



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

PRICE DANIEL
ATTORNEY GENERAL

July 11, 1947

Hon. George B. Butler, Chairman
Board of Insurance Commissioners
Austin, Texas

Opinion No. V-300

Re: Whether the Assured
Home Ownership Plan
of the Equitable
Life Assurance Soci-
ety of the United
States violates Ar-
ticle 5053, V.C.S.

Dear Sir:

In presenting the above question to this Department, you have enclosed your complete record of the hearing before your Board on the Equitable plan. You have also enclosed able briefs submitted by Equitable and those complaining of the plan. The Equitable plan is in essence one to require, simultaneously with the making of a loan on residential property, one of Equitable's own policies of life insurance as security for the loan in the event of the death of the borrower. It may be important to note that in the course of negotiations the plan does not contemplate the promise of a loan. The plan, in its broadest aspect, involves a complete selling program, with contracts and applications consistent with the plan; and of course, the administration of the loan and insurance policy subsequent to the closing of each loan. The statute involved, Article 5053, Vernon's Civil Statutes, reads as follows:

"No insurance company of any kind doing business in this State shall make or permit any distinction or discrimination in favor of individuals between the insured of the same class and of equal expectation of life in the amount of, or payment of, premiums or rates charged for policies of life or endowment insurance, or in the dividends or other benefits thereon; nor shall any such company or agent thereof make any contract of insurance or agreement as to such contract other

than as expressed in the policy issued thereon; nor shall any such company, or any officer, agent, solicitor, or representative thereof, pay, allow, or give, or offer to pay, allow or give, directly or indirectly, as an inducement to insurance, any rebate of premiums payable on the policy, or any special favor or advantage in the dividends or other benefits to accrue thereon, or any paid employment or contract for service of any kind or anything of value whatsoever, or any valuable consideration or inducement whatever not specified in the policy or contract of insurance;" (Emphasis supplied)

The requirement of insurance, both property and life, as additional security for loans is generally recognized as a wholesome practice if it is not abused. Lending organizations universally require some type of insurance on the property mortgaged. Property insurance agents are quite generally engaged in the loan business. In the very nature of things the agent desires the insurance business in conjunction with the loans he negotiates. Any borrower knows that the agent will take greater interest in the loan application when he expects to write the insurance. The probable advantage to the borrower in purchasing his insurance from the agent is present in any such negotiation by tacit understanding. We see no real distinction between such a transaction and the plan utilized by the Equitable. Equitable is free to select its borrowers and its insureds. It may refuse to make a loan unless secured to its satisfaction. It is not contended that it may not require life insurance as additional security for its loans. We see no reason why this concern legally engaged in both lines of business may not take advantage of their complementary features.

Article 5053 is primarily designed to prohibit discrimination between insureds of the same class. As stated in *Couch on Insurance*, Volume 3, Section 584, page 1872:

"The object or intent of statutes aimed against discrimination and rebates is that uniform rates shall be established and maintained, so as to secure all persons equality as to burdens imposed, as

well as to benefits derived, by preventing discrimination by insurers in favor of individuals of the same class, either as to premiums charged or dividends allowed, or as has been stated, in order that prospective insureds of the same class shall not be unfairly treated or discriminated against, by inducements being given to one of such class, which are not available to all therein."

As is true of all anti-discrimination statutes, the elements of reasonableness and fairness are to be read into them. The law cannot and does not attempt to place everyone on an identically equal basis in every situation. Of this statute, the Court of Civil Appeals at Texarkana said in the case of Morris v. Ft. Worth Life Insurance Company, 200 S. W. 1114:

"It is one of the evident purposes of the statute above quoted to prevent discrimination and secret agreements by which certain policyholders may be enabled to secure special favors as a consideration for their contracts of insurance."

The Equitable plan is essentially uniform in its application to insureds of the same class. On its face, the plan contains no element of a secret or side agreement with the assured which could be considered as an inducement or consideration for the sale of an insurance policy any different from that offered to any other assured of the same class. Simply because a prospective mortgagor is required to secure his loan by a policy of life insurance, affords no basis for the contention that the borrower is induced illegally to purchase insurance, or that the loan forms a part of the consideration for the policy. To hold otherwise would be reading into the statute a broader prohibition than is contemplated. The inducement aimed at is that which actually occurs, proved by competent evidence which of necessity by the very nature of the term involves the intent, purpose, methods and approach of the company, officer or agent employed in each transaction. According to Webster, the word "induce" is synonymous with "instigate", "lure", "incite", "entice", "impel", "urge". We cannot speculate that these elements will be present in each transaction even before it occurs.

Questions raised in various states under essentially identical statutes have been resolved by State

Courts, Attorneys General, and insurance officials against holding the plan and similar transactions to be prohibited as a matter of law. While the basis of these holdings, findings and opinions are not entirely uniform, the ultimate conclusions that such transactions are not per se illegal have been practically unanimous.

In the case of Greer vs. Aetna Life Insurance Company (Supreme Court of Alabama), 142 So. 393, the court held that an arrangement by Aetna to secure loans by its own policies of insurance did not violate the Alabama Statute, which is in essence the same as the Texas statute. However, in that case the main contention discussed by the court was that the policy issued on a 15 year term on a flat premium to all persons between the ages of 21 and 59, the same premium to be applicable to every age, constituted a discrimination between the policyholders and in that way violated the statutes.

