

VOLUME 31

Opinion No. 6

INSURANCE—Banks and Banking—National Banks—Debt Cancellation  
Contracts—Policy of Insurance—Compliance With Insurance Code  
—Business in State—License or Authorization From Commis-  
sioner of Insurance—Definition of Insurer—Sections 40-  
2602, 40-2603, 40-2604, 40-2609, 40-3702, 40-4204 and  
40-4212, R.C.M. 1947.

- HELD:**
- 1. A debt cancellation contract between a National Bank and its debtor whereby the balance of a loan is cancelled on the debtor's death is a contract of insurance.**
  - 2. The power and authority of National Banks to enter into debt cancellation contracts is a question of federal law to be decided by the Federal Government and not the State of Montana.**
  - 3. A National Bank which enters into a debt cancellation contract whereby the balance of a loan is cancelled on the debtor's death must qualify and comply with the applicable provisions of the Montana Insurance Code.**

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August 10, 1965

Mr. E. V. "Sonny" Omholt  
Commissioner of Insurance of  
The State of Montana  
Helena, Montana

Dear Mr. Omholt:

You have requested my opinion in answer to three (3) questions concerning debt cancellation contracts entered into between National Banks and their debtors whereby the balance due on loans would be paid in the event of the debtor's death.

The factual situation presented out of which your inquiry arises is as follows: In March of 1964 two letters were addressed to the President of a National Bank by the Comptroller of the Currency, United States Treasury. These letters refer to a ruling which holds that National Banks may enter into debt cancellation contracts whereby the balance due on a loan would be paid in the event the borrower died. The letters also indicate that a consideration may be charged for such contract; that the debt covered will be cancelled automatically on the borrower's death; that such contract is not considered to be an engagement in the life insurance business; that this is a lawful exercise of the powers of a National Bank and is necessary to, and is a part of, the business of banking.

In view of these presents you have asked:

1. Are such debt cancellation contracts insurance?
2. Do National Banks have the authority to enter into such contracts?
3. If a National Bank enters into this type of contract must the Bank comply with the applicable provisions of the Montana Insurance Code?

Section 40-2602, R.C.M. 1947, provides that Insurance is a contract whereby one undertakes to indemnify another or pay or provide a specified or determinable amount or benefit upon determinable contingencies. In applying this to the instant situation it is apparent that the Comptroller's ruling, under Montana law, envisages a contract whereby a National Bank undertakes to indemnify, pay or provide, a determinable amount of money (with which to liquidate the balance of a loan) upon a determinable contingency, the death of the borrower, and, in addition, this will be to the benefit of the borrower's estate and representatives.

Section 40-4204, R.C.M. 1947, defines "Credit Life Insurance" to mean insurance on the life of a debtor pursuant to or in connection with a specific loan or other credit transaction. In the same statute a Creditor is defined as the lender of money for which payment is arranged through a credit transaction. A Debtor is a borrower of money for which payment is arranged through a credit transaction. The transaction and the parties thereto which are herein contemplated come within these statutory definitions.

It is well settled that a contract by a creditor to cancel the indebtedness of a debtor upon the debtor's death is a contract of insurance. **Missouri K & T Trust Co. v. Krumseig** (1896), 77 F. 32, aff'd, 172 U.S. 351; **Attorney General v. C. E. Osgood Co.**, 249 Mass. 473, 144 N.E. 371, 35 A.L.R. 1037 (1924). See also 29 Am. Jur., **Insurance** §9, page 438. Additional cases so holding are collected at 35 A.L.R. 1039 and this collection is supplemented in 63 A.L.R. 726 and 100 A.L.R. 1454.

Concerning the second question presented, the weight of authority appears to dictate that a National Bank does not have power to engage in the business of writing this type of contract. However, this is a question of federal law for determination by the Federal Government and not the State of Montana.

Your third question must be answered in the affirmative.

An "Insurer" under Montana Insurance law includes every person engaged as indemnitor, surety, or contractor in the business of entering into contracts of insurance. R.C.M. 1947, section 40-2603. A "person" includes any legal entity. R.C.M. 1947, section 40-2604. Therefore, since a debt cancellation contract is a contract of insurance, a National Bank which enters into such a contract, being a legal entity, is an insurer.

A "policy" is a written contract for insurance. R.C.M. 1947, section 40-3702. All insurers issuing policies of credit life insurance are required to hold a license or authorization from the commissioner to do such business in this state (R.C.M. 1947, section 40-4212) and no person shall transact a business of insurance in Montana without complying with the applicable provisions of the Montana Insurance Code (R.C.M. 1947, section 40-2609).

It is therefore my opinion:

1. That a debt cancellation contract between a National Bank and its debtor whereby the balance of a loan is cancelled on the debtor's death is a contract of insurance.
2. That the power and authority of National Banks to enter into debt cancellation contracts is a question of federal law to be decided by the Federal Government and not the State of Montana.
3. That a National Bank which enters into a debt cancellation contract whereby the balance of a loan is cancelled on the debtor's death must qualify and comply with the applicable provisions of the Montana Insurance Code.

Very truly yours,

FORREST H. ANDERSON  
Attorney General

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