoke as follows at 115 Fed. Supp. 913, l.c. 921:

> "However, these principles are not applicable to this case, because the real beneficiary under the policy is not Columbia County but the estate of Robert Fomby. None of the benefits were intended to and none will inure to the plaintiff, Columbia County. The reasons of public policy for voiding wagering contracts on the life of another do not exist here, and, therefore, it is immaterial whether the plaintiff, Columbia County, had an insurable interest in the life of Fomby. Without question, the deceased, Robert Fomby, had an insurable interest in his own life, as did his wife, and children, and they are the real beneficiaries in this case."

It must reasonably be concluded that the "plan" reviewed does not disclose on its face that the life insurance coverage is predicated on a wagering contract. The face of the documents examined pursuant to your request raised the question of insurable interest on the part of the "benefactor", so we have disposed of such question.

An examination of the policy to be issued to the insured under the "plan" has been made in light of a germane provision found in Section 375.936 RSMo 1959, reading as follows:

> "The following are hereby defined as unfair methods of competition and unfair and deceptive acts or practices in the business of insurance:
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> * * * * * * * * * * * * * * * * * * *
>
> "(8) 'Rebates'.

> "(a) Except as otherwise expressly provided by law, knowingly permitting or offering to make or making any contract of life insurance, life annuity or accident and health insurance, or agreement as to such contract other than as plainly expressed in the contract issued thereon, or paying or allowing, or giving or offering to pay, allow, or give, directly or indirectly, as inducement to such insurance, or annuity, any rebate of premiums payable on the contract, or any special favor or advantage in the dividends or other benefits thereon, or any valuable consideration or inducement whatever not specified in the contract; * * *."

The initial inducement to accept the "plan" in question is found in the "newsletter" addressed by the insurance company to "Dear Parent, Teacher and Student" informing that the first year's premium on the policy to be continued has been paid by a named person. Such inducement is further reflected on the face of the insurance contract to be issued to the student when the policy date is shown as March 17, 1964, with premiums to be payable commencing on March 17, 1965. In light of such recitals we cannot say that the principal inducement to the continuance of the insurance contract has not been specified in the contract.

Within the scope of tests herein applied to the "plan", you are advised that the insurance policy in question does not contravene Missouri statutes and case decisions.

Yours very truly,

THOMAS F. EAGLETON
Attorney General