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OFFICIAL OPINION NO. 36

May 1, 1952.

Honorable Frank J. Viehmann,  
Commissioner of Insurance,  
State of Indiana,  
Indianapolis, Indiana.

Dear Sir:

Your request for an official opinion concerning group insurance under the Indiana statutes applicable thereto has been received. Your letter reads as follows:

“Many problems have developed in the Insurance Department with reference to the provisions of the Indiana Statutes applying to group insurance, as we understand them. The sections of Burns’ Indiana Statutes involved are 39-4221 to 39-4224 and 39-4306 (k) (1).

“Several policies have been submitted to the Department for approval, in which the policy is made payable to a trustee under an arrangement between an employer and his employees for paying benefits to the employees or his beneficiaries. The Department has been refusing to approve such forms, being under the impression that they do not comply with the Indiana insurance laws.

“For our guidance in the future in this regard, we ask you to give us an official opinion as to the following questions arising under our laws applicable to group insurance in Indiana.

“1. Is a policy covering employees of an employer, but which is payable to a trustee or an agent for such employer and employees, permissible under our insurance laws?

“2. If so, what requirements are necessary for the policy to show compliance with the statutes?

“3. If the answer to Question No. 1 is in the affirmative, would a policy undertaking to include one or more employers in the same industry be permissible under our laws?

"4. If the answer to Question No. 1 is in the affirmative, would a policy undertaking to cover employees of an employer having less than 25 employees be permissible under our law?

"5. Could subsidiaries and affiliates be included in the same policy with the parent corporation?

"6. May employees who are represented by a union but are not members of the union be covered by nominating them as associate members or by some similar device?

"7. May employees not represented by a union, but employed by employers with whom the union has contracts, be covered by nominating them as associate members or by some similar device?

"8. May members of two or more locals of the same national or international union be covered under a single policy?

"We believe answers to the foregoing questions will help us with reference to the problems arising under our statutes pertaining to group insurance."

The provisions of our statutes applicable to group insurance are in sections 39-4221, 39-4222, 39-4223, 39-4224 of Burns' Indiana Statutes (1952 Replacement) which pertain to group life insurance, and sub-paragraph (k) (1) of section 39-4306, which pertains to accident and health insurance. They read as follows:

"39-4221. *Group life insurance—Definition.*—(a) 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 the 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

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persons other than the employer: Provided, however, That when the premium is to be paid by the employer and employee jointly and the benefits of the policy are offered to all eligible employees, not less than seventy-five (75) per centum of such eligible employees must be so insured.

“(b) The following forms of life insurance are hereby declared to be group life insurance within the meaning of this act: (1) Life insurance covering the members of one (1) or more companies, batteries, troops or other units of the national guard of any state, written under a policy issued to the commanding general of the national guard who shall be deemed to be the employer for the purpose of this act, the premium on which is to be paid by the members of such units for the benefit of persons other than the employer: Provided, however, That when the benefits of the policy are offered to all eligible members of a unit of the national guard, not less than seventy-five (75) per centum of the members of such unit must be so insured; (2) life insurance covering the members of one (1) or more troops or other units of the state troopers or state police of any state, written under a policy issued to the commanding officer of the state troopers or state police who shall be deemed to be the employer for the purposes of this act, the premium on which is to be paid by the members of such units for the benefit of persons other than the employer: Provided, however, That when the benefits of the policy are offered to all eligible members of a unit of the state troopers or state police, not less than seventy-five (75) per centum of the members of such unit must be insured; (3) life insurance covering the members of any labor union, written under a policy issued to such union which shall be deemed to be the employer for the purposes of this act, the premium on which is to be paid by the union or by the union and its members jointly, and insuring only all of its members who are actively engaged in the same occupation, for amounts of insurance based upon some plan which will preclude individual selection, for the benefit of persons other than the union or its officials: Provided,

