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## ARIZONA ATTORNEY GENERAL

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PHOENIX, ARIZONA

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DEPARTMENT OF LAW OPINION NO. 71-36 (R-85)

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REQUESTED BY: MILLARD HUMPHREY  
Director  
Department of Insurance

QUESTION: When may an insurer offer or sell securities  
and insurance to the same person?

ANSWER: See body of opinion.

Article 6, Chapter 2, Title 20, Arizona Revised Statutes, entitled "Unfair Practices and Frauds", consists of A.R.S. §§ 20-441 through 20-459. Of these, the following sections are pertinent to the question presented:

"§ 20-452. Prohibited inducements

"Except as permitted in §§ 20-453 and 20-454, no insurer, agent, broker, solicitor or other person shall, as an inducement to insurance or in connection with any insurance transaction, provide in any policy for or offer, sell, buy or offer or promise to buy, sell, give, promise or allow to the insured or prospective insured or to any other person in his behalf in any manner whatsoever:

"1. Any employment.

"2. Any shares of stock or other securities issued or at any time to be issued or any interest therein or rights thereto.

"3. Any advisory board contract, or any similar contract, agreement or understanding, offering, providing for or promising any special profits.

"4. Any prizes, goods, wares, merchandise or tangible property of an aggregate value in excess of two dollars." (Emphasis added.)

"20-453. Programs for purchase by policy holders of securities of insurance companies

"Notwithstanding the provisions of § 20-452 and notwithstanding any other provision of law, domestic life insurers, whether of the stock, mutual, fraternal, limited capital stock, benefit stock or benefit type, shall not be prohibited from engaging in a program whereby the holders of their life insurance policies are offered the right from time to time to buy for cash or to exchange dividends on such policies or other policy values resulting therefrom for securities in domestic corporations engaged in or organized to engage in the insurance business, but no such insurer shall engage in any such program unless the right to buy or the dividends or other policy values subject to exchange shall result from ownership of or be payable on account of a policy which from its inception is or which shall, within a period of not to exceed six years from its issue date, become a life insurance policy on a permanent plan other than term. From and after being placed on such permanent plan, every such policy shall be in full compliance with § 20-1231 (standard nonforfeiture law) computed as from the date of being placed on such permanent plan. No such offering shall be deemed to be exempt from the provisions of chapter 12 of title 44."

"§ 20-454. Programs for purchase by policy holders of securities of companies not engaged in insurance

"Notwithstanding the provisions of § 20-452 and notwithstanding any other provision of law, domestic life insurers, whether of the stock, mutual, fraternal, limited capital stock, benefit stock or benefit type, which, on January 1, 1955, are engaged pursuant to the requirements of chapter 12 of title 44, in a program whereby the holders of their life insurance policies are offered the right from time to time to buy for cash or to exchange dividends on such policies or other policy values resulting therefrom for securities in domestic corporations neither engaged in nor organized to engage in the insurance business shall be permitted, subject to the requirements of chapter 12 of title 44, to continue to engage in such program notwithstanding the adoption of this title, but no such insurer shall so engage unless the right to buy or the dividends or other policy values subject to exchange results from ownership of or is payable on account of a policy which from its inception is, or which shall, within a period of not to exceed six years from its issue date, become a life insurance policy on a permanent plan other than term. From and after being placed on such permanent plan, every such policy shall be in full compliance with § 20-1231 (standard nonforfeiture law), computed as from the date of being placed on such permanent plan. No such program shall be engaged in by the insurer subsequent to January 1, 1960, except that any such insurer may, subject to chapter 12 of title 44, cause to be delivered stock in such corporation for an indefinite period subsequent to such limiting date if the right to acquire the stock arises as a result of a policy actually issued and delivered prior to such date."

Standing alone, A.R.S. § 20-452, in part, prohibits all insurers from either:

1. Providing in any policy for, or
2. Offering, or
3. Selling, or
4. Buying, or
5. Offering to buy, or
6. Offering to sell, or
7. Offering to give, or
8. Offering to allow, or
9. Promising to buy, or
10. Promising to sell, or
11. Promising to give, or
12. Promising to allow, either:

A. Any shares of stock or other securities issued, or

B. Any shares of stock or other securities at any time to be issued, or

C. Any interest in any shares of stock or other securities issued, or

D. Any interest in any shares of stock or other securities at any time to be issued, or

E. Any rights to any shares of stock or other securities issued, or

F. Any rights in any shares of stock or other securities at any time to be issued, to either:

- I. An insured, or
- II. A prospective insured, or
- III. Any person on behalf of any insured, or prospective insured, as either:

- (a) an inducement to insurance, or
- (b) in connection with any insurance transaction.

