

Order 92-4

Petition for declaratory ruling as to applicability of Arkansas code annotated s 23-79-103 to life insurance issued in favor of charitable donee/beneficiaries

January 10, 1992

On January 2, 1992, the ST. VINCENT DEVELOPMENT FOUNDATION ("Petitioner"), a not-for-profit charitable foundation within the meaning of 26 U.S.C. 501(c)(3), filed on its behalf and on behalf of similarly situated institutions, a petition for a declaratory ruling (the "Petition") in accordance with the procedures set forth at Ark. Code Ann. s 25-15-206 and Rule XVII, Arkansas Insurance Department Rules of Practice and Procedure.

In its Petition the Petitioner requests a declaratory order that its practices and those of certain charitable donors who wish to make gifts of life insurance to the Petitioner do not run afoul of or counter to the "insurable interest" mandates of Ark. Code Ann. s 23-79-103(a). In describing its program Petitioner indicated that its practice of solicitation incorporates all of the following circumstances:

- (i) An individual of competent legal capacity executes an application for life insurance upon his or her own life, answers all medical inquiries of the prospective insurer, and submits to such medical examinations as may be required by the insurer for the effectuation of life insurance upon the life or body of the said individual;
- (ii) The application is completed in such manner as to direct that the Petitioner is to be the initial owner and beneficiary of the policy to be issued;
- (iii) The application and all attendant requirements are completed and delivered to the insurer;
- (iv) The individual contributes to the Petitioner an amount equal to or exceeding the initial modal premium due on the policy prior to its effectuation; and
- (v) If the policy is, in fact, issued, the Petitioner pays the remaining premiums, if any, due upon the life insurance policy.

The statute controlling this question is Ark. Code Ann. s 23-79-103, subpart (a) of which reads as follows:

- (a) Any individual of competent legal capacity may procure or effect an insurance contract upon his own life or body for the benefit of any person. However, no person shall procure or cause to be procured any insurance contract upon the life or body of another individual unless the benefits under the contract are payable to the individual

insured or his personal representatives, or to a person having, at the time when the contract was made, an insurable interest in the individual insured.

This statute is a codification of the common law as it has developed in England and in the United States declaring that in order for one person to properly obtain life insurance upon the life of another, he must have some interest in the continued life of the cestui que vie; but, if the procurer of such a contract on the life of another stands to gain more by the death of the cestui than by continuing his life, the contract becomes a mere wagering contract and is void as against a sound public policy. But such statute, being expostive of the common law, also sets forth in its first sentence the unquestioned premise of the English and American common law that the insured who himself applies for and effects insurance on his own life is considered to have an unlimited insurable interest in it, and he may make as owner or beneficiary of such contract any person whom he pleases. 2 Appleman, Insurance Law and Practice, s 761, at pp. 108-109; 44 C.J.S. "Insurance," s 202, at pp. 899-900; Liberty National Life Insurance Company vs. Weldon, 267 Ala. 171. 100 So.2d. 696, 61 ALR 2d. 1346 (1958).

The evil against which these principles of law have been directed, i.e., trafficking in human lives, is deemed not to be in issue so long as the cestui que vie is legally competent, is not in some manner misled or defrauded, and is an active participant in the effectuation of the insurance upon his own life. No one knows more clearly whom he may trust with his life, and insurance upon it, than the cestui que vie himself.

That this is the law of Arkansas and is the proper interpretation of the provisions of Ark. Code Ann. s 23-79-103 is made clear by a review of extant, controlling Arkansas case law which is fully in accord with the principles herein announced, viz: Langford vs. National Life & Accident Ins. Co., 116 Ark. 527, 173 S.W. 414 (1915); Atkins vs Cotter, 145 Ark. 326, 224 SW 624 (1920); National Life & Accident Ins. Co. vs. Jackson, 179 Ark. 412 16 SW2d 469 (1929); Bank Credit Life Ins. Co. of Ark. vs. Pine Bluff National Bank, 247 Ark. 922, 448 SW2d 333 (1969); McRae vs. Wormack, 98 Ark. 52 (1911); Prudential Ins. Co. vs Williams, 113 Ark. 373 (1914); Mutual Aid Union vs. Alexander, 168 Ark. 698 (1925).

It is, therefore, the position and determination of the Insurance Commissioner that life insurance effectuated in the manner hereinabove described is fully valid and does not offend the public policy of this State.

Lee Douglass
Insurance Commissioner
