CREDIT UNIONS: Shareholder may not designate beneficiary to receive shares upon death.

JOHN M. DALTON
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John C. Johnsen
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Honorable J. A. Rouveyrol
Commissioner of Finance
Department of Business and Administration
Jefferson City, Missouri

Dear Sir:

We have received your request for an opinion of this office, which request reads as follows:

> "The following letter has been received from Mr. Stanley E. Sprague, Secretary of the Co-Op Dist. No. 9, I.A.M. Credit Union:
>
> > 'The Board of Directors of Co-Op Dist. No. 9, I.A.M. Credit Union have a problem which we feel is necessary to have official ruling by your department as to the method of procedure necessary to establish a beneficiary. We are enclosing a copy of the card that is the form we are using at the present time.
> >
> > 'It is our thought that where a joint ownership of an account is established, no problem exists. However, where it is an individual account with only the signature of the shareholder, we are of the opinion that the only method of payment legally allowed us would be to the shareholder's estate.
> >
> > 'In what way could a shareholder legally establish a beneficiary as a matter of record for the Credit Union?'
>
> "May I be favored with your opinion in this connection?"

Section 370.100, RSMo 1949, provides:

> "The commissioner of finance shall have exclusive supervision of all credit unions operating in this state, and may make necessary rules and regulations to carry out the provisions of this chapter."

The problem presented by this inquiry involves a great number of considerations and matters of general law, such as the statute of wills, the rights of heirs of a shareholder, the rights of creditors and the rights of the state and federal governments to inheritance and transfer taxes. It does not appear to be a matter which would come within your general regulatory and supervisory power, and therefore any pronouncement which you might make regarding the matter would be of little weight. We will, however, point out problems involved in this inquiry.

Apparently the author of the inquiry was concerned primarily with the matter of contractual designation of a beneficiary in a manner similar to that used in connection with the payment of insurance policies and which has been used frequently in recent years in connection with the registration and payment of bonds issued by the federal government. There are, of course, a number of methods by which rights in corporate stock may be transferred to another, with the donor retaining certain rights during his lifetime, such as the right to dividends. In such cases the problem generally is the question of whether or not a completed inter vivos gift was made, involving generally the problem of intention to make a gift, delivery and other matters. However, because of the nature of credit union shares, the author of the inquiry probably did not have in mind such relinquishment of control by the owner of the shares as would constitute a valid gift inter vivos.

In the case of Kansas City Life Ins. Co. v. Rainey, 353 Mo. 477, 182 S.W. (2d) 624, 155 A.L.R. 168, the question presented to the Supreme Court was the right, as between a designated beneficiary and the executor of the estate of one Hall, to the proceeds of an investment annuity policy purchased by Hall for a single premium payment with income payable to the purchaser during his lifetime and the purchase price to a designated beneficiary upon his death. The question, as stated by the court, was "whether the policy is invalid as a testamentary disposition not in the form prescribed by the statute of wills." In its opinion the court stated:

> "There is no set rule applicable to all circumstances for ascertaining if an instrument 'masquerades as a will.' Each instrument must be individually considered and whether or not it is testamentary must be discerned from its own terms. * * *"

The court concluded that the policy there in question was a contract entered into for the benefit of a third person and that the beneficiary, as such third party beneficiary, was entitled to the proceeds of the policy as against the executor of the estate of the purchaser.

In recent years numerous cases have arisen regarding the validity of the designation of beneficiaries of bonds issued by the United States government. In three cases courts held that such designation was not effective as between the designated beneficiary and the personal representative of the deceased. Those cases are: Decker v. Fowler, 199 Wash. 549, 92 P. (2d) 254, 131 A.L.R. 961; Sinift v. Sinift, 229 Ia. 56, 293 N.W. 841; and Deyo v. Adams, 178 Misc. 859, 36 N.Y.S. (2d) 734. The general rule, however, is to the contrary, and the right of the beneficiary has been upheld by the courts in most jurisdictions. Statutory enactments in New York and Washington reversed the effect of the decision by the courts in those states. The right of the beneficiary to the proceeds of United States Government bonds have generally been upheld on the theory that the Federal Law and Regulations of the Treasury Department recognize the interest of the beneficiary in the bonds and that in such cases there is a contract entered into between the government and the registered owner for the benefit of the beneficiary and the contract is governed by federal rather than the state law. See Annotation, 161 A.L.R. 304.

We find no cases in which the courts have considered the effect of designation of a beneficiary of corporate stock. In the case of Kansas City Life Ins. Co. v. Rainey, above referred to, the court cited the case of In re Koss' Estate, 106 N.J. Eq. 323, 150 Atl. 360, as sustaining the designation of a beneficiary, in the event of the death of a participant in an employee's stock purchase plan, as not a testamentary disposition. The court in that case upheld the disposition, again on the theory that it was a matter of contract for the benefit of a third person. The court stated:

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> "Instead of regarding the designation of the beneficiary as a disposition of property, we regard it as the mere naming of a person for whose benefit a contract is made. We believe this must be so since there never was any specific property to which Gertrude Koss was entitled in her lifetime."
>
> (150 Atl. l.c. 361.)

In 18 C.J.S., Corporations, Section 477, page 1147, the following statement of the nature of the stockholders' relation to a corporation is found:

> "The relation existing between a corporation and its stockholders inter se is one of contract, in which the charter and by-laws of the corporation, the pertinent statutes of the state, and the settled law of the land are embodied."

In view, however, of the absence of any authority upholding the right of a person named as a beneficiary of corporate stock to enforce his right upon the death of the holder thereof, we cannot advise that such designation would be valid and be upheld. In view of the diversity of opinion regarding the validity of the designation of a beneficiary for government bonds, and in view of the fact that the decisions upholding such designation do so generally on the theory that the federal law and regulations are superior to state law in such regard, we consider it doubtful that any such method of disposition of the stock of a credit union would be upheld.

CONCLUSION

Therefore, it is the opinion of this office that credit union shares may not be disposed of upon the death of the holder thereof by the holder's designating a beneficiary to receive such shares after his death.

The foregoing opinion, which I hereby approve, was prepared by my Assistant Robert R. Welborn.

Yours very truly,

JOHN M. DALTON
Attorney General

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