BANKS:
USE OF FUNDS FOR
LIFE INSURANCE:

A bank may not use its funds for the payment of insurance on the lives of persons who are not employees or officers of the bank, and in whose lives it has no insurable interest.

April 20, 1950

Honorable Harry G. Shaffner
Commissioner of Finance
Department of Business and Administration
Jefferson City, Missouri

Dear Commissioner Shaffner:

This will be in response to your recent request for our opinion on the question whether a bank may lawfully appropriate and use funds of the bank in payment for premiums on two life insurance policies for persons who are not employed in the bank, but are members of a family which owns a majority of stock in the bank.

Your letter requesting the opinion reads as follows:

> "A state chartered bank is now paying the premiums on two life insurance policies for persons who are not employed by the bank but are members of a family which owns a majority of stock. They do report that while the parties are not employees they are potential employees and sooner or later it will become necessary that they assume the responsibility of a part of the bank's operations. The policies are payable to the bank as beneficiary, though each policy reads subject to change of beneficiary. The policies are held by the bank.
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> "I have advised the institution that such an expense is not incident to the operation of a bank and should not be so treated. Is such an expense bona fide or could it be termed an investment for the bank?
>
> "May I be favored with an opinion?"

It appears from your letter that you have advised the bank in question that the use of the money of the bank for the payment

of premiums on the two life insurance policies named in your letter is not incident to the operation of the bank and should not be so treated. We believe your position is correct and that your advice to the bank, in effect, that such use of the funds of the bank would be entirely unauthorized, was prudent and proper.

The grounds upon which we base our opinion that the use of the funds of the bank for such purposes is improper and unlawful, is that our statutes, the decisions of our Supreme Court and Courts of Appeals, the Courts of every State in the Union, so far as we may learn, and the textwriters of the law as well, uniformly say that a person or corporation cannot take out a valid and enforceable policy of insurance for his or its own benefit on the life of a person in which he or it has no insurable interest; that such a policy is void and unenforceable on grounds of public policy, and constitutes a wagering contract. (37 C.J., pages 385, 386).

Our statutes are positive in prohibiting the taking out by a person or corporation insurance on the life of another in which such person or corporation has no insurable interest.

Section 5882, Article IV, Chapter 37 of the Insurance Code of this State, R.S. Mo. 1939, reads, in part, as follows:

> "No corporation, company or association transacting business under the provisions of this article shall issue a certificate or policy to any person until the applicant has been examined by a physician duly licensed and appointed by the company as its medical examiner, nor unless the beneficiary named in the certificate or policy is the husband, wife, legal representative, relative, heir, creditor or legatee of the insured, or who may have an insurable interest in the insured. * * *."

Treating of the right of a corporation to take out insurance on the lives of its officers or employees, and pointing out the circumstances and conditions which must exist to authorize the taking out of such insurance, and the conditions and circumstances, on the other hand, where the taking out of such insurance is unauthorized, 37 C.J., pages 396, 397, states the following text:

> "A corporation has an insurable interest in the life of its president, general manager, principal stockholder, or other person or officer where by reason of his ability, knowledge, skill, and experience the success of

> the business of the corporation is largely dependent on his efforts, and the policy is taken out in good faith for the purpose of protecting the corporation against loss in the event of his death. However a corporation does not have an insurable interest in the life of a director merely by virtue of his position as such and in the absence of additional circumstances; an association or society is held to be without insurable interest in the life of a member or a stockholder; and in order that an individual employer may have an insurable interest in the life of an employee it must appear that his continued employment is necessary to the profitable operation of the work in which he is engaged, and that his death would result in substantial loss to the employer."

In the case you cite it is frankly stated that the two persons upon whose separate lives the insurance policies have been taken out by the bank are not employed by the bank. This, under our said Section 5882, supra, would render the policies void as against public policy, from the beginning. It will not do to say that it is enough to validate such policies, that the time may arrive when the two persons whose lives are thus insured may assume responsibility of a part of the bank's operation. That is pure speculation. It supports completely the theory and statement of law that such contracts made by the bank without an insurable interest in the lives of the persons insured are wagering contracts, and void as against public policy. The text of Corpus Juris quoted states that, a corporation does not have an insurable interest in the life of a stockholder. Footnotes 47, 48 and 49 in citing cases, fully support the text quoted on the point. Footnote 47(b) to the test quoted, 37 C.J., pages 397, states:

> "(b) A building association has no insurable interest in the life of a stockholder not indebted to it. Tate v. Commercial Bldg. Assoc., 97 Va. 74, 33 S.E. 382, 75 Am. SR 770, 45 L.R.A. 243."

Footnote 49(a), same volume, same page, states the following:

> "(a) The cessation of ordinary service would not result in substantial loss, within the meaning of the rule. United Security I. Ins., etc., Co. v. Brown, 270 Pa. 270, 113 A. 446."

In cases where an insurance policy is taken out by a corporation on the lives of its actual employees, the Courts hold that the

corporation must have a pecuniary interest in the continuance of the life of the employee, and that his death would constitute a financial loss to the corporation. In the case of Singleton vs. Insurance Co., et al., 66 Mo. 63, l.c. 74, upholding this rule, our Supreme Court said:

> "* * * We feel constrained, therefore, by the weight of authority to hold that the policy of insurance procured by one upon the life of another, for the benefit of the former, who has no pecuniary interest in the continuance of the life insured, is against public policy, and therefore void, * * * ."

It seems to have been so generally understood and agreed that such insurance is void as against public policy, that no case going into a full discussion of the different features of such a contract of insurance has ever been submitted to our Appellate Courts for decision as to what would constitute an insurable interest upon the part of an employer in the life of his employees. The high courts of other States have considered, discussed and decided the question. One of the most clearly discussed and reasonably ruled cases on this subject coming to our attention is the case of Turner vs. Davidson, et al., a Georgia case, reported in 4 S.E. (2d) 814. This case holds that an employer must have a substantial economic interest in the life of his employee and expect to obtain a substantial pecuniary benefit through the continued life of the employee and sustain consequent loss upon his death to render lawful the taking out of an insurance policy on the life of such employee by the employer to protect his interests. So holding, at l.c. 816, 817, the Court said:

> "* * * Accordingly, it may be taken as settled in this case that an employer does not have an insurable interest in the life of his employee solely because of the relationship of employer and employee; * * * * * * * As a general rule, a reasonable expectation of pecuniary gain or advantage through the continued life of another person and consequent loss by reason of his death, creates an insurable interest in the life of such person. * * * An employer does not prima facie have an insurable interest in the life of his employee; and it would seem that, for such to be shown, it should appear that from the nature and character of the employment and the services rendered, their importance to the business conducted, and the character

> and particular ability of the employee, his death would be reasonably expected to result in substantial pecuniary loss to the employer. A small and insignificant economic readjustment which would normally follow the death of an employee performing ordinary duties requiring no special skill or knowledge would not give the employer an insurable interest in the life of his employee. In United Security Life Ins. & Trust Co. v. Brown, 270 Pa. 270, 113 A. 446, it was said: 'To sustain an insurance contract insuring an employee's life, it must appear that the employee securing the policy has a real concern in the life of the party named, whose death would be the cause of substantial loss to the business, and this does not follow the cessation of ordinary service such as that of a manager of a storage house owned by the beneficiary, but arises where the success of the business is dependent upon the continued life of the employee.' See also Murray v. Higgins Co., 300 Pa. 341, 150 A. 629, 75 A.L.R. 1360. Thus where it appears that an employer has a substantial economic interest in the life of his employee, that is that he might be reasonably expected to reap a substantial pecuniary benefit through the continued life of such employee, and sustain consequent loss upon his death, a policy of insurance taken out by him in good faith to protect his interest in the employee should be upheld."

It appears that the facts and conditions recited in your letter come strictly within the terms of the Georgia case cited, supra, and possess none of the elements upon which the bank referred to may take out a policy of insurance on the lives of the two persons who at most are said to be merely prospective employees of the bank.

The use of the funds of the bank for such purpose when the insureds were not employees of the bank at the time the policies of insurance were written, constitutes a legal fraud upon the minority stockholders of the bank and could not be bona fide nor be considered an investment for the bank. Such acts are ultra vires, and even though small in sum and value, constitute a mis-appropriation of the funds of the bank and might well be, if continued, the basis for the State to sue to cancel and revoke the charter of the bank, or at least, remove the officers and directors of the bank who continue the wrong.

CONCLUSION

It is, therefore, the opinion of this Department that the use of funds of a bank to pay premiums on two life insurance policies for persons who are employed in the bank, but are members of a family which owns a majority of the bank stock, even though such parties are said to be potential employees and sooner or later will become affiliated with the bank and assume the responsibility of a part of the bank's operation, is not an authorized expense, incident to the operation of the bank, and hence is ultra vires and unlawful.

Respectfully submitted,

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APPROVED:

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