

CREDIT UNIONS: Right to proceeds of insurance upon life of shareholder depends upon term of contract of insurance.



January 21, 1957

Honorable J. A. Rouveyrol
Commissioner of Finance
Department of Business and
Administration
Jefferson City, Missouri

Dear Sir:

We have received your request for an opinion of this office, which reads as follows:

"We have received the following letter from Mr. Russell Maloney, Attorney at Law, Kansas City, representing the various Missouri credit unions and relating to the disposition of life savings insurance:

'There exists among Missouri credit unions some misunderstanding regarding the disposition of life savings insurance, commonly called share insurance, in connection with shares held in joint tenancy. As you know, a large number of credit unions carry this group insurance which on the face of the policy provides as follows:

CUNA MUTUAL INSURANCE SOCIETY
(Hereinafter called CUNA Mutual)

will pay to the

BLANK CREDIT UNION
Kansas City, Missouri
(hereinafter called the Credit Union)

'The maximum that can be paid under the policy is \$1,000.00 depending on the amount in the share account.

'Upon the death of the member the problem arises whether or not when the money from the

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insurance company is paid into the credit union it becomes a part of the survivors account and can be credited to the survivors account along with the share account, and subsequently paid to the survivor of the joint tenancy.

'The standard joint share account agreement used by most, if not all, Missouri credit unions in part provides:

"The joint owners of this account, hereby agree with each other and with said credit union that all sums now paid in on shares, or heretofore or hereafter paid in on shares by any or all of said joint owners to their credit as joint owners with all accumulations thereon, are and shall be owned by them jointly, with right of survivorship * * *"

'Would the share insurance flow to the survivor along with the share account under the above quoted provision of the joint share account agreement?

'It has come to our attention that in at least two states credit unions have been informed that a "beneficiary" may be designated to receive amounts added to the deceased members account by reason of the share insurance. Information has also been received that in at least one state the Bureau of Federal Credit Unions have permitted the designation of a "beneficiary" by contract between the credit union and the joint tenants. It would seem that this procedure may be in conflict with an opinion you received from the office of Attorney General, John M. Dalton, dated July 16, 1953, which was prepared by Assistant Attorney General Robert R. Welborn. The opinion is not on the same point.

'Applying the proceeds of the life savings insurance to the survivors account or passing it to the survivor could possibly subject a credit union to litigation, which would be of

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concern to your department in the exercise of your regulatory and supervisory power as set forth in Section 370.100, R. S. Mo. 1949.

'In behalf of the Missouri Credit Union League, for the benefit of all Missouri credit unions, I wish to request a ruling from you as to whether share insurance goes to the survivor along with the share account or whether it is subject to administration under the Missouri Probate Code. Also whether a beneficiary can be designated by contract between the members and the credit union.

Respectfully submitted,

/s/ Russell Maloney
Russell Maloney.'

"As requested in the last paragraph of the letter, I will appreciate it if you would let me have an opinion as to whether share insurance goes to the survivors along with the share account or whether it is subject to administration under the Missouri Probate Code. Furthermore, I should like to know whether a beneficiary can be designated by contract between the members and the credit union."

As a matter of general law, in the absence of statutory regulation, which we do not find in Missouri, the payment of the proceeds of an insurance policy is a matter of contract among the parties to the contract of insurance:

"The primary and undoubted intent of a contract of life insurance is that the company shall make payment on the death of insured; and the question as to who is entitled to payment is a secondary one and contingent on the circumstances. The policy is said to be the measure of the rights of everybody under it, and in cases involving the right to the proceeds, the law of contracts, and not that of inheritance, is controlling.
* * *

46 C.J.S., Insurance, Section 1154, p. 37.

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We are dealing here with a group insurance policy. However, "it should be observed that while group insurance is distinctive in some respects, the right of one claiming under a group policy to recover thereon is governed in many respects by the general principles of the law of insurance * * *." 29 Am. Jur., Insurance, Section 1370, p. 1027.

The details of the policy of insurance here involved and the conditions under which it is granted to credit union shareholders are not contained in your opinion request. Inasmuch as the contents of the policy and the application or certificate (if any) of the shareholder are of primary significance, we are in no position to state any definite opinion as to whether or not the proceeds of such insurance should, upon the death of one party to a joint share account, be paid to the surviving shareholder or to the estate of the deceased joint shareholder. Furthermore, inasmuch as determination of this question would depend upon the terms of the contract of insurance and be a matter of general law, it would not appear to be subject to your regulation or control. If credit unions are in doubt as to the proper party to whom to make payment and as they may be liable for double payments, it might be well for your office, in its supervisory and regulatory capacity, to insist that the contracts of insurance be sufficiently clear and definite to eliminate such questions.

