



OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

GERALD C. MANN  
ATTORNEY GENERAL

Honorable D. B. Barrow  
Chief Examiner and Chief Clerk  
Board of Insurance Commissioners  
Austin, Texas

Dear Sir:

Opinion No. O-3457

Re: Mutual assessment insurance association may not lawfully issue a policy for a benefit less than the maximum benefit in case of death from military or naval service in time of war or in case of death while riding in an airplane, such death occurring after two years from date of issue.

Your request for an opinion has been received and carefully considered by this Department. We quote from your request as follows:

"The following paragraph appears in Section 9 of Senate Bill 135, passed by the 46th Legislature, 1939, and governing the operations of mutual assessment insurance associations in Texas.

"All conditions of the certificate must be stated thereon, including such portions of the by-laws of the association as may affect the insurance rights of the parties in any material way; and amendments to the by-laws which might affect such rights of members must forthwith be mailed by first-class mail to each certificate holder affected. In case of controversy the burden of proof shall be on the company to prove the amendment was mailed to the member. Each certificate must provide that it shall be incontestable, after

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having been in force during the lifetime of the insured for a period of two years from date of issue, except for non-payment of assessments; provided, however, any association may issue a certificate providing a benefit less than the maximum benefit named in the face of the certificate in case of death of the member by his own hand while sane or insane. It shall also provide that in case the age of the insured is misstated, the amount of insurance shall be that which the premium actually paid would purchase at the correct age, based on rates in force at the time of the death of the insured. No certificate issued by such association, nor any application for the certificate shall contain language or be in such form as to mislead the applicant or the policyholder as to the type of insurance afforded.

"We have underlined the portion of the paragraph with which we are particularly concerned.

"Will you please advise if, under this provision of the law, a mutual assessment insurance association may issue a policy providing for a benefit less than the maximum benefit in case of death from military or naval service in time of war, or in case of death while riding in an airplane, such death occurring after two years from date of issue."

You have correctly quoted the pertinent provisions of Section 9 of Senate Bill 135, 46th Legislature of Texas, and codified as Section 9 of Article 5068-1, Vernon's Annotated Texas Civil Statutes. Such provisions are applicable to mutual assessment insurance associations.

Life insurance companies organized and operating under Chapter 3, Title 78, Revised Civil Statutes, may place exceptions in their policies for violations of conditions of the policy relating to naval and military services in time of war. See Section 3 of Article 4732, Vernon's Annotated Texas Civil Statutes, which reads as follows:

"That the policy, or policy and application, shall constitute the entire contract between the parties and shall be incontestable not later than

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two years from its date, except for nonpayment of premiums; and which provision may or may not, at the option of the company, contain an exception for violations of the conditions of the policy relating to naval and military services in time of war."

However, Texas courts have repeatedly held that mutual assessment life insurance corporations are governed only by the statutes particularly applicable to them as such and that the general insurance laws relative to life insurance companies organized under Chapter 3, Title 78, Revised Civil Statutes, are inapplicable to mutual assessment life insurance companies. See the following cases:

Bankers' Life & Loan Ass'n v. Bond, 113 S.W.(2d)  
1001  
Bankers' Life & Loan Ass'n v. Chase, 114 S. W.  
(2d) 374  
General Life Insurance Co. v. Potter, 124 S. W.  
(2d) 409

The courts of Texas have also held that mutual assessment life insurance companies may place reasonable limitations on their liabilities in their policies provided same are not prohibited by statute applicable to them. See the following cases:

Imperial Life Insurance Company v. Thornton, 138  
S. W. (2d) 295  
Bankers' Life & Loan Ass'n v. Chase, 114 S. W.  
(2d) 374  
Bankers' Life & Loan Ass'n v. Bond, 113 S. W.  
(2d) 1001

Clearly Section 3 of Article 4732, Vernon's Annotated Civil Statutes, supra, applicable to life insurance companies generally, has no application to mutual assessment life insurance companies. We must, therefore, look to the provisions of Section 9 of Senate Bill 135, supra, for our answer to this question, as we have been unable to find any other provision of law applicable to mutual assessment life insurance companies and applicable to the question before us, other than Section 9, supra.

It is our opinion that Section 9 of Senate Bill 135, supra, is clear and unambiguous.

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It is our opinion that said section clearly provides that the certificate or policy of insurance must provide that same shall be incontestable, after having been in force for two years, except for nonpayment of assessments; this is limited only by the provision relative to suicide, while sane or insane, and by the proviso relative to mis-statement of age, etc. Said section does not contain any proviso relative to the death of the insured during war, military or naval service or as a result of airplane hazard so as to except said risks from the incontestability feature of the policy after the policy has been in force for two years. The statute is plain, and we can not read such provisions into it.

You are, therefore, respectfully advised that it is the opinion of this Department that your question should be answered in the negative, and it is so answered.

Yours very truly

APPROVED MAY 14, 1941

ATTORNEY GENERAL OF TEXAS

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