however, That when the premium is to be paid by the union and its members jointly and the benefits are offered to all eligible members, not less than seventy-five (75) per centum of such members must be so insured: Provided, further, That when members apply and pay for additional amounts of insurance a smaller percentage of members may be insured for such additional amounts if they pass satisfactory medical examinations; (3a) life insurance covering the members, both voting and nonvoting as defined in the Indiana Agricultural Cooperative Act, and/or employees of agricultural cooperatives written under a policy or policies issued to the Indiana Farm Bureau Cooperative Association, Inc. and/or affiliates or units thereof who shall be deemed to be the employer for the purposes of this act, the premium on which is to be paid by the units and/or affiliates, members or employees in a manner and form to be determined by the designated employer for the benefit of persons other than the employer: Provided, however, That when the benefits of the policy or policies are offered to all eligible members of such agricultural cooperatives or employees of such units or affiliates not less than seventy-five (75) per cent of the members or employees of each such cooperative unit and affiliate for which insurance is provided must be insured; and (3b) and life insurance covering the employees of the Indiana Statewide Rural Electric Cooperative, Inc. and units thereof written under a policy issued to Indiana Statewide Rural Electric Cooperative, Inc. which shall be deemed to be the employer for the purposes of this act; (4) life insurance covering only the lives of all members of a group of persons for not more than five thousand dollars (\$5,000) on any one life, numbering not less than one hundred (100) new entrants to the group yearly, who become borrowers from one (1) financial institution, including subsidiary or affiliated companies, or who become purchasers of securities, merchandise or other property from one (1) vendor under agreement to repay the sum borrowed or to pay the balance of the price of the securities, merchandise or other property purchased in

instalments over a period of not more than ten (10) years, to the extent of their indebtedness to said financial institution or vendor but not to exceed five thousand dollars (\$5,000) on any one life, written under a policy which may be issued upon the application of and made payable to the financial institution or vendor or other creditor to whom such vendor may have transferred title to the indebtedness, as beneficiary, the premium on such policy to be payable by the financial institution, vendor or other creditor: Provided, That group life insurance issued under this classification shall not include annuities or endowment insurance; (5) life insurance written under a policy covering the executive, supervisory, sale and professional employees of bona fide members of any voluntary industrial association, issued to such association, which shall be deemed to be the employer for the purposes of this chapter, the premium on which may be paid by the association or by the employer members or by the employer members and their employees jointly, and insuring, with or without medical examination, all of such employees of the employer members electing to include their employees, for amounts of insurance based upon some plan which will preclude individual selection, for the benefit of persons other than the association or its employer members: Provided, however, That when the premium is to be paid by the employer member and his employees jointly not less than seventy-five (75) per centum of its eligible employees may be insured: Provided, further, That such policy shall cover either, (1) a total of one thousand (1,000) or more employees with not less than seventy-five (75) per centum of the total insured employees employed by employer members with at least twenty-five (25) insured employees each and not more than ten (10) per centum of the total insured employees employed by employer members with less than ten (10) insured employees each, or (2) two hundred and fifty (250) or more employees and not less than seventy-five (75) per centum of the total number in the eligible classes of employees of all employer members of the association.

“39-4222. *Group policies—Standard provisions.*—No policy of group insurance shall be issued or delivered in this state unless and until a copy of the form thereof has been filed with the department and approved by it; nor shall such policy be so issued or delivered unless it contains in substance the following provisions:

“(a) A provision that the policy shall be incontestable after not more than two (2) years from its date of issue, except for nonpayment of premiums and except for violation of the conditions of the policy relating to military or naval service in time of war or other prohibited risks.

“(b) A provision that the policy, the application of the employer and the individual application, if any, of the employees insured, shall constitute the entire contract between the parties, and that all statements made by the employer or by the individual employees, shall, in the absence of fraud, be deemed representations and not warranties, and that no such statement shall be used in defense to a claim under the policy, unless it is contained in a written application. The individual certificate referred to in subsection (d) hereof, issued by the insurance company setting forth a statement as to the insurance protection to which the individual is entitled shall not become a part of the contract between the parties.

“(c) A provision for the equitable adjustment of the premium or the amount of insurance payable in the event of a misstatement of the age of an employee.

“(d) A provision that the company will issue to the employer for delivery to the employee whose life is insured under such policy, an individual certificate setting forth a statement as to the insurance protection to which he is entitled, to whom payable together with provision to the effect that in case of the termination of the employment for any reason whatsoever the employee shall be entitled to have issued to him by the company, without further evidence of insurability, and upon application made to the company within thirty-

one (31) days after such termination and upon the payment of the premium applicable to the class of risk to which he belongs and to the form and amount of the policy at his then attained age, a policy of life insurance in any one (1) of the forms customarily issued by the company, except term insurance, in an amount equal to the amount of his protection under such group insurance policy at the time of such termination: Provided, That nothing in this subsection (d) shall apply to group policies described in subsection (b) (4) of section one hundred and sixty-six (§ 39-4221) of this act.

