

INSURANCE: Scheme for recovery of medical and hospital expenses through voluntary contributions constitutes engaging in insurance business.

OPINION NO. 50
(402, 1966)

August 22, 1967

Honorable Robert D. Scharz
Superintendent of Division of Insurance
Jefferson Building
Jefferson City, Missouri



Dear Mr. Scharz:

Reference is made to your letter requesting a formal opinion from this office as follows:

"Is a corporation, organized under Chapter 352, R.S.Mo. 1959, engaging in an insurance business when it has members paying a specified annual membership fee, which members proportionally contribute a sum of money for a hospital bill of another member after the bill is incurred?"

The inquiry arose in regard to proposed Articles of Incorporation of the Missouri Benevolent Association and the Contributing Disability Benefit Certificate to be issued by the proposed association.

Article IV of the proposed Articles of Incorporation provides as follows:

"The purpose of this association shall be to organize a group of people together in a special fellowship with benevolent and charitable purposes so as to aid its members in time of need through voluntary contributions in the form of disability benefits for the incapacity of any of their members through sickness or accident, and at the discretion of the Board of Directors to call for such voluntary contributions from its members, and if so determined by the Board of Directors, to contribute thereof for charitable and benevolent purposes to such incapacitated member his or her heir or heirs or relative or relatives as the Board should determine."

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The following provisions of the Benefit Certificate relate directly to the question which you have raised.

"While the member shall continue as a contributing disability benefit member as provided in the present by-laws or amendment thereto, he will be entitled to disability, sickness and accident benefits including while he or any family member listed hereon shall be confined in any hospital.

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"Accidents are covered from first day and 'Sickness' means sickness, illness or disease which is contracted and begins and causes loss after the certificate has been in force for 30 days from its issue date.

"Provided that if hospitalization is due to a condition that is pre-existing the date of this certificate, no benefit will be payable for any hospitalization commencing prior to 6 months after issue date of this certificate.

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"The Midwest Benevolent Association Accident and Sickness Plan was primarily formed to provide small cost protection to its members, by the voluntary contribution of other members whereby such donation shares part of the cost when a fellow member becomes incapacitated by accident or sickness.

"Since the plan is based on the donation of the members to members in need, the Association is formed into groups who will help and contribute to one another in the event of an accident or sickness. However, each group of members will consist of persons who agree individually and not jointly to make a donation within thirty (30) days after notification, not to exceed One Dollar (\$1.00) for each member of their group, that becomes injured or sick. For example, if a member

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of one of the groups becomes ill, or is involved in an accident causing injury, then each member of the group donates money to pay the necessary doctor and hospital bills up to but not to exceed \$2,000.

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"The members are covered up to 2,000 dollars (\$2,000) for any one sickness or accident to pay hospital and doctor charges. This plan covers all hospital room cost, x-ray, laboratory, tissue examination, operating room, anesthetic, medicines and drugs, special nurses, antibiotics, blood, and blood transfusions, oxygen, and all other hospital charges. Also the clinic or doctor's office when such calls result in surgery or hospitalization, plus emergency outpatient care (when hospitalization is not required) on any accident in addition, no limit on any one specific use on any preceding items. Doctor to receive only his regular charge in full. All pre-existing conditions are covered after member is in plan six months. However, the pre-existing conditions will entitled the members coverage up to and not to exceed five hundred dollars. The Board of Directors after their investigation of the case may if the facts warrant grant additional coverage to the member to include maximum donation up to \$2,000.00.

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"The plan extends to each member regardless of other health or accident plans. The member may have full benefits up to but not exceeding \$2,000. When a member becomes ill or incapacitated by a sickness or accident the member will notify the Midwest Benevolent Association and sent to the Association all itemized medical expense statements incurred in their treatment of their particular ailment. A letter giving the details of the injury or illness should accompany the statement. The Midwest Benevolent Association upon receipt of the member's itemized medical expense statements check the validity of the claim and if satisfied that the claim is a legitimate one will then notify the other members of the group that a member is in need of a donation. The Association upon receipt of fellow members donations will pay to the claimant member the donations received not to exceed \$2,000.

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It is not the purpose of the Association to mislead or misinform its members so the following information is set out in large type.

"DONATIONS WILL BE ASKED JUST FOR THE ACTUAL COST OF EACH SICKNESS OR ACCIDENT. IN NO CASE WILL A MEMBER BE PAID MORE THAN ACTUAL CHARGES, NOT TO EXCEED TWO THOUSAND DOLLARS.

