

August 29, 1969

OPINION LETTER NO. 346

Mr. George J. Eckmann, Counsel
Division of Insurance
Jefferson Building
Jefferson City, Missouri 65101

Dear Mr. Eckmann:

This letter is in response to your request for an opinion as to whether the "Advance Deposit Plan" of Community Blood Bank of the Kansas City Area, Inc., as described in a brochure entitled "Blood Is Life" and the donor pledge enrollment card, copies, both of which, you have provided this office, constitutes a contract of insurance subject to the provisions of Section 375,310, RSMo 1959, providing 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, * * *"

According to the brochure, the plan is activated by the receipt of a donor pledge enrollment card. The donor is to donate within thirty days, when called upon, or to provide an alternate donor in the event he is unable, due to physical or other reasons, to donate when called. The donor is to keep the Community Blood Bank informed of all changes in address and telephone number and is to notify the Community Blood Bank within thirty days following any transfusion.

The "Advance Deposit Plan" consists of either a family plan, which provides blood replacement credit for the donor, his spouse,

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and unmarried children under 21 years of age, or the benefit group plan, which provides blood replacement credit for four designated persons listed by the donor at the time of the application. Members of the plan are entitled to "unlimited blood replacement credit, to eliminate responsibility (non-replacement) fee for blood used in transfusion." (Emphasis in original). The benefits apply in hospitals serviced by the Community Blood Bank or which are participants in the American Association of Blood Banks Clearing House Program, including American Red Cross banks. It is represented that this includes most hospitals in the United States. Benefits may be obtained immediately following activation of the plan when blood is required for transfusions in cases of accidental injury or for expectant mothers and newborn children. Other benefits apply following sixty days from the date the plan is activated.

The plan is subject to a number of conditions. Membership is nontransferrable. Benefits do not apply for treatment of any condition that has required transfusion during the twelve month period preceding the effective date of membership, nor do they apply for any of the following diseases which are known by member or beneficiary to exist as of the date of issuance of membership: hemo-
philia, leukemia, malignant neoplasm, blood dyscrasia, ulcers, active tuberculosis, or heart defects. Benefits do not include any blood bank service fee, processing fee or participation fee, hospital laboratory charge or fees for services rendered in connection with the infusion of blood. Substitution of persons covered under the benefit group plan may be made only on the anniversary date of the enrollment, and newly added beneficiaries are subject to all conditions. Membership may be terminated or transferred to superseding plans by the Community Blood Bank on any anniversary date of the plan. Membership may be terminated when a member fails to fulfill his obligation as outlined above, and, in the event of war or other emergency in which the facilities of the blood bank are taken over by any governmental agency, service will be suspended.

In Attorney General Opinion No. 52 issued on August 16, 1961, to Honorable C. Lawrence Leggett, a copy of which is enclosed, this office was requested to review the Southwest Blood Service Plan offered by Southwest Blood Banks, Inc. In that opinion we held the Southwest Plan to be a contract of insurance subject to the provisions of Section 375.210, RSMo 1959.

The Southwest Plan and the Community Blood Bank Plan are not identical but quite similar. However, we find that in considering the legal question of whether the respective plans constitute contracts of insurance, the factual distinctions between the plans are not significant.

The major difference between the two plans is that the Southwest Plan provides coverage of plan members conditioned on an initial enrollment fee of one dollar and annual membership fees of one

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dollar for an individual membership, and three dollars and sixty cents for a family membership. Coverage for members of the Community Blood Bank Plan is contingent upon the signing of the enrollment card whereby the member is obligated to make a blood donation within thirty days after request by Community Blood Bank (with a limit of one donation per year). In the Southwest opinion, we cited the case of State ex rel. Inter-Insurance Auxiliary Company v. Revelle, 257 Mo. 529, 535, 165 S.W. 1084, 1086 (1914), which stated the elements of an insurance contract 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. . . ."

Since blood is a substance of value, an agreement promising to make a blood donation when requested by the Community Blood Bank is sufficient consideration to support the Community Blood Bank's promise to provide those protected under the plan with unlimited blood replacement credit. Therefore, in light of the Attorney General Opinion No. 52 issued on August 16, 1961, to Honorable C. Lawrence Leggett, Community Blood Bank Plan would constitute a contract of insurance subject to Section 375.310, RSMo 1959.

Yours very truly,

JOHN C. DANFORTH
Attorney General

Enclosure: Op. No. 52
8-16-61, Leggett