“(e) A provision that to the group or class thereof originally insured shall be added from time to time all new employees of the employer eligible to insurance in such group or class.

“39-4223. *Group policies—Exemption from liability for debts.*—No policy of group insurance nor the proceeds thereof, when paid to any employee or employees, shall be liable to attachment, garnishment, or other process, or to be seized, taken, appropriated or applied to any legal or equitable process or operation of law, to pay any debt or liability of such employee, or his beneficiary, or any other person who may have a right thereunder, either before or after payment, nor shall the proceeds thereof, where not payable to a named beneficiary, constitute a part of the estate of the employee for the payment of his debts.

“39-4224. *Group policies—Classification.*—Any life insurance company may issue life or endowment insurance, with or without annuities, upon the group plan as hereinbefore defined, with special rates of premiums less than the usual rates of premiums for such policies, and may value such policies on any accepted table of mortality and interest assumption adopted by the company for that purpose; provided, that in no case shall such standard be lower than the American Men Table of Mortality (ultimate) with interest assumption at three and one-half (3½) per cent, in the case of policies issued before the transition date selected by the

company pursuant to section 153C (§ 39-4208c), nor lower than the standard prescribed in subsection (2) (f) of section 153A (§ 39-4208a), in the case of policies issued on and after such transition date. All policies of group insurance shall be segregated by the company into a separate class, the mortality experience kept separate, and the number of policies, amount of insurance, reserves, premiums, and payments to policyholders thereunder, together with the mortality table and interest assumption adopted by the company shall be reported separately in the company's annual financial statement.

"39-4306. *Standard provisions—Health and accident policies.*—\* \* \*

"(k) (1) Nothing in this section, however, shall apply to or affect any policy of liability or workmen's compensation insurance. The provisions of subsections (b), (c), (d) and (e) of this section shall not apply to any general or blanket policy of insurance issued to any municipal corporation or department thereof, or to any employer whether a corporation, co-partnership, association or individual, or to any college, school or other institution of learning or to the head or principal thereof, or to any police or fire department, underwriters corps, salvage bureau, state police, militia or labor union, or to any association of fifty (50) or more members having a constitution or by-laws and formed in good faith for purposes other than that of obtaining insurance, where not less than seventy-five (75) per centum of the members or employees are insured for their individual benefit against specified accidental bodily injuries or sickness while exposed to the hazards of the occupation or otherwise in consideration of a premium intended to cover the risks of all the persons insured under such policy."

Citizens have a fundamental right to enter into contracts with each other, except as such contracts are prohibited or restricted by law in the exercise of the government's power for the protection of the public welfare. The general rule is well stated in the following language in American Jurisprudence (Vol. 12, pp. 641-642) :

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“It is the inherent and inalienable right of every man freely to deal or refuse to deal with his fellow men. Competent persons ordinarily have the utmost liberty of contracting, and their agreements voluntarily and fairly made will be held valid and enforced in the courts. Parties may incorporate in their agreements any provisions that are not illegal or violative of public policy. The general right to contract is subject to the limitation that the agreement must not be in violation of the Federal or state Constitutions, Federal or state statutes, some ordinance of a city or town, or some rule of the common law. \* \* \*”

Our Indiana laws do not prohibit the execution or issuance of group insurance contracts, but do provide certain restrictions and limitations with regard to such contracts. It is provided in section 39-4222, having to do with group life insurance, which is above set out, that “No policy of group insurance shall be issued or delivered in this state unless and until a copy of the form thereof has been filed with the Department and approved by it”; the section also provides that such policy shall contain in substance certain provisions which are set out in the statute.

Thus it is seen the duty is imposed upon the Department of Insurance of approving a group life insurance policy before it can be issued or delivered. The question immediately arises: what can the Department of Insurance properly consider in determining whether, in the exercise of its duty under the statute, a policy shall be approved or disapproved? In that connection it is important to bear in mind that the Department of Insurance was created by statute enacted by the General Assembly (Burns' Indiana Statutes, Sections 39-3326 and 39-3330) and that as an administrative creature of the state it has no power or authority except that given it by the State expressly or by necessary implication.

