

INSURANCE: The National Senior Citizens Benevolent
BENEVOLENT ASSOCIATIONS: Association is engaging in the business
of insurance in the State of Missouri.
The Articles of Agreement and the Con-
tributing Death Benefit Certificate clearly show that the purpose
of this association is to provide insurance for its members in
fact, if not in name.

OPINION NO. 164

March 12, 1968

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



Dear Mr. Scharz:

Reference is made to your letter of January 12, 1968, in
which you said:

"This office has under investigation the
National Senior Citizens Benevolent Associa-
tion, a corporation which we believe to be
engaging in the transaction of insurance
business without authorization of this
Department as provided for in our insurance
code.

We enclose herewith copy of the Decree of
Pro Forma Corporation and copy of the Con-
tributing Death Benefit Plan of this corpora-
tion. These documents set out in detail the
plan of operation of this association.

We request herewith your opinion as to whether
this corporation is engaging in the business
of insurance within the State of Missouri as
such business is defined by our courts and
statutes."

The Fourth Article of the Articles of Agreement of the fore-
going association contains the following provisions which are par-
ticularly relevant to our question:

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"Fourth: This association is formed for the purpose of providing, at small cost, for persons who shall become members of said association, a death benefit plan to be supported by voluntary contributions and memberships from such members and others, if possible, whereby such donations shall pay benefits when a member of such association shall die by sickness or accident.

* * * * *

Membership requirements in the association shall consist of the following:

- (a) Members shall be 50 years of age or older.
- (b) Members shall be benevolent in thought and deed.
- (c) Members shall be charitable in thought and deed.
- (d) Members shall be willing to aid a fellow member who may be ill or in distress.

Dues in said association shall be Ninety Dollars (\$90.00) for initial membership and Fifty Dollars (\$50.00) for yearly renewal of membership. In event of cancellation of the said death benefit plan, the member of the association will be notified of such cancellation. Decisions for cancellation shall be by a majority vote of the Board of Directors, and its decision shall be final. The Board of Directors of said association shall be the applicants herein.

The said death benefit plan shall be based on donations of members of said association to other members of said association who are in need; members shall be formed into groups up to a total of one thousand two hundred fifty (1,250) members, the members of which will agree to help and contribute to one another in event a member has died by accident or sickness. (Emphasis ours)

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Each of said groups of members will consist of persons who agree individually and not jointly to donate within thirty (30) days after notifications that a member has died by sickness or accident a sum not to exceed One Dollar (\$1.00) for each member of his or her group who dies as a result of sickness or accident.

* * * * *

The operation of said plan shall be: When a member dies the beneficiary shall notify the National Senior Citizens Benevolent Association and send to the association Proof of Death form furnished at the request of the member's beneficiary and upon receipt of such Proof of Death form, the association may review the validity of the claim, and, if satisfied that such claim is legitimate and lawful, will notify other members of the group that such member's beneficiary is in need of a donation. Upon receipt of other member's donations the association shall then pay to claimant member's beneficiary such donations received, but not to exceed the maximum sum of One Thousand Dollars (\$1,000.00).

The members of the plan shall be told and given to understand that the association is not an insurance company, but is a benevolent association formed for helping fellow members at the time of the member's death, and at such time, member's beneficiary shall receive only what fellow members of the group shall donate."

The Contributing Death Benefit Plan Certificate outlines the program of death benefit protection which the association seeks to provide. It is our understanding that this certificate is signed by those who wish to become members of the group and thereby constitutes the formal agreement between the member and the association. The following are relevant excerpts from the Death Benefit Plan:

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"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 death. 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 dies or is killed by accident. For example, if a member of one of the groups dies or is killed in an accident, then each member of the group donates money to pay the necessary funeral expenses up to but not to exceed \$1,000.00. (Emphasis ours)

* * * * *

When a member dies or is killed by either sickness or accident the beneficiary will notify the NSCBA and send to the Association a certificate of death.

The NSCBA upon receipt of the member's proof of loss check on 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 \$1,000.

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 ALL NECESSARY EXPENSES. IN NO CASE WILL A MEMBER BE PAID MORE THAN ACTUAL CHARGES, NOT TO EXCEED ONE THOUSAND DOLLARS.

* * * * *

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In the event of cancellation of the death benefit plan the member will be so notified and the decision of the Board of Directors is final.

I solicit the National Senior Citizens Benevolent Association to join their death benefit plan. I understand and agree that the National Senior Citizens Benevolent Association is not an INSURANCE COMPANY.

I UNDERSTAND I WILL RECEIVE ONLY THAT MONEY WHICH IS DONATED FOR ME, NOT TO EXCEED \$1,000."

Missouri's statutes do not define the term "insurance". In State ex rel. Inter-Insurance Auxiliary Company vs. 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 vs. Shawnee Fire Insurance Company of Topeka, Kansas, 132 Mo. App. 275, l.c. 278, 111 S.W. 592, 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:

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

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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 the 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 to be absolute. In determining whether or not an association is engaged in the business of insurance in violation of the law, the court is concerned with the plan as a whole and not with artificially segregated single phases of the plan. * * *"

Section 377.010, RSMo 1959, reads as follows:

"Every contract whereby a benefit is to accrue to a person or persons named therein, upon the death or physical disability of a person also named therein, the payment of

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which said benefit is in any manner or degree dependent upon the collection of an assessment upon persons holding similar contracts, shall be deemed a contract of insurance upon the assessment plan, and the business involving the issuance of such contracts shall be carried on in this state only by duly organized corporations which shall be subject to the provisions and requirements of sections 377.010 to 377.190."

The principles of law outlined above were taken from a former opinion of this office, Attorney General's Opinion No. 50, Scharz, 8/22/67. That opinion was written in response to a set of facts very similar to those involved in the present case. It was held in that opinion that a benevolent association was engaging in the business of insurance where it maintained a program for the recovery of medical and hospital expenses through voluntary contributions of its members.

The National Senior Citizens Benevolent Association has a death benefit plan providing for payment up to \$1,000 to the beneficiary of any member who dies from sickness or accident. Each member is expected to pay \$1.00 for each benefit claim. Although there are no specific penalties provided for those who do not contribute, the Board of Directors may cancel the death benefit plan of any member by a simple majority vote. The death benefit plan certificate states that it is not an insurance company and all contributions are supposed to be voluntary. However, the members do agree in the death benefit certificate, which they must sign, that they will make donations when one of their number dies. The whole purpose of the arrangement is to have the surviving members indemnify the beneficiaries of a deceased member. While members may not be legally compelled to donate, the plan certainly operates on the assumption that they will donate. The plan contains the elements of an insurance contract. Each member agrees that he will contribute in order to indemnify the beneficiaries of a deceased member.

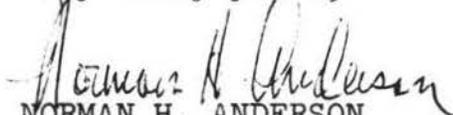
CONCLUSION

The National Senior Citizens Benevolent Association is engaging in the business of insurance in the State of Missouri. The Articles of Agreement and the Contributing Death Benefit Plan Certificate clearly show that the purpose of this association is to provide insurance for its members in fact, if not in name.

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The foregoing opinion, which I hereby approve, was prepared by my Assistant, Gary G. Sprick.

Very truly yours,


NORMAN H. ANDERSON
Attorney General