As for the second inquiry, the matter again is one of general law not peculiarly within the scope of your regulatory authority. We perceive, however, no objection, as a matter of law, to the designation of a beneficiary to whom the proceeds of such policy should be paid upon the death of the shareholder. The Supreme Court of Missouri recognized the right of the insured in similar circumstances to designate a beneficiary to whom the proceeds of the policy should be paid. The case of Mutual Bank & Trust Co. v. Shaffner, 248 SW2d 585, involved the authority of a bank to participate in an insured life savings account plan, which appears to be somewhat similar to that involved in the insurance upon shareholders of credit unions. Under the arrangement there involved, the bank obtained a group savings certificate policy from an insurance company under which holders of insured life savings certificates in the bank were to be insured in an amount equal to the difference in their deposits under the insured savings account and the amount of the purchaser's certificate, not to exceed two thousand dollars. The depositor could purchase the certificate for himself and as "trustee" for a named "beneficiary" or for himself and a named co-owner. One of the questions raised was the matter of privity of contract between the insurer and the depositor-assured. In passing on this question the court went into the matter of designation of a beneficiary by the depositor, and stated, 248 SW2d 1.c. 591:

" * * * A group policy is a contract between an insurer and an individual or a corporation for the benefit of third persons. 'Basically, it resembles or is a simple third party beneficiary contract. It is true that every life insurance policy is such a contract, but under the group policy the beneficiary is also the insured.' Crawford and Harlan, Group Insurance, Sec. 15, p. 30. The assured's rights are determined by the policy, and either he or his beneficiary may maintain an action against the insurer upon the policy. See Gallagher v. Simmons Hardware Co., 214 Mo. App. 111, 258 S.W. 16; White v. Prudential Ins. Co. of America, 235 Mo. App. 156, 127 S.W. 2d 98; Adair v. General American Life Ins. Co., supra.

"We note that the insurer has not raised the issue of the bank's insurable interest. See Baker v. Keet-Rountree Dry Goods Co., 318 Mo. 969, 2 S.W. 2d 733, 738, 3 S.W. 2d 1003. Defendants concede that in 'employees' group insurance, the employment factor has been held to give rise to insurable interest necessary to the validity of such group contracts.' However, they point out, there is no employment factor in this case, and the depositor is not the bank's debtor. They inquire: 'If the bank has an insurable interest in its depositors' lives, how is it measured? If the bank lacks an insurable interest in the life of the depositor as a creditor, officer or employee, is not the contract a wagering contract?'

"An insurable interest is not required of the bank. The group insurance contract is one between the insurer and the bank for the benefit of certain depositors. When a depositor becomes insured thereunder, his rights, and the rights of the beneficiary whom he has designated, are measured and determined by the group policy. Gallagher v. Simmons Hardware Co., White v. Prudential Ins. Co. of America, and Adair v. General American Life Ins. Co., supra. The insurance proceeds payable upon the death of the insured depositor inure to the benefit of such beneficiary. At most, the bank is a mere conduit through whom the insurance proceeds are paid to the named beneficiary. Unquestionably, every person has an

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insurable interest in his own life and 'he may insure it for the benefit of any person whom he sees fit to name as beneficiary,' Walker v. General American Life Ins. Co., Mo. Sup., 141 S.W. 2d 785, 787. Thus, the insurable interest which the insured depositor has in his own life makes unnecessary the existence of any insurable interest in the bank."

In view of the court's construction of policies of insurance, as noted in the above case, as contracts for the benefit of the third person, this feature distinguishes the designation of a beneficiary in such circumstances from the situation involved in the opinion to you dated July 16, 1953, and referred to in your opinion request, in which we held that a shareholder may not designate a beneficiary to receive the shares of a credit union upon his death without administration. In that opinion we pointed out that in the case of Kansas City Life Ins. Co. v. Rainey, 353 Mo. 477, 182 SW2d 624, 155 A.L.R. 168, the court upheld the right of a beneficiary designated by the purchaser of an investment annuity policy to receive the proceeds of such contract upon the death of the purchaser as against the executor of the estate of the purchaser, on the grounds that the contract was one entered into for the benefit of a third party.

We also mentioned in that opinion that in that case the Supreme Court cited the case of In re Koss' Estate, 106 N.J. Eq. 323, 150 A. 360, as upholding the right of a third party beneficiary under a contract to receive the proceeds of such contract upon the death of a party as against the personal representative of the decedent. That case involved the designation of a beneficiary in the event of the death of a participant in an employee stock purchasing plan. The court upheld such designation as against the contention that it was a testamentary disposition. In doing so, the court stated:

"Instead of regarding the designation of the beneficiary as a disposition of property, we regard it as the mere naming of a person for whose benefit a contract is made. We believe this must be so since there never was any specific property to which Gertrude Koss was entitled in her lifetime."

In view of the fact that contracts of insurance are generally regarded, insofar as the rights of beneficiaries are concerned,

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as contracts for the benefit of a third party, we would see no reason why the insurance here involved could not be disposed of in the same manner as ordinary insurance. Here again, however, the right to do so must depend primarily upon the contract of insurance and the contract between the credit union and the shareholder.

CONCLUSION

Therefore, it is the opinion of this office that the right to the proceeds of a group insurance policy covering joint shareholders in a credit union account upon the death of one of the joint shareholders must be determined by the contract of insurance, including the contract between the insurer and the credit union and that between the credit union and the shareholders.

We are further of the opinion that, subject to the provisions of the contract of insurance, the shareholder may dispose of proceeds of any such insurance by the designation of a beneficiary to receive such proceeds upon the death of the shareholder.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Robert R. Welborn.

Yours very truly,

JOHN M. DALTON
Attorney General

RRW:ml