The State, through the General Assembly in the exercise of its legislative function, has set up certain standards with reference to group life insurance and has given the Department of Insurance the power and duty to approve policy forms. In so acting, the function of the Department of Insurance is to determine whether the proposed policy of insurance is in

accordance with the standards as set up by the legislature. Under our Constitution, even the Legislature could not validly give the Department authority to exercise its discretion without legislative guide or standards in approving or disapproving policy contracts.

It is clear, therefore, in determining whether a policy should be approved or disapproved, the guide to be followed is that set out in the provisions of the statute pertaining to group insurance. If the Department of Insurance should go beyond that guide or exercise power not contemplated by the provisions of the statutes applicable, the Department would be acting arbitrarily and in excess of its powers.

Such procedure is well recognized, both as to the legislative act of setting up certain standards and the authority given an administrative agency to determine as a matter of fact whether, as in this instance, a group policy is in conformity with the law. The general rule in that regard is well stated in a recent decision of the Indiana Supreme Court in the case of *State ex rel. Standard Oil Co. v. Review Board of Indiana Employment Security Div. et al.* (1951), — Ind. —, 101 N. E. (2d) 60, in the following language:

“\* \* \* While a law as enacted must be complete, where the legislature has laid down a standard which is as definitely described as is reasonably practicable, it may authorize an administrative agency to determine whether facts or circumstances exist upon which the law makes or intends to make its own action depend, but it cannot confer upon any body or person the power to determine what the law shall be. As has been said, there is a clear distinction between the delegation of power to make a law, which necessarily involves a discretion as to what the law shall be, and conferring an authority or discretion as to its execution, to be exercised under and in pursuance of the law. \* \* \*”

Thus it is obvious that a legislature can not validly give the Department of Insurance unlimited discretion to determine of what the provisions of a policy can or can not consist. The legislature may set up definite standards as to what the provisions of the policy shall or shall not be and delegate to the Department of Insurance the power to determine with refer-

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ence to any given policy whether it is in accordance with the standards set up by the legislature. If the policy meets the requirements of the legislative standards prescribed by the legislature, it should be approved; if it is contrary to such legislative standards, it should be disapproved. However, the Department of Insurance cannot apply its own standards or change the standards set up by the legislature either by ignoring any of the provisions of the law or by imposing additional standards or requirements not found in the law.

Among the standards and requirements set up by the legislature with reference to group life insurance are the requirements that it be based upon the relationship of employer and employee (Sec. 39-4221, Burns' Indiana Statutes) and that it cover not less than twenty-five (25) employees and that, when the premium is to be paid by the employer and employee jointly and the benefits of the policy are offered to all eligible employees, not less than 75% of such eligible employees must be insured.

Referring to question number 1 in your letter, I find no provision in the statute either expressly or by implication prohibiting the issuance of a group life policy payable to a trustee or agent acting for the employer and the employees covered. It is stated in your letter that "Several policies have been submitted to the Department for approval, in which the policy is made payable to a trustee under an arrangement between an employer and his employees for paying benefits to the employees or his beneficiaries." The fact that our statutes contemplate that the relationship of employer and employee shall exist, does not mean, in my opinion, that the contract of insurance can not be executed between the insurance company and a designated agent or trustee for the employer and employee. If the contract is by virtue of such relationship, the parties may enter into a contract through an agent or trustee empowered by a proper instrument to act for and on their behalf. If, when all of the provisions of the insurance contracts are taken into consideration, it appears that such contract is by virtue of the relationship of employer and employee, that should be sufficient, and the parties interested in such contract should not be put in a strait jacket as to the arrangement or method contemplated in carrying out the purposes of the contract. I do not believe that the legis-

lative intent was to limit or restrict the rights of the interested parties, to enter into insurance contracts beneficial to the parties interested.

We should not be unmindful of the provisions of the Taft-Hartley law, passed by Congress in 1947 (U. S. C. A. Title 29, Section 1086) which has to do with plans for the payment of money as between employer and employee, and requires that the plan must be under a trust arrangement. It would be a disservice to the citizens of Indiana, in my opinion, to interpret our insurance laws concerning group insurance, in such a way that the requirements of the Taft-Hartley law can not be met, unless such a construction is unavoidable. The result would be to make it impossible for such policies, which come both under the Indiana insurance laws and the Taft-Hartley law, to be issued at all in Indiana.

