



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable O. P. Lockhart, Chairman
Board of Insurance Commissioners
Austin, Texas

Dear Sir:

Opinion No. O-4065

Re: Is the plan of the Reserve Loan
Life Insurance Company and the
American Liberty Oil Company as
described lawful?

Your letter requesting an opinion of this department on
the above stated question reads as follows:

"The Reserve Loan Life Insurance Company of
Dallas, Texas, is organized pursuant to Chapter 3,
Title 78, Revised Civil Statutes of Texas, with
\$250,000 capital, and the American Liberty Oil Com-
pany, as its name indicates, is presumably incor-
porated for the purpose of producing, refining, and
marketing crude oil and its products, including re-
tail distribution. Mr. Clint Murchison and Mr.
Toddie Lee Wynne are stockholders and directors in
the life insurance company, and are the principal
stockholders in the oil company.

"A plan has been submitted to us for approval
in a policy form and application form whereby life
policies are offered to the public generally by the
insurance company for which the first year premiums
are agreed to be paid, and actually paid in advance,
jointly by the employer of the assured and by the oil
company in certain agreed proportions, and these facts
are reflected in the face of the policies themselves.

"We understand the oil company has set up a fund
of \$50,000 to be used for this purpose and charged to
advertising of the oil company, whose name, of course,
appears in the face of the policy as having donated
its share of the first year premiums. Obviously the
plan is designed also to increase the business of the

insurance company, and thus this scheme rebounds to the benefit of the common stockholders in the two companies at both ends of the line.

"The authorities cited in "Insurance," 24 Tex. Jur., Sections 137, and 231, and in Couch on Insurance, Sections 107, 350, 605, and 606 seem to indicate that since, so far as we have been able to discover, we have no statute forbidding the practice mentioned above, it is not illegal unless by reason of the community of ownership, interest, and control as between the two companies which might be a form of rebating, discrimination, or other practice forbidden by the statutes hereafter mentioned, or contrary to public policy generally.

"We respectfully invite your attention to the provisions of Articles 568, 569 and 578 of the Penal Code, and Articles 5053, 5056 and 5064 of the Revised Civil Statutes, which may have some bearing upon the questions here propounded.

"We respectfully ask your opinion as to whether the plan above outlined is lawful and should be approved by us in policies and application forms, or whether the scheme contravenes the provisions of any constitution or statutory provision or is contrary to public policy otherwise in view of the community of ownership, interest, and control as between the two companies."

Article 5053, Vernon's Annotated Civil Statutes, among other things, provides in effect that no inducement to insurance shall be made unless specified in the policy or contract of insurance. Apparently this requirement has been complied with by inserting into the insurance policies or contracts the following paragraph:

"This policy is issued in consideration of the application therefor, a copy of which is attached hereto and made a part hereof, and of the payment in advance of the first premium of \$ _____, the receipt of which is hereby acknowledged, which shall

Honorable O. P. Lockhart, Chairman, Page 3

maintain this policy in force for the period terminating on the _____ day of _____, 19____, and it will be continued in force upon the further payment of \$_____ on said date and on the _____ day of every _____ thereafter until the policy anniversary nearest the date on which the insured attains the age of _____ years or until the prior death of the insured; the said first premium only to be paid jointly by _____ (employer of the insured) and _____ (corporation)."

We have carefully considered the statutes mentioned in your letter and are of the opinion that the proposed plan of the Reserve Loan Life Insurance Company and the American Liberty Oil Company does not contravene any of these statutes.

It is stated in Couch's Cyclopaedia of Insurance Law, Vol. 3, page 1962, that:

"Payment of insurance premiums is not necessarily the personal act of the insured, consequently, and as a general rule, anyone may pay the premiums or assessments on an insurance policy or benefit certificate, with the result that, if accepted, the payment is as valid as if made by the insured himself, and this whether the payment was voluntary, or pursuant to request of, or a contract with, the person or persons responsible for such payment, this being especially true in the case of request or express contract, provided, of course, that there are no elements of vagering sufficient to avoid the contract of insurance, or such payments are not prohibited by a statute, and are not made after the policy has ceased to be a valid and enforceable contract. * * *"

With reference to the payment of premiums on insurance policies, the general rule as stated in Corpus Juris, Vol. 32, p. 1197, is as follows:

Honorable O. P. Lockhart, Chairman, Page 4

"Premiums may be paid by insured or beneficiary, or by someone for him, even though the one so paying has no insurable interest."

Apparently, under the general rules above mentioned, the payment of insurance premiums can be made by anyone where such payments are not prohibited by statute. We have failed to find any Texas Statute prohibiting such payments.

In the case of Thayer et al vs. Wathem et al, 44 S. W. 906, it is stated:

"Because the parties composing both companies are the same is no bar to their dealing with each other. All the law requires in such cases is that the transaction shall be free from fraud and executed in good faith."

This was a suit brought for the construction of a trust agreement, and to require one of the trustees, to accept stock of the new company, and transfer the franchises and property of the Dallas Rapid-Transit Railway Company to the new corporation organized by virtue of said trust agreement.

In Fletcher's Cyclopaedia Corporations Vol. 2, p. 1857, it is stated:

"Whenever a corporation has power to make a contract, it can make it with another corporation as well as an individual or partnership. However, it has been held that contracts between two corporations, in order to bind either of them, must be within the powers of both.

"If the right to contract exists, it is immaterial if the same officers and stockholders control both contracting corporations, if there is no bad faith."

However, as we understand the question before us, we do not have the proposition of two separate corporations contracting with each other with the same officers and stockholders. Apparently there

Honorable O. P. Lockhart, Chairman, Page 5

is no contract whatsoever between the American Liberty Oil Company and the Reserve Loan Life Insurance Company. The oil company merely agrees to pay and does pay a part of the premium on all policies of a certain class.

The question is raised whether the American Liberty Oil Company has the legal power and authority to perform the above mentioned acts as advertising for said company. It is stated in Fletcher's Cyclopedia on Corporations, Vol. 2, page 1787:

"A corporation may adopt any proper means of advertising its business or its enterprise, and make necessary contracts with the publishers of newspapers or others for such purpose."

It is further stated in the same volume on page 1788:

"The most difficult of all questions relating to implied powers is whether, in a particular case, a corporation may aid a person or a firm or another company when its purpose in so doing is to increase its own business. This question often arises in connection with donations by a corporation to aid an enterprise, the success of which will increase the business of the donating corporation, in connection with the power of the corporation to become a guarantor or a surety to help a person, firm or another corporation, where the effect will be to enable the corporation to make a sale or obtain a steady customer or to otherwise help its business, and in various other phases. It most frequently arises in connection with the business of brewing companies, land companies, street car companies and the like. All that can be said is that the circumstances of the particular case largely control the question; that some courts are more liberal than others in allowing corporations to do acts which a level-headed business man, as an individual, would do to help his business; that the undoubted tendency of the courts is in the direction of upholding such acts.
* * * ."

Honorable O. P. Lockhart, Chairman, Page 6

It is our opinion that the above mentioned plan is not prohibited by law and that the Department of Insurance may legally approve application and policy forms containing the above quoted paragraph.

Trusting that the foregoing fully answers your inquiry, we are

Yours very truly

APPROVED OCT 22, 1941

ATTORNEY GENERAL OF TEXAS

James R. Allen

FIRST ASSISTANT
ATTORNEY GENERAL

BY *Ardell Williams*

Ardell Williams
Assistant

AW:ej

