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ARIZONA ATTORNEY GENERAL

June 19, 1954
Letter Opinion
No. 54-169-L

Mr. Gordon Shoaf
Deputy Director, Division of Insurance
Arizona Corporation Commission
State Building
Phoenix, Arizona

Re: Bill of sale of chinchilla with
warranties; 61-101, A.C.A. 1939,
1952 Cum. Supp. Ch. 64, Senate Bill
1, Art. 1, Sec. 2, Second Regular
Session, 21st Arizona Legislature.

Dear Mr. Shoaf:

This is in reply to your request for our opinion as to whether or not a bill of sale of a chinchilla which warrants "that the above chinchilla or chinchillas will not die from any cause save as hereinafter excepted, for the period of _____ years from the date hereof", is insurance under the existing code and the new insurance code. The term insurance is defined under the existing code, 61-101, A.C.A., 1939, 1952 Cum. Supp., as follows:

"61-101. Definitions.--

* * * * *

'Insurance' means: A contract of insurance or an agreement by which one (1) party, for a consideration, promises to pay money or its equivalent or to do an act valuable to the insured upon the destruction, loss, or injury of something in which the insured has a pecuniary interest, or in consideration of a price paid, adequate to the risk, becomes security to the other against loss by certain specified risks;"

The new insurance code, Senate Bill 1, Art. 1, Sect. 2, Second Regular Session, Twenty-First Arizona Legislature, which becomes effective January 1, 1955, defines insurance as follows:

"ARTICLE I, SCOPE OF CODE.

* * * * *

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Sec. 2. 'INSURANCE' DEFINED. 'Insurance' is a contract whereby one undertakes to indemnify another or to pay a specified amount upon determinable contingencies."

The case of STATE OF OHIO EX. REL. HERBERT S. DUFFY, Attorney General, vs. WESTERN AUTO SUPPLY COMPANY, 137 Ohio St. 163, 16 N.E. 2d 256, 119 A.L.R. 1236, distinguishes a warranty from insurance. At 119 A.L.R. 1240, the court said:

"* * * A warranty promises indemnity against defects in the article sold, while insurance indemnifies against loss or damage resulting from perils outside of and unrelated to defects in the article itself."

In this case the court held that the warranty in question was too broad and therefore constituted insurance. The court said:

"The respondent, in one of its forms of contract, specifically guarantees 'against defects in material and workmanship without limit as to time, mileage, or service;' but it goes further and undertakes to indemnify the owner of such tires against all road hazards (except fire and theft) which may render his tire unfit for service. The terms employed in the guarantee are sufficiently broad to include not only damage from blow-outs, cuts and bruises, whether resulting from under-inflation, faulty brakes or misalignment, but any and every hazard, including collisions, whether resulting from negligence of the owner or another. It clearly embraces insurance upon the property of the owner, such as is authorized by the provisions of Section 9556, General Code, to be written by companies required to comply with the insurance laws of the state."

See STATE ex rel. HERBERT, Atty. Gen., v. STANDARD OIL CO., 138 Ohio St. 376, 35 N.E. 2d, 437, where the court upheld its decision in WESTERN AUTO SUPPLY COMPANY case, supra, but pointed out that the warranty in the instant case did not constitute insurance.

You will note that the warranty in the case of the chinchillas

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is against death from any cause without regard to defect or infirmities in the chinchilla as of the time of the sale; and, therefore, it is our opinion that the warranty in this bill of sale does constitute insurance under our existing insurance code and the new insurance code.

Yours very truly,

JAMES E. HUNTER, JR.
Assistant to the
Attorney General

JEH:mp

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