The Supreme Court of Utah considered a Utah statute similar to A.R.S. § 20-452 in the case of Utah Association of Life Underwriters v. Mountain States Life Insurance Company, et al., 200 P. 673 (1921), when it said, at page 675:

" . . . [I]t was the purpose and intent of the Legislature to have the business of life insurance conducted free and independent of any other matter of whatever kind or nature, and so that the person who is solicited to enter into a life insurance contract may do so entirely upon the merits of the contract of insurance presented to him. Life insurance contracts are so important in our modern life and affect so many persons of all classes, including widows and orphans, and are so beneficial in their effects, that they may well receive the consideration and protection of the lawmaking power. . . ."

In the Utah case, supra, a contract to purchase stock was made part of an application for insurance, with the purchase price for the stock to be paid by a promissory note. The contract provided that the dividends accruing on the insurance policy would be applied on the promissory note and that should the policy be allowed to lapse the insured would not be entitled to the dividends credited on the promissory note and the note and contract would be cancelled. The contract further provided that in the event of death, the beneficiary under the policy would have the option of either paying the balance due on the promissory note and taking the stock or receiving in cash the amount of dividends credited on said note and thereafter the note and contract would be cancelled. As a defense the company insisted that it had not violated the statute, because it allowed any person to purchase an insurance policy without subscribing for stock, and also allowed any person to purchase stock without buying insurance, and therefore the contracts were entirely independent of each other. The court said, at page 677:

"In determining whether the plan of the Company in disposing of its stock contravenes the provisions of our statute it should be remembered that it is not necessary that the subscription contract is the sole, or even the controlling, element which induced the prospect to take a policy of insurance under the Company's plan. In the language of the statute, it is sufficient if the stock transaction constituted 'an inducement to insurance,' or is made 'in connection therewith.' That is, that it is entered into in connection with the insurance contract and as a substantial part thereof. If the contract for the stock constitutes only one of the elements which induced the prospect to enter into the contract of insurance, and such contract is entered into in connection with the insurance, then the stock transaction is in direct violation of the provisions of our statute, and cannot stand.

\* \* \*

"To apply the foregoing rule in no way interferes with the Company's right to dispose of its capital stock. Contracts of insurance necessarily fall within the police power of the state, and it may therefore regulate such contracts within at least reasonable limits. It is elementary doctrine in this jurisdiction that statutes must be construed and applied in furtherance of the purpose or object which induced their adoption. That the statutes governing life insurance contracts must be liberally construed, and so as to protect the public, is held by all the courts having statutes that are like or similar to ours. See Joyce on Insurance (2d Ed.) § 190e. The language of our statute is very broad and comprehensive,

and a mere cursory reading of it discloses its dominant intent and purpose. Moreover, we have a right to assume that every provision of the statute which is prohibitive in its effect is based upon some evil which, in the minds of the Legislature, required regulation. Then, again, it is manifest that the statute was enacted for the protection of the public and especially for the protection of those who are solicited to enter into life insurance contracts who may lack the experience and the opportunity to guard themselves against the wiles of the experienced life insurance solicitor. The statute should therefore be construed so as to accomplish its purpose and so as to protect those it intends to protect. If the plan that is pursued by the Company in disposing of its capital stock as outlined above is not contrary to the provisions of our statute, then we cannot conceive of any plan which merely disposed of the Company's stock in connection with the contract of insurance that would be contrary thereto. After a careful consideration of all of the evidence, and especially the documentary evidence which is not and cannot be contradicted or explained, we are all agreed that the plan pursued by the Company in taking subscriptions for stock in connection with contracts of insurance is clearly violative of the provisions of our statute, and if permitted by this court would soon lead back to the very practices in writing life insurance which the statute, we think wisely, prohibits."

The all inclusive wording of A.R.S. § 20-452, as outlined above, viewed in the light of the dominant intent and purpose of such statutes, as set forth in the Utah case, supra, clearly indicates that the Legislature intended A.R.S. § 20-452 to be a complete and absolute prohibition.

Because A.R.S. § 20-452 specifically refers to A.R.S. §§ 20-453 and 20-454, we must read the former section as though the latter sections were written into it. See 2 Sutherland, Statutory Construction, § 5208 (3d ed. 1943), which states:

"When the reference is made [in a statute] to a specific section of a statute, that part of the statute is taken as though written into the referenced statute."

