

nished shall be in substantial accordance with a requisition which the superintendent of the hospital shall send with the acceptance of such insane person. If such clothing be not otherwise furnished, the clerk of the circuit court shall purchase such clothing and the payment therefor shall be made out of the general fund of the county treasury, upon certificate of the clerk, and warrant of the county auditor. The expenditure for such clothing out of the county treasury shall in no case exceed seventy-five dollars (\$75.00). If such clothing is purchased by the clerk of the circuit court, the person from whom the clothing is purchased shall submit therewith a verified, itemized statement showing the price charged for each such item of clothing so purchased and no such item shall be paid unless the price charged therefor shall be just and reasonable. (Acts 1927, ch. 69, Sec. 15, p. 179; 1933, ch. 95, Sec. 1, p. 669; 1943, ch. 195, Sec. 1, p. 588.)"

From the last quoted statute it appears that the maximum amount to be allowed for clothing for insane persons is seventy-five dollars (\$75.00), and this same amount would be applicable as the maximum amount to be allowed for clothing for persons committed to the Fort Wayne State School.

OFFICIAL OPINION NO. 75

July 27, 1945.

Hon. John D. Pearson,
Insurance Commissioner
State of Indiana,
State House,
Indianapolis 4, Indiana.

Dear Mr. Pearson:

I have your letter requesting my opinion as follows:

"A life insurance company authorized to do business in Indiana is confronted with an opportunity to place

a life insurance contract in the hands of an established corporation doing a general insurance business.

"If this contract is consummated, the manager of what will be known as the life insurance department will be licensed and he will be paid a salary by the corporation and if the profits from the life insurance department are sufficient, he may receive a bonus.

"This will necessitate an assignment of all commissions earned under this contract to the corporation. Is such a contract and application for license within the Insurance Laws of the State of Indiana?"

In the absence of an examination of the contracts and the assignments which are to be made, it is difficult to give a thoroughly accurate interpretation of the relationship of the various parties. Consequently, anything which is said herein might be varied to some extent by the terms of the tri-partite arrangement.

The general rule is, as stated in Vol. II of Couch-Cyclopedia of Insurance Law, p. 1388:

"* * * it is apparent that, in the absence of statutory restriction, a corporation may act as an insurance agent, provided such an activity is within the scope of the corporate powers."

That general statement is, of course, modified by the express provision of the Indiana law, Sec. 217 of Chapter 162 of the Acts of 1935 (39-4601, Burns' R. S.), which provides as follows:

" 'Agent' defined.—(a) The word 'agent' as used in this article, shall mean any *natural* person authorized by law, and by an insurance company in writing, to solicit applications for life insurance, and to otherwise represent it in such manner as he may be authorized by the company in writing." (Our emphasis.)

Section 224 (39-4608 Burns' R. S.) of the same Act emphasizes the use of the word "natural", and provides:

"Offenses.—No person shall, within this state, act as an agent for any life insurance company unless and

until he shall have complied with the provisions of this article: *Provided, That no corporation whether organized under the laws of this state, of the United States or of any state or territory thereof or of a foreign country, shall within this state, act as an agent for any life insurance company.*" (Our emphasis.)

The term "agent" is further defined in Section 3 of the same act (39-3203 (i) Burns' R. S.), as follows:

"The term 'agent' means any person, firm or corporation not being an officer or salaried home or department office employee of a company or a duly licensed insurance broker, who solicits business in behalf of any company, corporation or association or transmits for a person other than himself an application for a policy of insurance of any kind to or from such company, corporation or association; to act in the negotiation of any such policy or in the negotiation of its continuance or renewal; to write and countersign policies and collect premiums therefor."

Obviously, then, the corporation mentioned in the above letter could not obtain a license as a life insurance agent in Indiana. Since there is no provision for life insurance solicitors or brokers under Indiana law, we need not be concerned with the question of brokerage or solicitation.

The question is then: May the same results be reached by securing a life insurance agent's license for an agent of the corporation? The agent of the corporation who thus secures an agency contract from an insurance company is necessarily placed in a dual capacity. He is acting as agent for the life insurance company and, at the same time, as agent for the corporation in soliciting, negotiating, collection of premiums, and other functions of a life insurance agent.

The fundamental principle which underlies all the law of agency as expressed in the Latin maxim "*qui facit per alium, facit per se,*" would necessarily imply that when the corporation does something through its agent, it is, in the eyes of the law, doing that act itself. That is particularly true since the corporation can only act through its agents. It follows, then, that in acting through its agents the corporation is itself act-

ing as agent for a life insurance company irrespective of the name in which the license is held.

The fact that the corporation itself will act as agent is expressed indirectly in facts which you outline. It is stated that there is an opportunity to place a life insurance contract "in the hands of an established corporation", that a "life insurance department" will be established, and that the corporation will receive the benefit of the premium by assignment.

In *Rogers v. Ramey*, 248 S. W. 254 (1923, Kentucky) the question was raised whether a corporation could act as agent for a life insurance company in the absence of statutory restriction. The court in that case discussed a previous case of *Botts* against *Ramey* (apparently unreported) in which an officer of a trust company wrote insurance for the general public in his own name, but accounted to the trust company for all commissions. It was charged that in writing for the trust company, the officer was unlawfully rebating commissions. But, the right of the officer to act as an insurance agent under the arrangement was justified on the theory that the trust company was in reality an agent of the insurance company and was writing insurance through its agent. If that theory is correct, as applied to the inquiry made to you, the corporation would be in reality the agent for the insurance company and writing insurance through its agent.

Your case appears to me to be somewhat similar to a case which arose in Massachusetts. In that case the plaintiff was not licensed as an agent or broker. Having knowledge that two persons desired insurance, he requested the defendant to write the insurance and give plaintiff a share of the premium, to which the defendant agreed. The court there held that in furnishing the information, the plaintiff was acting as an insurance broker, that he was engaging in the business of negotiating insurance, and that, therefore, his contract to participate in the compensation was illegal.

I am of the opinion that any corporation which so attempts to solicit, negotiate and make insurance contracts through its agent, is itself acting as an insurance agent. The fact that the agent is duly licensed does not in any manner remove the statutory prohibition from the corporation.