Categorically answering question number 1 in your letter, it is my opinion that a policy of insurance which is payable to a trustee or agent is permissible under our statutes and that the Department of Insurance should approve such policies if they are otherwise in accordance with the provisions of our statutes.

In question number 2 you ask: "What requirements are necessary for the policy to show compliance with the statutes?"

The policy contract should set out fully and completely the powers and authorities of the trustee or agent in whose name the policy is taken out. It would seem that should be done by an endorsement, made a part of the policy, setting out the terms and provisions of the contract giving the trustee or agent power to act with reference to such insurance. And, of course, the policy should carry necessary provisions to show compliance with the statute in the many particulars expressly applying to group insurance.

It would seem necessary that the trustee or agent named in the policy should be a legal entity, capable of suing or being sued as such and not merely a group of individuals identified by some name such as an unincorporated association.

In question number 3 you ask: "Would a policy undertaking to include employers of several different employees be permissible under our laws?" In my opinion a fair and proper

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construction of our law compels the conclusion that separate policy contracts are contemplated and that a policy undertaking to include two or more employers together with their employees should not be approved as being in accordance with the provisions of our insurance laws.

In that connection it should be added that I see no reason why several separate policy contracts cannot designate as payee the same trustee or agent acting on behalf of the parties in carrying out the insurance plan contemplated by the policies if such designation of the same trustee or agent advantageously serves the parties concerned. Certainly there is nothing in the law prohibiting such arrangements, although it does seem to require separate policy contracts as to each employer and his employees.

Question number 4 asks: "Would a policy undertaking to cover employees of an employer having less than 25 employees be permissible under our law?" In that regard the wording of Section 39-4221 seems very explicit. It says: "Group life insurance is hereby declared to be that form of life insurance covering not less than twenty-five (25) employees" etc. It seems clear, therefore, that the provisions of the statute pertaining to group life insurance refer only to those group policies covering not less than twenty-five (25) employees and there is no provision or law permitting issuance of group life insurance policies to employers for the benefit of employees having less than twenty-five (25) employees.

Question number 5 asks: "Could subsidiaries and affiliates be included in the same policy with the parent corporation?" The answer to question number 3 indicates the answer to question number 5. If the subsidiaries or affiliates are separate legal entities, as for instance different corporations, each having existence as a legal entity, I believe it would be necessary to issue separate policies for each employer constituting a separate legal entity. If the subsidiaries or affiliates are not legal entities, but simply a division or divisions of the overall corporation and such separate division is not a legal entity, one policy could cover the one overall corporation and its employees, including the employees of the different divisions. The fact that there are separate and different divisions having separate groups of employees would make no difference, so

long as the division or divisions are parts of the corporation and not separate and distinct legal entities.

Each of questions numbered 6, 7 and 8 require a study and construction of subparagraph (b) of Section 39-4221. That paragraph sets out several exceptions to the requirements that group life insurance should be based on the relationship of employer and employee, by declaring that certain forms of life insurance are group life insurance, within the meaning of this act, and provides that the organizations referred to shall be deemed to be the employer for the purposes of the act. It would serve no useful purpose to discuss such provisions in detail in this opinion, except as is necessary to answer questions numbered 6, 7 and 8.

To question number 6 asking: "May employees who are represented by a union but are not members of the union be covered by nominating them as associate members or by some similar device?" the answer is, no. The member of the union should be a *bona fide* member, and designating a person as an associate member or by some similar device would not be within the meaning of the law if in fact such person was not a *bona fide* member.

To question number 7, reading as follows: "May employees not represented by a union, but employed by employers with whom the union has contracts, be covered by nominating them as associate members or by some similar device?" the answer is, no, for the reasons already hereinabove set out.

Question number 8 reads as follows: "May members of two or more locals of the same national or international union be covered under a single policy?" I assume this question involves the construction of subparagraph (b) of Section 39-4221. A definite answer can not be given to that question, as it would depend upon the organizational setup of the particular union or unions involved. For example, I understand that the United Steel Workers of America (CIO) is one international union composed of several units designated as local unions. The individual members pay dues to the international union, which retains part of the dues and remits part to the local union to which the member belongs and which is a part of the international union. However, other so-called international or national unions are often in reality organizations or federations composed of several local unions and the members

