Opinion No. 208

Mutual Insurance Companies—Insurance—Benevolent Societies—Licenses—Commissioner of Insurance.

HELD: Organizations known as "benevolent insurance companies" or as "benevolent insurance societies" which cannot qualify as mutual benefit companies or as fraternal benefit societies, have no right otherwise to be in the insurance business, and if they wish to continue in it, it is incumbent upon them to incorporate under some appropriate provision of the Civil Code and thereby subject themselves to the payment of a license fee and to the visitorial powers of the commissioner of insurance.

May 11, 1933.

In a communication to me of recent date you state that, in your judgment, certain unincorporated associations, professing to be benevolent societies, are engaged in the insurance business in various parts of the state, and desire to know whether, under the circumstances existing, they are subject to our insurance laws.

It appears from your statement of the facts that each of the associations in question has a membership in excess of two hundred and that a fee of $2.00 is exacted from a new member or immediately before he joins such association. This fee goes to the person who procures the new member or to him and the promoter of the organization. There is no initiatory ceremony and no meetings are ever held. Following the death of a member an assessment of $1.00 is levied on each surviving member, the proceeds of which are paid to

the beneficiary of the deceased, less ten per cent thereof retained for operating expenses. In the membership blank it is stipulated that the members are under no legal liability to pay the assessment of one dollar. The secretary of the association is compensated for his services out of the fund established for operating expenses. Furthermore, the associations, or some of them, pay benefits to members on account of disability resulting from sickness, accident or old age.

From the facts before me, meager as they are in some respects, it is safe to conclude that these associations cannot be classed as mutual benefit companies under the provisions of section 6159, Revised Codes 1921, or as fraternal benefit societies under the provisions of Chapter 22 of Part III, Civil Code of 1921. What, then, is their status? The question must be answered, not from what they profess to be, but from what they actually are, and the nature of the business they conduct. The general trend of authority in this country is that organizations like those are, in effect, mutual insurance companies. (Royal Highlanders v. State, 108 N. W. 183; 1 Couch, Cyclopedia of Insurance Law, secs. 250, 251; 32 C. J. 1018-1021.)

Thus it has been held that an association which insured only the property of its members by a policy in the form of a certificate of membership, for a premium paid simply as an admission fee, and by assessing its members to pay for the losses sustained by such certificate holders, was, to all intents and purposes, a mutual insurance company. (State v. Live Stock Ass'n., 20 N. W. 852.)

Where associations agree with their members, in consideration of the payment of dues and assessments, to indemnify them or their nominees against loss from certain causes, such as accidental personal injury, sickness, or death, they conduct an insurance business, and the certificate issued to each member fills the place of the ordinary insurance policy and is essentially a contract of insurance. (7 C. J. 1053-1056; 1 Bacon on Benefit Societies 94-97; I Couch, Cyclopedia of Insurance, sec. 6.)

After much consideration of the question it is my view that these organizations are engaged in the insurance business, but without authority of law. As they cannot qualify as mutual benefit companies or as fraternal benefit societies, they have no right otherwise to be in the insurance business. If they wish to continue in it, it is incumbent on them to incorporate under some appropriate provision of the Civil Code and thereby subject themselves to the payment of a license fee and to the visitorial powers of the commissioner of insurance. (Chapters 14, 19 and 21 of Part III, Civil Code of 1921; Intermountain Lloyds v. Diefendorf, 5 Pac. (2d) 730; 32 C. J. 981; 1 Couch, Cyclopedia of Insurance Law, Sec. 242.)

Your vigilance in this matter is worthy of hearty approbation. What the Supreme Court of Pennsylvania said in the case of In re National Indemnity & Endowment Co., 21 Atl. 879, may apply very closely to more than one of these organizations, namely:

"The appellant company claims to be a beneficial association, within the meaning of the ninth paragraph of section 2 of the Act of 1874. Without going into detail, the auditor and the court below have sufficiently demonstrated that the only persons likely to be benefited by the scheme set forth in the charter are the officers themselves. It manifestly belongs to that class of associations, by far too numerous, the practical effect of whose operations is to enrich a few at the expense of confiding and ignorant people. Such corporations are 'unlawful and injurious to the community,' and in this age of deception and fraud too much care cannot be exercised in scrutinizing the provisions of charters with sounding names and alluring schemes to benefit the public."