* * * * *

"FAILURE TO DONATE WITHIN THIRTY DAYS WILL VOID YOUR MEMBERSHIP IN THE SICKNESS PLAN BUT MEMBER MAY STILL REMAIN IN ASSOCIATION.

"The members understand that the Midwest Benevolent Association is not an Insurance Company, but rather a benevolent Association for helping fellow members in times of sickness and accident. As such the Association can not and does not guarantee any rates or benefits and the claimant member receives only what the members in the group donate.

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"I have agreed with the Midwest Benevolent Association to join their sickness and accident plan. I understand and agree that the Midwest Benevolent Association is not an INSURANCE COMPANY, AND THEY CANNOT GUARANTEE RATES OR BENEFITS."

Missouri's statutes do not define the term "insurance". In State ex rel. Inter-Insurance Auxiliary Company v. Revelle, 257 Mo. 529, l.c. 535, 165 S.W. 1084, the essential elements of a contract of insurance are alluded to in the following language:

"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."

In the case of Rogers v. Shawnee Fire Insurance Company of Topeka, Kansas, 111 S.W. 592, 132 Mo.App. 275, l.c. 278, the Kansas City Court of Appeals used the following language in discussing the words "indemnity" and "insurance":

"Indemnity signifies to reimburse, to make good and to compensate for loss or injury. (4 Words and Phrases, p. 3539) Insurance is defined by Bouvier, 'to be a contract by which one of the parties, called the insurer, binds himself to the other called the insured, to pay to him a sum of money, or otherwise indemnify him.'"

In Richards On Insurance, Fifth Edition, Volume 1, Section 4, p. 11, we find the following:

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"Where statutory definition is lacking, what constitutes 'insurance' is left to judicial decision and temperament."

At 44 C.J.S., Insurance, Sec. 59, p. 528, we consider the following language appropriate as an introduction to our problem:

"Whether a company is engaged in the insurance business depends, not on the name of the company, but on the character of the business that it transacts, and whether that business constitutes an insurance business subject to regulation as such is determined by the usual course of business, and whether the assumption of a risk, or some other matter to which it is related, is the principal object and purpose of the business. In determining whether a business is an insurance business, the nature of the contract or forms in which the parties state their relations must be considered, and whether a contract is one of insurance is determined by its purpose, effect, contents and import, and not merely from its terminology, although it does not, on its face purport to be one of insurance, and even though it contains declarations to the contrary."

The following admonitions are not to be overlooked when considering whether an association is unlawfully engaged in the insurance business, and are found at 44 C.J.S., Insurance, Section 70, p. 549:

"The prohibition against engaging in the business of insurance without the prescribed authority is held absolute. In determining whether or not an association is engaged in the business of insurance in violation of law, the court is concerned with the plan as a whole and not with artificially segregated single phases of the plan."

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In applying the principles set out above to the question under consideration, the provisions of the Benefit Certificate have been examined in relation to the above principles. The Certificate provides benefits up to \$2,000 for the payment of hospital, doctor and related medical charges resulting from sickness or accident. A fund from which the payment may be expected results from payments by the individual members which the Certificate refers to as voluntary donations. However, the Certificate provides that failure to pay a voluntary donation results in membership in the sickness plan becoming void. The voluntary donation is limited to \$1.00 for each benefit claim.

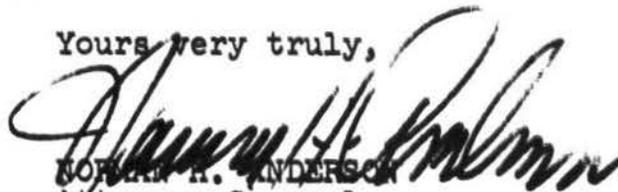
It appears that the scheme for payment of disability, sickness and accident benefits provided for by the Certificate and to be paid from the voluntary donations of the members is substantially the same as insurance on the assessment plan provided for by Section 377.010 through 377.190, RSMo 1959. The assessment in the Benefit Certificate under consideration is referred to as a voluntary donation. However, if the donation is not paid within 30 days, the membership becomes void and the member is not entitled to any disability, accident or sickness benefits. The result is identical to the failure of a policyholder to pay an assessment under assessment plan insurance. The scheme contains the elements of an agreement for a legal consideration to indemnify for a specified loss.

CONCLUSION

The Missouri Benevolent Association would be engaging in an insurance business pursuant to the proposed Articles of Incorporation and the Contributing Disability Benefit Certificate which have been submitted to this office for examination.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Thomas J. Downey.

Yours very truly,



NORMAN H. ANDERSON
Attorney General