

ing in either of the statutes seems to contemplate the procedure above described.

The statute required the "amount withdrawn" from the Teachers' Retirement Fund be turned over to the Public Employees' Retirement Fund on a person becoming a member of the latter fund. The amount withdrawn, even though it included unauthorized interest is a definite sum and must be so paid on becoming such a member in such latter fund. Your first question is answered in the affirmative.

Since no authority exists for the payment of money as contemplated by your second question, the answer to your second question is in the negative.

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OFFICIAL OPINION NO. 32

May 6, 1953.

Harry E. Wells, Insurance Commissioner,  
The Department of Insurance,  
240 State House,  
Indianapolis, Indiana.

Dear Sir:

I have your letter of April 15, 1953 which states as follows:

"During the last session of the Legislature H. B. No. 178, pertaining to Group Life Insurance, was passed. In the Senate an attempt was made to include an Amendment that would provide for the writing of Group Life Dependency coverage but the Amendment failed to carry.

"The old law was silent as to Dependency Coverage in the writing of Group Life and the law is still silent as to such coverage.

"The question arises as to whether or not this Department should permit such coverage to continue to be written, or shall we conclude from the failure of the proposed Amendment to pass, that it was the intention of the Legislature to prohibit the writing of such coverage?

"Your ruling on this question will be appreciated."

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The prior law dealing with Group Life Insurance, as enacted by the General Assembly of 1935, Chapter 162, Section 166, as amended, as found in Burns' Indiana Statutes Annotated (1952 Repl. Volume), Sections 39-4221 through 39-4224 provides in part as follows:

“Group Life insurance is hereby declared to be that form of life insurance covering not less than twenty-five (25) employees with or without medical examination, written under a policy issued to the employer, the premium on which is to be paid by the employer or by the employer and employee jointly, and insuring *only* all of his employees, or all of any class or classes thereof determined by conditions pertaining to the employment, for amounts of insurance based upon some plan which will preclude individual selection, for the benefit of persons other than the employer: \* \* \*.” (Our emphasis)

Chapter 228 of the Acts of 1953 amended the above quoted act dealing with Group Life Insurance and provides:

“No policy of group life insurance shall be delivered in this state unless it conforms to one of the following descriptions and otherwise fulfills the conditions and limitations contained in this section: \* \* \*.”

For the sake of brevity the conditions and limitations contained in Chapter 228 of the Acts of 1953 are not set out. However, it is to be noted that nowhere in said act does authorization appear for the writing of group dependency insurance.

The General Assembly of 1935, Chapter 162, Section 27, as found in Burns' Indiana Statutes Annotated (1952 Repl. Volume), Section 39-3324 provides in part as follows:

“\* \* \* No company shall transact any business of insurance in this state until it shall have received a certificate of authority as herein prescribed and no company shall make any kind or kinds of insurance not specified in such certificate of authority.”

Section 59 of Chapter 162, Acts of 1935, as amended, same being Section 39-3501, Burns' Indiana Statutes Annotated (1952 Repl. Volume) provides in part as follows:

“A company may make all or any one (1) or more of the kinds of insurance and reinsurance comprised in any one (1) of the following classes, *subject to and in accordance with the provisions of this act.* \* \* \*”  
(Our emphasis)

Section 166 of the same act, quoted in part earlier in this opinion, sets forth the requirements for group life insurance policies. The general definition of a group has some specific exceptions and the section was amended in 1943 and again in 1945 to further enlarge the application in certain situations. Yet, there is no language in this section to authorize dependency coverage in group life insurance.

The Appellate Court of Indiana, in the case of *Mitchell v. Hart et al.* (1940), 107 Ind. App. 548, 25 N. E. (2d) 665 held:

“\* \* \* Another principle of general recognition is that a corporation can not enter into or bind itself by, a contract which is expressly prohibited by its charter or by statute; \* \* \*. No one is permitted to justify an act which the legislature, within its constitutional power, has declared shall not be performed \* \* \*.”

Section 166, as amended, was repealed by House Bill 178 (being Chapter 228 of the Acts of 1953). When this act was before the Senate in the General Assembly an amendment to the same was introduced which provided authority for the writing of dependency coverage in group life insurance. This proposed amendment failed to pass.

In 50 Am. Jur., Statutes, Section 330, page 322 it provides:

“\* \* \* In the interpretation of a statute of doubtful import, the fact that a provision originally in a bill is omitted from the act as finally passed by the legislature, has been regarded as a significant factor. \* \* \* Similarly it has been held that rejected amendments to an act of the legislature may properly be considered in an effort to determine the legislative intention. \* \* \*”

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It is, therefore, my opinion, taking into consideration the above quoted excerpts of statutes, cases and authorities that the writing of Dependency Coverage in Group Life Insurance was and is now prohibited by the statute authorizing the writing of Group Life Insurance coverage.

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### OFFICIAL OPINION NO. 33

May 8, 1953.

Mr. Joseph McCord, Director,  
Department of Financial Institutions,  
410 State House,  
Indianapolis, Indiana.

Dear Sir:

Your letter of March 20, 1953 has been received and reads as follows:

"I have been requested by the Members of the Department of Financial Institutions to ask for your official opinion covering the following questions in connection with the establishment of branch banks under the provisions of Section 224 (18-1701) of the Indiana Financial Institutions Act:

"1. Does the Department of Financial Institutions have the authority or legal right to approve an application for the establishment of a branch bank to be located in an unincorporated community just outside the city limits of the city in which the applying bank is located and in the same county?

"2. Does the Department of Financial Institutions have the legal right to approve an application for the establishment of a branch bank in an unincorporated town located in the same county in which the applying bank is located?"

The applicable statute is Section 224, Chapter 40, Acts 1933, as amended by Section 30, Chapter 33, Acts 1937, the same being Section 18-1707, Burns' Indiana Statutes Annotated (1950 Repl.) which reads as follows: