



medical examiners and for the issuance of a certificate to them showing such appointment. Part of the money collected from an applicant is set aside as life-time dues of the number of such association; part to the purchase of notes made by other applicants and part to a mortuary fund.

"In the case of application by a doctor, such company agrees to appoint such doctor as a medical examiner for a certain designated district and agree to pay him \$1.00 for every member examined by said doctor in his district and to pay an additional sum of \$4.00 if a detailed medical examination is required.

"I am enclosing herewith a copy of the application blank prepared and used by said association, together with a copy of the certificate issued by it to doctors who take memberships, for your use in considering this request. The association plans to employ agents on a commission basis to secure such applications and contends that such membership certificates are not securities, within the meaning of the Texas Securities Act.

"Before passing on such contention, this Department will appreciate the benefit of your advice as to whether or not such application or certificate, singly or together, constitutes a security within the meaning of the aforesaid Securities Act."

Article 600a, Vernon's Annotated Civil Statutes, reads, in part, as follows:

"Section 2. The following terms shall, unless the context otherwise indicates, have the following respective meanings:

"(a) The term 'security' or 'securities' shall include any share, stock, treasury stock, stock certificate under a voting trust agreement, collateral trust certificate, equipment trust certificate, preorganization certificate, or receipt, subscription or reorganization certificate, note, bond, debenture, mortgage certificate or other evidence of indebtedness, any form of commercial paper, certificate in or under a profit sharing or participation agreement, certificate or instrument representing any interest

in or under oil, gas or mining lease, fee or title, or any certificate or instrument representing or secured by an interest in any or all of the capital, property, assets, profits or earnings of any company, investment contracts, or any other instrument commonly known as a security, whether similar to those herein referred to or not. . . ."

The above mentioned application for membership and appointment as a regional, medical advisor and examiner to the United Fraternal Benefit Association, reads in part as follows:

"IN CONSIDERATION of the premises set forth in the recitals hereof and the benefits to accrue to First and Second Parties by and through a consummation of the objects and purposes therein set forth, it is agreed:

"Sec. 1. The Second Party agrees to pay to the First Party the sum of \$\_\_\_\_\_ payable as follows: \$\_\_\_\_\_ cash, receipt whereof is hereby acknowledged by First Party; and the remainder of said sum shall be due and payable in \_\_\_\_\_ installments of \$\_\_\_\_\_ each and \_\_\_\_\_ installments \_\_\_\_\_ of \$\_\_\_\_\_, the first installment being due and payable on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, and one installment being due and payable on the \_\_\_\_\_ day of \_\_\_\_\_ next thereafter until all installments are paid; said installment payments being payable at Dallas, Dallas County, Texas, and shall bear interest from maturity at the rate of \_\_\_\_\_ per centum per annum, and it is agreed that upon failure to pay any installment as stipulated First Party may, at its election, mature all remaining unpaid installments, and further that if this obligation is placed in the hands of an attorney for collection or if collected by suit or through the probate court ten per centum additional on the principal and interest then due shall be allowed and recovered as attorneys fees.

"Sec. 11. The funds set forth in Section I hereof, as and when paid, it is agreed, shall be used, expended and applied as follows:

"First: The first 6 \_\_\_\_\_ of said sum shall be applied and allocated by First Party to the payment of the life time dues of the Second

Party as stipulated and provided for in Section III of this agreement.

"Second: Should any one or more of the applicants for insurance benefits referred to in the recitals hereof execute his or her note, notes or other evidence of indebtedness, in payment, in whole or in part, of the premium required to be paid for a benefit certificate or policy of insurance issued or to be issued to such applicant then so much of said fund as may remain after an allocation of the amount stipulated in subdivision First of this section, as may be requisite thereunto, may be used and applied by First Party, at its option, for the purchase by Second Party of such note, notes, or other evidence of indebtedness, or an interest therein, and thereupon such note, notes or other evidence of indebtedness so purchased with said funds, in whole or in part, shall be transferred to the Treasurer of the First Party, and his successors in office, without recourse on First Party to be held in trust by such Treasurer in his individual capacity as Trustee of the Second Party and such other party or parties, if any, whose funds may be used and employed by First Party in such purchase and sale; it being contemplated by First and Second Parties, and so agreed, that the funds of another person or other persons subscribing to the fund referred to in the recitals hereof may be so employed and used by First Party jointly with said funds of Second Party for the purchase of such purchases and sales. The gains and losses, or either, arising or sustained by and through the said uses of said funds shall accrue to and be borne by the parties holding an interest in such note, notes or other evidence of indebtedness in the ratio or proportion of their respective investments therein. The said Trustee, and his successors in office, shall hold and retain possession of every such note, notes or other evidence of indebtedness at the office of First Party in Dallas, Texas, and shall have power to collect the same, or any part thereof, execute receipts for payment thereof or thereon and to maintain suits thereon in his name as Trustee for the use and benefit of the beneficial owner or owners thereof, and he shall transmit, within fifteen days after receipt thereof, to Second Party all collections made thereon assignable to Second Party, less reasonable collection expenses incurred,

all collections made thereon assignable to Second Party, less reasonable collection expenses incurred, if any. First Party agrees to furnish to Second Party quarterly a written report of the amount of any outstanding obligations in which Second Party may be interested under the terms of this subdivision together with the name or names and postoffice address or addresses of the obligator or obligators insofar as it may be reasonably practical for First Party so to do.

"Third: Should there remain any balance of the funds referred to in Section I hereof after an application, appropriation and expenditure thereof as set forth in subdivisions First and Second above, then such balance, or so much thereof as may be reasonably necessary thereunto, shall be set aside by First Party to create and provide the mortuary fund referred to in the recitals hereof, and thereupon shall be held inviolate for such purpose.

"BANK DRAFT AUTHORITY

\_\_\_\_\_, 19\_\_\_\_  
Bank \_\_\_\_\_ Town \_\_\_\_\_ State \_\_\_\_\_  
(Name of Bank)

"You are hereby authorized to pay drafts drawn against my account by the United Fraternal Benefit Association, Dallas, Texas in the amount of \_\_\_\_\_ and charge same to my account, without further notice, until revoked by me in writing. In case funds are not available at the time draft arrives do not return the same until you notify me. I reserve the right to withdraw this authority at my option.

(Applicant Sign Banking Signature here)

"Fourth: Should there remain any balance of the funds referred to in Section I hereof after an application, appropriation and expenditure thereof as set forth in subdivisions First, Second and Third above, or either, then such balance shall be set aside by First Party for and placed in its general membership dues fund to be used by it in accordance with its rules and regulations governing such dues funds."

Under the above mentioned application, a physician makes application to the United Fraternal Benefit Association

tions applicable to such memberships or as the same may be thereafter altered, amended, modified or enlarged and agrees to pay said association, concurrently with the execution with said application a designated sum not to exceed Seventy Two Dollars (\$72.00) paid in cash and in the event the total Seventy-Two Dollars is not paid a portion thereof is paid and the balance is to be paid in installments as set out in the application. The application for membership in the United Fraternal Benefit Association is also an application for appointment as a regional, medical advisor and examiner for said association. When the physician becomes a member of said association he is also appointed as a medical advisor and examiner for said association and for his services the association agrees to pay him the sum of \$1.00 for every member examined by the said physician in his district and to pay an additional sum of \$4.00 if a detailed medical examination is required.

The above mentioned certificate and application considered together is more than an application for membership in the United Fraternal Benefit Association and a contract of employment. The agreement as set out in the application specifically provides that "should any one or more applicants for insurance benefits referred to in the recitals hereof execute his or her note, notes or other evidence of indebtedness, in payment, in whole or in part, of the premium required to be paid for a benefit certificate or policy of insurance issued or to be issued to such applicant then so much of said fund as may remain after an allocation of the amount stipulated in subdivision First of this Section, as may be requisite thereunto, may be used and applied by First Party, at its option, for the purchase by Second Party of such note, notes, or other evidence of indebtedness, or an interest therein, and thereupon such note, notes or other evidence of indebtedness so purchased with said funds, in whole or in part, shall be transferred to the Treasurer of the First Party, and his successors in office, with out recourse on First Party to be held in trust by such Treasurer in his individual capacity as Trustee of the Second Party and such other party or parties, if any, whose funds may be used and employed by First Party in such purchase and sale; it being contemplated by First and Second Parties, and so agreed, that the funds of another person or other persons subscribing to the fund referred to in the recitals hereof may be so employed and used by First Party jointly with said funds of Second Party for the purposes of such purchases and sales. The gains and losses, or either, arising or sustained by and through the said uses of said funds shall accrue to and be borne by the parties holding an interest in such note, notes or other evidence of indebtedness in the ratio or proportion of their respective investments therein. . . ."

The above mentioned certificate and application, considered together is a profit sharing or participating agreement wherein both parties, namely, the physician and the United Fraternal Benefit Association, participate in the gains and losses, or either, arising or sustained by and through the uses of said funds.

After a careful study of the term "security" or "securities" as defined in the above mentioned Act in connection with the application and certificate of the United Fraternal Benefit Association, we are of the opinion that said application and certificate considered together constitutes a security within the meaning of the Securities Act.

It is to be specifically understood that we are not passing upon the authority of the issuing company to issue the kind and character of instrument or instruments as hereinabove mentioned. Neither are we passing upon any phase of the insurance law which may be applicable regarding the proposed amendment to the charter of the United Fraternal Benefit Association.

Trusting that the foregoing fully answers your inquiry, we are

Yours very truly

ATTORNEY GENERAL OF TEXAS

By s/Ardell Williams  
Ardell Williams  
Assistant

AW:IM:wc

APPROVED APRIL 8, 1940  
s/Gerald C. Mann  
ATTORNEY GENERAL OF TEXAS

Approved Opinion Committee by s/BWB Chairman