By its terms A.R.S. § 20-452 is limited by A.R.S. §§ 20-453 and 20-454 and, therefore, pursuant to the rule of statutory construction "expressio unius est exclusio alterius" (the mention of one thing in law implies the exclusion of the things not mentioned) the prohibitions of A.R.S. § 20-452 are limited only by the specific exceptions set forth in A.R.S. §§ 20-453 and 20-454. See Bushnell v. Superior Court of Maricopa County, 102 Ariz. 309, 428 P.2d 987 (1967), wherein the court said, at page 311:

"In construing a statute, it is the primary duty of the Court to attempt to ascertain the true intent of the legislature at the time it enacted the statute. In order to assist us in fulfilling this duty, experience has led to the adoption of certain canons of construction, one of which is particularly applicable to the present situation. It is expressed in the old phrase 'expressio unius est exclusio alterius'. Under this maxim, if a statute specifies one exception to a general rule, other exceptions are excluded."

We must therefore determine the nature and extent of the programs permitted by A.R.S. §§ 20-453 and 20-454.

A.R.S. § 20-453 permits domestic life insurers whether:

1. Stock, or
2. Mutual, or
3. Fraternal, or

4. Limited capital stock, or
5. Benefit stock, or
6. Benefit type,

to engage in a program whereby the holders of their life insurance policies are offered the right from time to time to either:

1. Buy for cash, or
2. To exchange for either:
  - A. Dividends on such policies, or
  - B. Policy values other than dividendswhich resulted from such policy, either:

- I. Securities in domestic corporations engaged in insurance business, or
- II. Securities in domestic corporations organized to engage in insurance business,

if the policy from which the right of the policyholder is derived becomes within six years from its issuance date a policy on a permanent plan other than term.

A.R.S. § 20-454 permits domestic life insurers whether:

1. Stock, or
2. Mutual, or
3. Fraternal, or
4. Limited capital stock, or
5. Benefit stock, or
6. Benefit type,

which on January 1, 1955, were engaged, pursuant to the requirements of Chapter 12, Title 44, Arizona Revised Statutes, in a program whereby the holders of their life insurance policies are offered the right from time to time to either:

1. Buy for cash, or
2. To exchange for, either:
  - A. Dividends on such policies, or
  - B. Policy values other than dividends which resulted from such policy, either:
    - I. Securities in domestic corporations which are not engaged in the insurance business, or
    - II. Securities in domestic corporations not organized to engage in the insurance business,

subject to the requirements of Chapter 12, Title 44, to continue to engage in such program if the policy from which the right of the policyholder is derived becomes within six years from its issue date a policy on a permanent plan other than term, but no program as outlined above is allowed after January 1, 1960, except that an insurer subject to Chapter 12, Title 44, Arizona Revised Statutes, can cause to be delivered stock in such corporations for an indefinite period subsequent to January 1, 1960, if the right to acquire the stock arises as the result of a policy issued and delivered prior to January 1, 1960.

It is our opinion that under the rule of statutory construction "expressio unius est exclusio alterius" the programs provided for in A.R.S. §§ 20-453 and 20-454 are limited to "domestic life insurers". We therefore conclude as follows:

I

Domestic life insurers may sell or offer securities and insurance to the same person if the sale or offer of securities:

1. Is not an inducement to insurance, and
2. Is not connected with an insurance transaction, or
3. If it is an inducement to insurance or is connected with an insurance transaction, and is

- A. Pursuant to a program provided for in A.R.S. § 20-453, or
- B. Pursuant to a program provided for in A.R.S. § 20-454.

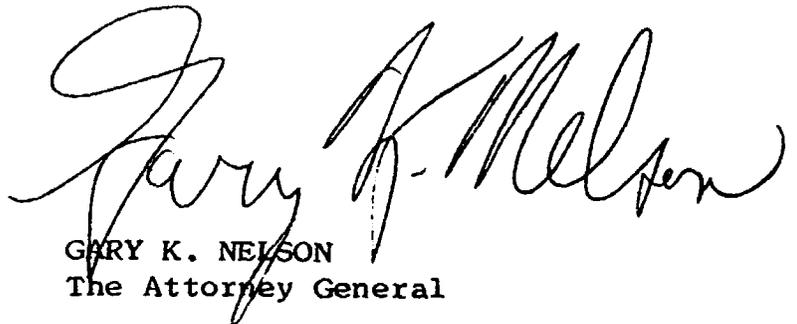
II

All insurers other than "domestic life insurers" may sell or offer securities and insurance to the same person if the sale or offer of the securities:

1. Is not an inducement to insurance, and
2. Is not connected with an insurance transaction.

Whether the offer or sale fulfills the conditions as set forth above depends upon the facts of each transaction. In determining these facts, it is our opinion that the substance rather than the form of the transaction should be looked to, thereby insuring that the intent of the Legislature will not be frustrated.

Respectfully submitted,



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The Attorney General