In the case of Phillips vs. Fishback, (146 Pac. 181), the insurance agent agreed with the assured that a loan would be made and that a policy of insurance was required to secure the loan. It was contended there that the loan agreement was an illegal consideration or inducement for the policy of insurance. The Court said:

"If the inducement and consideration flowing from appellant in such transactions constitute an inducement or favor for anything, it is for the granting of a loan."

We find this statement in Joyce on Insurance, Volume 2, page 2195, section 192g:

"Nor is it violative of the statutes as to rebates, etc., to require one who desires a mortgage loan from the company to take out life insurance."

In considering this plan, the New York Department of Insurance had the following to say:

"In view of all the circumstances, and after listening to the points raised by the members of the insured Savings Associations, I am convinced that the Equitable is making every reasonable effort to conduct its affairs ethically and with due consideration to the effects of replacing mortgage loans

with lower interest rates. I can see no justification for the charge of rebate and, so far as I can determine, the charge of 'raiding' other portfolios seems unjustified. However, it does appear to be a fact that the Equitable has an advantage in obtaining this type of loan by reason of its trained personnel and the selected areas in which they appear to be operating."

Likewise, the Superintendent of Insurance in Ohio is quoted as follows:

"An applicant for a loan must at the same time apply for a policy of life insurance in same amount; the policy is then assigned as collateral to the loan. . .

"In my opinion, to say, an insurance company in requiring an applicant for a loan to take out a policy of life insurance, is violating General Code 9404 in that in so doing it is 'giving something of value,' is erroneous. To require a life insurance policy to be taken with each loan and to have said policy assigned as collateral security for said loan is within the rights of the company. . .

"The complaint as a whole attacks the general plan, and we find that the evidence introduced is insufficient to sustain the complaint. The complaint is therefore dismissed."

The Attorney General of Ohio is quoted in a ruling in 1941 as follows:

"At no time does it appear from the papers which you have submitted to me that the insurance company gives or offers to give, or enters into any separate agreement promising to secure the loan of any money as an inducement or consideration for insurance. It would therefore seem that the loan, if made, is not an inducement to insurance but rather that the insurance is an inducement to the loan.

"I realize, of course, that the plan makes it possible for an agent to offer to secure a loan as an inducement to a prospective purchaser of insurance to apply for such insurance. This, however, is not contemplated by the documents which you have submitted to me and the mere possibility of such misconduct on the part of an agent does not suffice to make the plan illegal. In such event the statutes give to you ample authority to punish such an agent. In view of the rules of construction applicable to the statutes in question and since the documents which you have submitted to me do not contain any promise on the part of the insurance company to make a loan of money to the applicant, I conclude that the plan as evidenced by these documents does not constitute an inducement to insure within the meaning of the sections above referred to.

From his Biennial Report of 1930, the Attorney General of Alabama is quoted as follows:

"It seems to me that there is a question of fact to be determined in each case. When the loan is the principal transaction, and the life insurance is a bona fide incidental requirement of the company, for the purpose of augmenting the loan security, a requirement made of all applicants alike, without discrimination, who may apply for a loan, then I am of the opinion that the transactions do not fall within the inhibitions of the statute.

"However, if the company or agent call upon a prospect for life insurance, and as a sales argument or inducement, makes the promise that if the policy of insurance is taken, the company will make long time mortgage loans to the insured, at a low rate of interest, and without charging any commission, then, I am of the opinion that this will constitute an 'inducement,' in fact and in law, and would be offensive to statutes, supra.

unless it is specified in the contract of insurance, and unless it applies to all persons alike who apply for insurance without discrimination. I, therefore, hold that the method of making loans in connection with the issuance of insurance policies, as outlined in the statement of facts, is not offensive to the Alabama Statutes and does not have to be set out in the policy of insurance."

The two Texas cases construing this statute in connection with the offer of a loan in connection with the writing of an insurance policy, *Morris v. Ft. Worth Life Insurance Company*, supra, and *Gause v. Security Life Insurance Company of America (Civil Appeals)*, 207 S. W. 346, are clearly distinguishable in that each involved an isolated instance of an agent offering to make or promising a loan clearly and manifestly for the purpose of inducing the particular prospect to take a policy of insurance. The object was primarily to sell an insurance policy and the loan was offered in the fullest sense as "an inducement to insurance." The Equitable in putting forward this plan purports to be motivated by a desire for protected loans. If that purported purpose is prosecuted by its agents in good faith and is not misrepresented to the borrower in such a way as to procure insurance on the promise of a loan which does not materialize, it is not subject to criticism. It is a legitimate prosecution of the company's authorized business. It is not the plan nor the ultimate result in the writing of a policy which the statute condemns. It is the approach which must be scrutinized. Every negotiation must be judged upon the occurrences transpiring while it is being conducted.

We believe that this plan can be legally presented to prospective borrowers. Whether it is used in a manner contrary to the spirit of Article 5053 is a question to be determined on the facts of each transaction.

SUMMARY

The Assured Home Ownership Plan of the Equitable Life Assurance Society of the United States does not violate Article 5053

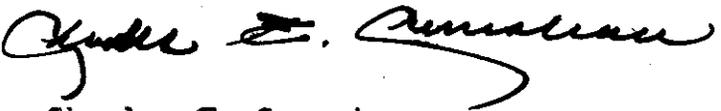
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of Vernon's Civil Statutes as a matter of
law.

Yours very truly

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