

OPINION NO. 75-007

Syllabus:

The benefits limitation of R.C. 3917.01(C) does not apply to a group life insurance policy, covering residents of many states including Ohio, when the policy has neither been issued nor delivered within the state of Ohio.

To: Harry V. Jump, Director, Dept. of Insurance, Columbus, Ohio
By: William J. Brown, Attorney General, February 7, 1975

Your predecessor's request for my opinion as to the interpretation of portions of Chapter 3917 of the Revised Code, which governs group life insurance policies, reads as follows:

"[An insurance company], which is organized under the laws of another state and authorized to do business in Ohio, has issued to * * *, a Michigan corporation, a policy of group life insurance under which employees of [the corporation] in Ohio are eligible for life insurance. Benefits are offered by the plan of up to five times the employee's annual salary. But Section 3917.01 (C) of the Ohio Revised Code limits the maximum benefits available under a group life insurance plan to the lesser of \$75,000 or 250% of annual compensation. While Section 3917.01(C) refers to policies 'issued or delivered in this state', the last paragraph of 3917.06(I) states, 'Except as provided in Sections 3917.01 to 3917.06 inclusive of the Revised Code, no contract of life insurance shall be made covering a group in this state'.

"Your opinion is requested as to whether these two sections together limit the maximum benefits available to Ohio residents under the above described group life insurance plan to the lesser of \$75,000 or 250% of annual compensation notwithstanding the 'issued or delivered in this state' language of 3917.01(C)."

The question here is whether Ohio members of the group covered by this policy are subject to the benefits limitation of R.C. 3917.01(C), even though the contract was neither issued nor delivered within the state of Ohio.

Under R.C. 3917.01(B) the General Assembly has limited the writing of group life insurance contracts to ten specific group types. Under R.C. 3917.01(C) the Assembly has limited the benefits under such policies to \$40,000, or to \$75,000 under certain circumstances. My predecessors have frequently interpreted the group type limitation of subsection (B). In Opinion No. 1091, Opinions of the Attorney General for 1960, for instance, the Attorney General said that, "* * *the

statute, by setting forth what constitutes group life insurance, has the effect of limiting the authority of life insurance companies authorized to do group life business in the state of Ohio, to those classes listed in Section 3917.01, Revised Code." I am unable to find, however, that any question as to the benefits limitation of subsection (C) has ever been raised previously. In the absence of precedent as to the meaning of a statute, "we must", to quote another of my predecessors, "find its meaning in the language used." Opinion No. 1932, Opinions of the Attorney General for 1958.

In Opinion No. 1903, Opinions of the Attorney General for 1950, the Attorney General was asked whether the group type limitation of subsection (B), at that time a part of G.C.9426-1, invalidated a policy including Ohioans, when the insured group was not among the types prescribed by the Ohio statute, but when the policy had neither been issued nor delivered in Ohio. My predecessor said:

"The clear purpose and intent of the provision in Section 9426-2, General Code, which you quote, is to prohibit the writing of a group life insurance contract 'covering a group in this state' unless the group covered qualifies as such under the Ohio group insurance law. (Section 9426-1, General Code, et seq.) In the situation you present, a foreign life insurance company authorized to transact such business in Ohio has issued and delivered outside this state a master group life insurance contract, the benefits of which are being offered to associated groups in Ohio.

The Ohio groups eligible for benefits under the master contract do not fall within any of the authorized groups under the Ohio group life insurance law. It is therefore apparent on its face that the contract is illegal in its application to groups within the state of Ohio unless it is found Ohio law cannot affect contracts negotiated, issued and delivered outside this state even though they cover persons within the state."

The Attorney General also relied upon the following quotation from Palmetto Fire Ins. Co. v. Conn, Superintendent, 9 F.2d 202 (S.D.O., 1925), affirmed 272 U.S. 295:

"This, of course, does not affect the question of the right of a citizen of Ohio to buy insurance where he pleases and from whom he pleases, nor does it affect the right of a foreign insurance company to sell to a citizen of Ohio a Michigan contract of insurance; but, on the other hand, it does prevent an insurance company, who has been admitted to do an insurance business in Ohio from issuing policies upon property in Ohio upon any other terms or conditions than as named in the statute. In other words, it may not accept the benefits of the right and privilege of doing an insurance business in Ohio, and reject the conditions imposed by the statute. * * *"

Finding no statutory exception to the group type limitation for contracts issued and delivered outside of Ohio, and being satisfied that the law permitted Ohio to police all insurance activities within its boundaries, the opinion concluded that coverage of Ohio residents, under a group type not permitted by statute, was illegal.

There is, however, a marked difference in the language of the benefits limitation in subsection (C) which reads as follows:

"In addition to the limitation of amount provided for in division (B) (4) of this section, no group life insurance policy may be issued or delivered in this state which provides term insurance on any person which together with any other term insurance under any group life insurance policy issued to the employer of such person or to the trustee of a trust fund established as authorized by this section exceeds forty thousand dollars, unless two hundred fifty per cent of the annual compensation of such person from his employer or employers exceeds forty thousand dollars in which event all such term insurance shall not exceed seventy-five thousand dollars or two hundred fifty per cent of such annual compensation, whichever is the lesser; * * *."
(Emphasis added.)

The General Assembly has specifically made the benefits limitation applicable only to policies issued or delivered within the state of Ohio. As already noted, we must take the statute as it is written, and consider the words used to have been inserted for a specific purpose. Wheeling Steel Corp. v. Porterfield, 24 Ohio St. 2d.24, 28 (1970); Columbus Suburban Coach Lines v. Public Utilities Commission, 20 Ohio St. 2d. 125, 127 (1969). It is undisputed that this particular contract complies with the group type limitations of subsection (B). I conclude that, since it was neither issued nor delivered within the state, it is unnecessary that it comply with the benefits limitation of subsection (C). The insurance company has not, in the language of the Palmetto case, attempted to "reject the conditions imposed by the statute." This conclusion is fortified by the fact that the benefits limitation of subdivision (C) was first enacted by the General Assembly in 1951, as G.C. 9426-1 (5), 124 Ohio Laws 552, just one year after my predecessor's Opinion No. 1903 applying the group type limitation of subdivision (B) to a contract not issued or delivered in Ohio. If the General Assembly had intended to follow my predecessor's reasoning when it enacted subdivision (C), it would certainly not have used the specific language it did.

Your letter calls attention to the last paragraph in R.C. 3917.06 which reads as follows:

"Except as provided in sections 3917.01 to 3917.06, inclusive, of the Revised Code, no contract of life insurance shall be made covering a group in this state."

This provision is not controlling here, since, as we have seen, the benefits limitation of R.C. 3917.01(C) has no application to contracts which are neither issued nor delivered within the state.

In specific answer to your question it is my opinion, and you are so advised, that the benefits limitation of R.C. 3917.01(C) does not apply to a group life insurance policy, covering residents of many states including Ohio, when the policy has neither been issued nor delivered within the state of Ohio.